

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MIRANDA HANSEN,

Claimant,

vs.

HELPING HANDS NURSING
SOLUTIONS,

Employer,

and

TECHNOLOGY INSURANCE CO.,

Insurance Carrier,
Defendants.

File Nos. 19001260.02
19700152.02

ARBITRATION DECISION

Headnotes: 1402.40, 1802, 1803,
1803.1, 2907, 4000.2

Claimant Miranda Hansen filed two petitions in arbitration on June 30, 2020, File Numbers 19001260.02 and 19700152.02. In File Number 19700152.02, Hansen alleges she sustained injuries to her right arm, neck, shoulder blades and right hand while working for Defendant Helping Hands Nursing Solutions (“Helping Hands”) on June 20, 2019. In File Number 19001260.02, Hansen alleges she sustained injuries to her right arm, neck, shoulder blades, and right hand while working for Helping Hands on June 22, 2019. Helping Hands and its insurer, Technology Insurance Company (“Technology Insurance”), filed an answer on July 15, 2020.

An arbitration hearing was held *via* CourtCall video conference on April 26, 2021. Attorney Al Sturgeon represented Hansen. Hansen appeared and testified. Attorney Andrew Tice represented Helping Hands and Technology Insurance. Melissa Topete, the operations manager and resources manager for Helping Hands, appeared and testified on behalf of Helping Hands and Technology Insurance. Joint Exhibits (“JE”) 1 through 9, and Exhibits 1 through 5 and A through G were admitted into the record. The record was held open through August 11, 2021, for the receipt of Exhibits H and I and post-hearing briefs. Exhibits H and I were received and admitted into the record. The briefs were also received and the record was closed.

The parties submitted a Hearing Report covering both files, listing stipulations and issues to be decided. The Hearing Report was approved at the conclusion of the hearing. Helping Hands and Technology Insurance raised the affirmative defenses of refusal of suitable work under Iowa Code section 85.33 and lack of authorization and waived all other affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between Helping Hands and Hansen at the time of the alleged injuries.
2. Hansen sustained injuries, which arose out of and in the course of her employment with Helping Hands on June 20, 2019, and June 22, 2019.
3. The alleged injuries are causes of temporary disability during a period of recovery.
4. The alleged injuries are causes of permanent disability.
5. Although entitlement to temporary benefits cannot be stipulated, Hansen was off work from July 29, 2019, through January 22, 2020.
6. The commencement date for permanent partial disability benefits, if any are awarded, is January 22, 2020.
7. At the time of the alleged injuries, Hansen's gross earnings were \$682.87 per week, she was single and entitled to two exemptions, and the parties believe her weekly rate is \$442.86.
8. Prior to the hearing Hansen was paid 41.857 weeks of compensation at the rate of \$442.86 per week, including 9.857 weeks of temporary benefits totaling \$4,365.27, and 32 weeks of permanent partial disability benefits, totaling \$14,171.52.

ISSUES

1. What is the nature of the injuries?
2. What is the extent of disability?
3. Is Hansen entitled to temporary benefits from July 29, 2019, through January 22, 2020?
4. Is Hansen entitled to payment of medical expenses set forth in Exhibit 5?
5. Is Hansen entitled to recover the cost of the independent medical examination?
6. Is Hansen entitled to alternate care?
7. Is Hansen entitled to recover penalty benefits for late paid temporary disability benefits?
8. Should costs be assessed against either party?

FINDINGS OF FACT

Hansen lives in Hamilton, Ohio with her daughter and her daughter's father. (Tr., p. 13) At the time of the hearing she was 26. (Tr., p. 14)

Hansen attended classes and earned a certified nursing assistant (“CNA”) certificate in 2015. (Tr., pp. 15-16) After obtaining her certificate, Hansen worked as a CNA, providing direct patient care. (Tr., p. 16) Hansen planned to go back to school to obtain a bachelor of science in nursing degree and to specialize in wound care. (Tr., p. 17)

In April 2019, Helping Hands hired Hansen as a traveling CNA. (Tr., pp. 18, 98) Helping Hands operates a traveling staffing agency that staffs multiple facilities in Iowa, Nebraska, and South Dakota. (Tr., p. 97) Helping Hands’s principal place of business is located at 4300 South Lakeport, Suite 106, in Sioux City, Iowa. (Tr., p. 97) At the time of her hiring, Hansen was living in Sioux Falls, South Dakota, which she reported is “a little over” 90 miles from Sioux City. (Tr., p. 19) According to the duties and responsibilities for the position, the position requires the ability to lift 50 pounds and up to 100 pounds when moving, lifting, or transferring patients. (Ex. 2)

Hansen spoke with a staffing specialist at Helping Hands to receive and accept shifts. (Tr., pp. 19-20) Hansen reported she preferred working 12 to 16 hour shifts and she typically worked 40 hours per week. (Tr., p. 22) Helping Hands paid Hansen a flat rate of \$18.00 per hour. (Tr., p. 20) Hansen admitted on cross-examination that when she was hired, Helping Hands offered her an option for pay that included paid mileage and she “opted for the higher wage with no mileage.” (Tr., p. 72) Hansen stated she could not recall the amount of the lower wage with mileage, noting, “I did sit down and do a little bit of math, and it equated to be about the same, so I just went ahead and opted for the flat rate of \$18 an hour.” (Tr., pp. 72-73) Topete testified at the time of her hiring, Helping Hands offered Hansen \$15.00 per hour with paid mileage or \$18.00 per hour with no paid mileage, and that Hansen chose to be paid \$18.00 per hour with no paid mileage. (Tr., p. 98)

Hansen testified she agreed to travel an hour and if Helping Hands wanted her to travel more than an hour, Helping Hands would offer her an incentive, noting, “the majority of my shifts were within that one-hour drive range. The other shifts that were not, I did receive mileage for those.” (Tr., p. 20) Hansen reported she received mileage of \$35.00 each way. (Tr., p. 21)

Topete testified on one occasion Hansen saw a coworker had received mileage on the co-worker’s check. (Tr., p. 98) Topete relayed Hansen’s coworker had accepted the \$15.00 wage plus mileage. (Tr., p. 98) Hansen contacted payroll and stated she wanted to receive paid mileage to go to Estherville and she received paid mileage for the trip. (Tr., p. 99) Topete reported Hansen received paid mileage five times at the Estherville facility. (Tr., p. 99) Topete testified the mileage was paid in error because Hansen was not to be paid mileage given she had elected to be paid \$18.00 per hour. (Tr., p. 99) Topete reported Helping Hands does not pay a per diem separate from mileage. (Tr., p. 100)

Hansen testified on June 20, 2019, she was working the night shift at Pearl Valley in Estherville, Iowa, which is two hours and 11 minutes from her home. (Tr., p. 22) Hansen admitted the distance from her home to Pearl Valley was 97 miles. (Tr., p. 85) Hansen relayed she was reimbursed for mileage for that shift. (Tr., p. 22) Hansen

reported she sustained a work injury pulling a resident up to the head of the bed with another CNA, noting she “instantly felt” and “heard something.” (Tr., pp. 22-23) Hansen testified she reported her injury to the nurse on duty and she called Helping Hands to report her injury. (Tr., p. 24) Hansen completed an accident report. (Ex. 1, p. 1) Hansen did not complete her shift that night and drove home. (Tr., p. 24)

On June 21, 2019, Hansen attended an appointment with Ryan Noonan, M.D., with AMG Occupational Medicine, complaining of a sudden injury to her right shoulder with sharp pain radiating down into her fingers causing numbness after lifting a patient up in bed. (JE 1, p. 1) Hansen described the pain as constant, pins and needles, sharp, stabbing, and tingling. (JE 1, p. 1) Dr. Noonan examined Hansen, diagnosed her with right medial and lateral epicondylitis, right neck and shoulder pain, prescribed a Medrol Dosepak, and ordered physical therapy. (JE 1, pp. 3, 5)

On June 22, 2019, Hansen worked at a facility in Dell Rapids. (Tr., p. 26) Hansen testified a coworker needed assistance using a stand aid, and she went “to be the standby while they used the lift, and the particular resident was having behaviors that day, and she ended up dropping herself out of the lift and had [Hansen] pinned in between her and the wheelchair.” (Tr., p. 26) Hansen reported her injury to Amanda Foster, R.N., the nurse on duty, and she called Helping Hands to report her injury. (Tr., p. 27) Foster, Hanson, and an individual named, Radmila, signed a statement, stating:

[r]esident was put into stand-aid due to refusing to meaningfully assist in transferring. Resident was properly secured into stand-aid, resident put her arms and fell through the sling and instinctively my right arm was pinned between the resident, the floor and the wheel of the wheelchair. CNA Radmila was in the room (and assisted resident to floor) and witnessed incident. Incident occurred at approximately 1545.

(Ex. 1, p. 3)

Hansen testified she did not complete her shift on June 22, 2019, and she went to the emergency room, where she was seen by Kelly Taylor, CNP, with urgent care. (Tr., p. 27; JE 2, p. 23) Hansen reported a resident landed on top of her and she had immediate increased pain following the incident. (JE 2, p. 24) Taylor examined Hansen, noted her right shoulder appeared normal with no obvious deformity, she demonstrated pain over the AC joint, but no pain with abduction and adduction, and documented her range of motion was abnormal and limited with pain. (JE 2, p. 24) Taylor assessed Hansen with right shoulder pain, prescribed a sling and tramadol, released her to return to work with no use of the right hand, and recommended she follow up with occupational medicine. (JE 2, pp. 25-26)

Hansen went to the emergency room at Avera McKennan Hospital on June 23, 2019, complaining of right shoulder pain radiating to her elbow and neck and that her whole arm felt tingly at times with no numbness or weakness. (JE 3, p. 27) Lucas VanOeveren, M.D., examined Hansen, noted her right shoulder was not swollen, she had good range of motion with gentle passive movements, she had pain with the empty can test, and she reported her pain was worse in the posterior shoulder in the

supraspinatus area. (JE 3, p. 28) Dr. VanOeveren assessed Hansen with right shoulder pain, prescribed valium, and discharged her. (JE 3, pp. 28-30)

Hansen returned to Dr. Noonan on June 25, 2019, complaining of back pain from a second injury while helping a patient with a stand lift. (JE 1, p. 7) Hansen complained of pain in the posterior/lateral shoulder radiating to the right side of her neck and that her right elbow pain had improved. (JE 1, p. 7) Dr. Noonan assessed Hansen with right shoulder and elbow pain, prescribed tramadol, valium, and Flexeril, and ordered magnetic resonance imaging of the right shoulder and physical therapy. (JE 1, p. 9) Dr. Noonan restricted Hansen from working for two days and released her to return to work on June 27, 2019, with restrictions of light duty with the right hand, such as clerical tasks of writing and typing, with no other use of the right upper extremity, and directed Hansen to keep her right elbow in a neutral position at her side to limit her shoulder range of motion. (JE 1, pp. 12-13)

On July 10, 2019, Hansen attended a follow-up appointment with Dustin Randall, CNP, in Dr. Noonan's office, reporting no symptom improvement with physical therapy. (JE 1, p. 14) Randall assessed Hansen with worsening right shoulder pain and improved right elbow pain, restricted her from working for two days, and released her to return to work with restrictions of light duty with the right hand, including clerical tasks of writing and typing, but otherwise no use of the right upper extremity. (JE 1, pp. 15, 17)

Hansen underwent right shoulder magnetic resonance imaging on July 12, 2019. (JE 4, p. 32) The reviewing radiologist listed an impression of mild extracapsular biceps tenosynovitis, acute mild low-grade deltoid muscle strain, and intact rotator cuff and labrum. (JE 4, p. 32) Dr. Noonan wrote on the report he notified physical therapy of the result and that he would continue with Hansen's current plan and restrictions with a follow-up in two weeks. (JE 4, p. 32)

Hansen attended an appointment with Dr. Noonan on July 19, 2019, reporting her pain had not improved and that she was "very painful" after her physical therapy sessions. (JE 1, p. 19) Hansen relayed she was very depressed because she could not use her arm and she was in pain. (JE 1, p. 19) Hansen complained of pain moving into her neck and radiating down to her right elbow with some numbness and tingling in her forearm and fingers, and noted that electrical stimulation and dry needling with physical therapy were helpful. (JE 1, p. 19) Dr. Noonan documented the shoulder magnetic resonance imaging was "non explanatory for current symptoms." (JE 1, p. 19) Dr. Noonan assessed Hansen with right shoulder pain, paresthesia of skin, cervicalgia, and thoracic spine pain, noted the etiology of her current symptoms is "unclear" and he ordered cervical spine magnetic resonance imaging and electromyography. (JE 1, p. 22)

At hearing Topete testified she sent a text message to Hansen on July 23, 2019. (Tr., pp. 105-06) The message states, "[h]i Miranda it's Melissa can you respond to the email that I sent you on Friday. We do have work for you at the office." (Ex. F, p. 15)

On July 25, 2019, Topete sent Hansen a letter stating she had received notification Hansen could perform modified duty work as long as her right elbow is in a neutral position, and that Helping Hands was offering her work effective July 29, 2019,

at the 4300 S. Lakeport office in Sioux City, Monday through Friday, 8:00 a.m. through 5:00 p.m. hour lunch. (Ex. F, p. 17) The letter provided Hansen would be filing, answering the telephone, transferring calls to the specific staffing specialist, and performing any other miscellaneous tasks around the office. (Ex. F, p. 17)

On July 30, 2019, Hansen's attorney responded to an e-mail regarding her availability to work in Sioux City, Monday through Friday, as follows:

[i]f Miranda lived in Sioux City that would be just fine, but as you know she doesn't. Instead she lives in Sioux Falls and your offer for employment within her restrictions would require her to be on the road for more than 3 ½ hours. That would cause problems for her physically due to her injury and personal problems since she is a single mother. It is my understanding that when she was originally hired by your company there was a 1 hour limitation for travel, depending on the length of the shift. At any rate, this is in excess of that.

Miranda certainly continues to be ready, willing, and able to accept work within her restrictions as long as it is within her geographic proximity. Iowa Workers' Compensation law makes it quite clear that employees in this situation are not expected to travel extraordinary distances for work within their restrictions. It must be offered within their geographic proximity.

(Ex. 3, p. 1)

On August 8, 2019, Hansen attended an appointment with Keith Baumgarten, M.D., an orthopedic sports medicine physician, complaining of right arm pain, scapular pain, back pain, and numbness and tingling down her arm since a work injury on June 20, 2019. (JE 5, p. 34) Dr. Baumgarten examined Hansen, noted her magnetic resonance imaging "at most shows some tenosynovitis about the biceps which does not account for the amount of discomfort that she is having," assessed her with right upper extremity scapular pain "greater than what is apparent thus far on MRI imaging for her shoulder," recommended nerve conduction studies, and noted he did not see any evidence that surgical intervention is necessary for her shoulder. (JE 5, p. 34)

Hansen requested Helping Hands and Technology Insurance reinstate her temporary disability benefits. On August 23, 2019, Defendants' counsel sent Hansen's counsel a letter stating Defendants had discontinued her temporary benefits because she had refused suitable work in the Sioux City office. (Ex. 3, p. 5) In response to her complaints that the travel was too far and would increase the cost of her child care, Helping Hands' counsel stated: (1) Hansen regularly had to travel from her home to work, to cities in Iowa, including, Sutherland, a distance of 97.1 miles, Lake Park, a distance of 86.9 miles, Orange City, a distance of 65.8 miles, and to Menno, South Dakota, a distance of 64.5 miles, and the distance to the Sioux City office is 92.7 miles; (2) Hansen had opted to work a set hourly wage rate instead of being paid mileage; and (3) Hansen regularly worked varied and different shifts. (Exs. 3, pp. 5-6; G, pp. 20-21) Defendants' counsel noted contrary to her assertion that she spoke to Helping Hands twice per week about returning to work, she only spoke with Helping Hands'

representatives on August 1, 2019, August 5, 2019, August 8, 2019, and August 19, 2019. (Exs. 3, p. 6; G, p. 21)

On August 26, 2019, Hansen sent an e-mail to Topete regarding the offer of work. (Ex. F, p. 18) Hansen stated her attorney was out of the office at a hearing and that she would get back with her, and also stated:

[i]n the meantime, I am hoping we can try to find something that fits more of what my schedule/hours were prior to the injury. It was an extremely rare occurrence where I worked less than 8 hours prior to my injury as that is what best fit my schedule and circumstances. Working less than 8 hours typically only occurred because I was sick, my child was sick, or other similar unexpected circumstances. Your offer also includes 7 am start Monday through Friday. This is not something that was a typical occurrence prior to the injury. The handful of AM shifts I opted into were because I was able to make alternative arrangements. Again, it was not a typical nor regular occurrence that I opted for these shifts.

(Ex. F, p. 18)

On August 29, 2019, Topete sent Hansen an e-mail stating Dell Rapids, located at 1400 Thresher Drive, Dell Rapids, South Dakota was willing to work with her restrictions and was offering a dietary aide position Monday through Friday from 7:00 a.m. through 10:00 a.m., and 5:00 p.m. through 8:00 p.m., where she would feed residents and document intakes, clear tables, input intakes into the system, and give snacks. (Ex. F, p. 19) Hansen testified Dell Rapids is a 25 minute drive from her home. (Tr., p. 44) At hearing Hansen testified she believed she would have a difficult time performing the feeding tasks at Dell Rapids because she would have to feed the residents with her nondominant hand and she believed she would spill food on the residents. (Tr., p. 44) Hansen relayed she had never worked a split shift for Helping Hands and she rarely worked less than six hours unless she had a family emergency or she had been sent home early. (Tr., p. 45)

Following a telephone conversation, Defendants' counsel sent Hansen's counsel a letter on August 29, 2019, stating Helping Hands would not pay Hansen a \$35 per diem to travel to the Sioux City office and noting she was not paid a per diem during her regular work. (Ex. G, p. 22) The letter also stated that Hansen had refused suitable work offers in Sioux City and Dell Rapids. (Ex. G, p. 22)

Hansen attended an appointment with K.C. Chang, M.D., a physiatrist working in Dr. Baumgarten's office, for nerve conduction studies on September 4, 2019. (JE 7, p. 46) Dr. Chang listed an impression of right carpal tunnel syndrome to a mild degree involving both motor and sensory fibers, and noted he found no electrical evidence of any other peripheral neuropathy of the right upper extremity such as cervical radiculopathy, brachial plexopathy, axillary, suprascapular, dorsal scapular, long thoracic, or spinal accessory neuropathies. (JE 7, p. 47)

On September 5, 2019, Hansen returned to Dr. Baumgarten, complaining her right shoulder pain was unchanged since her last appointment. (JE 5, p. 35) Dr.

Baumgarten noted the nerve conduction studies were negative for any shoulder-based pathology, and showed carpal tunnel syndrome, which is not consistent with her chief complaint. (JE 5, p. 35) Dr. Baumgarten documented he did not see any indication for surgical intervention and he recommended a referral to a physiatrist. (JE 5, p. 35)

Between August 31, 2019, and September 17, 2019, Hansen attended appointments with Nicole Roemen, D.C., and received acupuncture and chiropractic manipulations for her shoulder, neck, and medial scapula pain. (JE 6)

On October 10, 2019, Hansen attended an appointment with Dr. Chang, complaining of right shoulder pain and difficulty elevating her arm. (JE 7, p. 48) Dr. Chang noted Hansen had developed a significant amount of trigger points in three different muscle groups and she had developed an indication of mild right shoulder capsulitis, recommended and administered trigger point injections, prescribed aggressive physical therapy, and restricted Hansen from working until her next appointment. (JE 7, pp. 48-49)

Hansen attended a follow-up appointment with Dr. Chang on October 24, 2019, complaining of right shoulder pain and discomfort in her shoulder blade area, reporting she felt worse after the trigger point injections, and that she had attended only one physical therapy program because of a scheduling problem. (JE 7, p. 50) Dr. Chang administered additional trigger point injections, recommended aggressive physical therapy, noted Hansen might benefit from a right intra-articular shoulder injection under fluoroscopy guidance to improve her range of motion for the capsulitis, and restricted her from working. (JE 7, pp. 50-51)

Hansen requested additional temporary benefits following her appointment with Dr. Chang. (Ex. G, p. 23) Defendants' counsel sent Hansen's counsel a letter on October 28, 2019, stating,

I am sure you recall Ms. Hansen has previously been offered accommodated work duties consistent with the restrictions from her treating physicians, which Ms. Hansen has refused to accept stating she does not want to travel the distance required to perform the offered work. Now, it seems Ms. Hansen is seeking to overcome her refusal and obtain TTD benefits based upon opinions from Dr. Chang reportedly taking her off work. We question whether Dr. Chang has concluded Ms. Hansen is unable to work.

Dr. Chang's initial office note includes a history stating "[Ms. Hansen] had injury at work and reinjured herself while she was going back to light duties and now she is completely off work for now." Of course, while Ms. Hansen was "off work" it was due to her refusal to perform the work offered to her – not because she had been taken off work by a physician. This important distinction is not apparent from the history section of Dr. Chang's office note. Dr. Chang goes on to state in the recommendations section "[f]or now, she will remain off work . . ." This entry suggests Dr. Chang intended only to maintain the status quo, which had allowed for Ms. Hansen to perform limited work.

We will be investigating Ms. Hansen's entitlement to temporary disability benefits by requesting Dr. Chang's clarification of his opinion upon Ms. Hansen's ability to perform work. Our office will be requesting a conference with Dr. Chang in order to address this subject. We will let you know when we have received a response from Dr. Chang.

(Ex. G, p. 23)

On November 11, 2019, Defendants' counsel sent Hansen's counsel a follow-up letter, stating he had the opportunity to speak with Dr. Chang on Friday, November 8, 2019, and "Dr. Chang advised he restricted Ms. Hansen's work duties because Ms. Hansen had reported she was unable to perform any light duty work," and also noting Hansen had been offered suitable light duty work within Dr. Baumgartner's restrictions, which she had refused because she did not wish to commute. (Ex. G, p. 24) Defendants' counsel relayed Defendants would voluntarily commence paying temporary total disability benefits. (Ex. G, p. 24)

On November 12, 2019, Hansen returned to Dr. Chang complaining of right shoulder pain and shoulder blade pain. (JE 7, p. 52) Hansen reported following the last injection she noticed very mild improvement in her range of motion, but no improvement with her pain, noted she had not attended physical therapy because she contracted influenza, and that her pain was worse. (JE 7, p. 52) Dr. Chang listed an impression of right shoulder pain, noted Hansen had only attended physical therapy three times since her last appointment, and recommended aggressive physical therapy two to three times per week to decrease the effects of right shoulder capsulitis, muscle spasm, and tightness. (JE 7, p. 52)

Defendants' counsel sent Hansen's counsel a letter on November 15, 2019, stating he had received Dr. Chang's office note from November 12, 2019, and that Dr. Chang had revised Hansen's restrictions to allow for "light duty work with no use of the right upper extremity," and that Defendants would not provide Hansen with further temporary benefits in light of her ongoing refusal of work. (Ex. G, p. 25) Defendants' counsel stated if Hansen were to reconsider her refusal of suitable work offered, to let him know, and that Hansen had been paid weekly temporary benefits from October 10, 2019 through November 13, 2019. (Ex. G, p. 25)

Hansen attended an appointment with Dr. Chang on December 4, 2019, regarding her right shoulder. (JE 7, p. 53) Dr. Chang noted the physical therapist had reported some improvement with range of motion and the therapist recommended Hansen continue with additional therapy and a strengthening program. (JE 7, p. 53) Dr. Chang ordered additional physical therapy and he imposed a restriction of no use of the right upper extremity. (JE 7, p. 53)

On January 3, 2020, Hansen returned to Dr. Chang after completing physical therapy. (JE 7, p. 54) Dr. Chang documented the therapist reported Hansen had received an 85 percent improvement in the function of her right shoulder, and a 50 percent reduction in her pain, and she had problems with external rotation of the shoulder and she was unable to touch her shoulder and the back of her shoulder. (JE 7, p. 54) Dr. Chang noted he asked Hansen whether she was ready to return to her

regular duties and she responded she did not believe she was capable of going back as a CNA. (JE 7, p. 54) Dr. Chang listed an impression of continued indication of right shoulder pain and a slight limitation in range of motion of her shoulder, found she had reached maximum improvement, recommended a home exercise program with stretching, continued her restrictions of no use of the right upper extremity, and recommended a functional capacity evaluation. (JE 7, pp. 54-55)

On January 22, 2020, Hansen attended a functional capacity evaluation with Jay Clayton, OTR. (JE 8) Clayton found Hansen demonstrated physical capabilities and tolerances in the medium physical demand level, with no limitations in sitting, standing, walking, forward reaching, squatting, static balance, dynamic balance, gripping, pinching, or dexterity, with a right grip of 70 pounds of force and left grip of 61 pounds of force. (JE 8, pp. 61-62) Clayton determined Hansen could occasionally lift 45 pounds from 12 inches to waist level, lift 30 pounds waist to shoulder, 25 pounds waist to overhead, bilateral carry 50 pounds, push 69 pounds of force, pull 83 pounds of force, and engage in overhead reach and sustained overhead reach. (JE 8, p. 62)

Hansen attended an appointment with Dr. Chang following the functional capacity evaluation. (JE 7, p. 56) Dr. Chang noted based on the evaluation, Hansen is capable of medium type work and that she could work as a CNA with "some amount of mild restriction" as identified in the functional capacity evaluation. (JE 7, p. 56)

On March 12, 2020, Hansen returned to Dr. Chang and Courtney Linton, PA-C, for an impairment rating, reporting she was receiving chiropractic treatment once per week and that is the only thing that helps her present condition. (JE 7, p. 57) Hansen complained of pain nearly all of the time, noted she had not returned to working as a CNA, and reported she was pursuing a business degree and had started college. (JE 7, p. 57) Dr. Chang and Linton noted,

[o]n physical exam, Miranda is in no distress. Mood and affect are appropriate. Shoulders are grossly symmetrical with no winging of the scapula. The upper extremities appear symmetrical. She does demonstrate hyperlaxity of the elbows bilaterally. She has tenderness with palpation to the superior border of the scapula as well as multiple sore points into the posterior glenohumeral region as well as anterior glenohumeral region. She denies pain over the bicipital groove specifically. Resisted muscle strength testing is graded 5/5 with an ability to fully fire the muscles against resistance, however, this is painful for her and she demonstrates a degree of cogwheeling. Range of motion measurement[s] for the shoulder itself were obtained and measured via goniometer. Active range of motion measurements demonstrate forward flexion ability to 130 degrees with extension to 50 degrees. She is able to adduct 40 degrees with abduction to 120 degrees and pain. She has external rotation to 80 degrees with internal rotation of 50 degrees. All motions appear to be uncomfortable for the patient but she has most discomfort with internal rotation and reaching behind the back. She has good capillary refill to the hand and good perfusion to the arm. Her skin is

without dystrophic changes. She does demonstrate some grimacing with range of motion testing, but otherwise does not show pain behaviors.

(JE 7, pp. 57-60) Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) (“AMA Guides”), Chapter 16, Dr. Chang and Linton found,

[p]er figure 16-40, her lack of flexion equates to a 3% upper extremity impairment. Per figure 16-43, her lack of abduction carries a 3% impairment. Per figure 16-46, her lack of internal rotation carries a 2% upper extremity impairment. These were added for a total value of 8% right upper extremity impairment due to her shoulder injury. If administrative purposes dictate, 8% upper extremity impairment converts to a 5% whole person impairment per table 16-3.

(JE 7, pp. 58, 60)

On March 23, 2020, Defendants’ counsel sent Hansen’s counsel a letter stating Defendants had received Dr. Chang’s 8 percent upper extremity impairment rating for her shoulder condition with a maximum medical improvement date of January 22, 2020. (Ex. G, p. 26) Defendants’ counsel stated Hansen had previously been overpaid two days of temporary benefits from November 12, 2019 through November 13, 2019, totaling \$126.77, and that his clients would pay the rating covering 10 weeks at \$442.86 per week, less the “\$126.66 credit,” for a total \$4,301.94. (Ex. G, p. 26)

On November 17, 2020, Hansen attended an appointment with Robert Pulliam, M.D., to establish care. (JE 9, p. 66) Dr. Pulliam noted Hansen had been involved in a work injury in June 2019 where she injured her rotator cuff and reported she had limited movement of her right shoulder with weakness, and she is limited to lifting 45 pounds with the right arm. (JE 9, p. 66) Dr. Pulliam examined Hansen, assessed her with right rotator cuff tendinitis, acne, attention deficit hyperactivity disorder, predominantly inattentive type, and depression and referred her to psychology. (JE 9, p. 71)

Dr. Baumgarten responded to a check-the-box letter from counsel for Defendants on November 19, 2020, and included handwritten comments as follows:

1. You treated Ms. Hansen following her alleged 6/20/19 and 6/22/19 injuries. From 8/8/19 through 9/5/19. True?

Yes No Comments (if any):

2. Ms. Hansen presented with subjective pain complaints. You were unable to identify any objective findings or basis for Ms. Hansen’s subjective complaints. True?

Yes No Comments (if any):

3. Following your examinations and review of test results, you were unable to identify a medical explanation for Ms. Hansen’s pain complaints. True?

Yes No Comments (if any):

4. You believe the alleged 6/20/19 and 6/22/19 workplace injuries would **NOT** be the cause of any permanent condition(s), impairment, or need for permanent work restrictions. True?

Yes No Comments (if any):

I do not see an objective reason for permanent restrictions.

5. You believe chiropractic treatment would **NOT** be reasonable or necessary to treat Ms. Hansen's pain complaints if the complaints continue after 6-8 weeks. True?

Yes No Comments (if any):

A short course of chiropractic treatment might be reasonable. If sustained relief was not obtained by 3 months, I would cease chiropractic treatment.

(Ex. A)

On November 24, 2020, Sunil Bansal, M.D., an occupational medicine physician, conducted an independent medical exam for Hansen and issued his report on March 2, 2021. (Ex. 4) Dr. Bansal reviewed Hansen's medical records and he spoke with Hansen on the telephone, but he did not physically examine her. (Ex. 4; Tr., pp. 37, 67)

Dr. Bansal noted Hansen reported that after pulling and lifting a resident on June 20, 2019, she heard and felt a pop in her right shoulder. (Ex. 4, p. 7) Hansen reported she could raise her arm to head level, but not overhead and she could not reach behind her back. (Ex. 4, p. 8) Hansen noted she had difficulty with repetitive activities, including vacuuming and reaching up into cupboards to put away groceries. (Ex. 4, p. 8) Hansen also complained of neck pain radiating to her right shoulder blade and down her arm into her fingers, and that her neck pain increases when reading a book or looking at a computer screen and reported she had limited range of motion when turning her head to the right. (Ex. 4, p. 8)

Dr. Bansal diagnosed Hansen with right shoulder rotator cuff tendinitis and cervical myofascial pain syndrome with symptoms characteristic of disc pathology and radiculopathy in her neck. (Ex. 4, p. 9) With respect to causation, Dr. Bansal opined, "the mechanism of lifting the resident onto the bed is consistent with Ms. Hansen's right shoulder tendinitis," and she aggravated her right shoulder tendinitis when her right shoulder was jerked sharply as the resident fell from the lift on June 22, 2019, noting she did not have any problems with her right shoulder before the June 20, 2019 and June 22, 2019 incidents. (Ex. 4, p. 10) With respect to her neck, Dr. Bansal opined Hansen's neck, trapezius, and shoulder blade pain are related to a cervical discogenic problem, noting he had provided a "provisional" diagnosis and that confirmation is needed by magnetic resonance imaging testing. (Ex. 4, pp. 10-11)

Using the AMA Guidelines, Dr. Bansal agreed with Linton and Dr. Chang that Hansen had sustained an 8 percent upper extremity impairment, or a 5 percent whole person impairment. (Ex. 4, p. 12) For her neck, Dr. Bansal found Hansen meets the criteria for a DRE Category II impairment under Table 15-5 of the AMA Guides, noting

she has radicular complaints and continued pain, and he assigned her a 5 percent whole person impairment. (Ex. 4, p. 12) Dr. Bansal agreed with the restrictions assigned by the valid functional capacity evaluation, and imposed additional restrictions of not lifting overhead with the right arm, to avoid work or activities that require repeated neck motion, or that places her neck in a posturally flexed position for greater than 15 minutes. (Ex. 4, p. 12) Dr. Bansal recommended future medical care to include cervical spine magnetic resonance imaging. (Ex. 4, p. 13)

On January 28, 2021, Dr. Chang responded to a check-the-box letter from Defendants' counsel, without providing any comments:

1. On March 12, 2020, you provided a recommendation for chiropractic treatment once a week for the following two months in response to Ms. Hansen's request. True?

Yes No Comments (if any):

2. You only recommended chiropractic treatment over a two-month period because you do NOT believe further chiropractic treatment would be necessary. True?

Yes No Comments (if any):

3. Your treatment and 8% right upper extremity impairment rating for Ms. Hansen involved her right shoulder only. True?

Yes No Comments (if any):

(Ex. B)

Hansen requested additional chiropractic treatment on January 12, 2021, and informed Defendants she was seeking an orthopedic consultation. (Ex. G, p. 27) On January 21, 2021, Defendants' counsel sent Hansen's counsel a letter stating Dr. Chang had recommended a short course of chiropractic treatment and Dr. Baumgarten had opined further chiropractic visits were not reasonable and necessary, so Defendants would not authorize additional chiropractic treatment. (Ex. G, p. 27) Defendants' counsel also noted Hansen had been discharged from medical treatment more than 10 months before and it had been one year since she had reached maximum medical improvement, and that Defendants wanted to know if a medical provider had recently recommended a referral for an orthopedic evaluation, so Defendants could investigate. (Ex. G, p. 27) Defendants also requested Hansen attend an independent medical examination with Arthur Lee, M.D., on March 17, 2021 or March 19, 2021, and asked that if Hansen required any special accommodation to attend the evaluation, to let him know as soon as possible. (Ex. G, p. 28)

Defendants scheduled an independent medical examination of Hansen with Dr. Lee for March 17, 2021. (Ex. G, p. 29) Due to a scheduling conflict, the examination was moved to March 22, 2021, at 3:30 p.m. (Ex. G, p. 29) The morning of the independent medical examination, Hansen's counsel informed Defendants' counsel

Hansen did not have a car and that Uber could not guarantee a ride over 30 miles. (Ex. G, p. 30)

Hansen did not attend the independent medical examination. (Ex. G, p. 32) On March 23, 2021, Defendants' counsel stated Defendants had requested an examination on January 21, 2021 for March 17, 2021 or March 19, 2021, and asked whether Hansen needed any special accommodation to attend the examination and that she did not respond. (Ex. G, p. 32) The appointment was changed to March 22, 2021, due to a revision in Dr. Lee's schedule, and the first time Defendants were notified Hansen had a transportation problem was the morning of March 22, 2021. (Ex. G, p. 32) Defendants' counsel asked Hansen's counsel to confirm she did not attend the examination, and, if so, to provide an explanation as to why she did not attend the examination, noting there are consequences of refusing to do so under Iowa Code section 85.39, and noted Defendants incurred a \$1,600 expense for the examination. (Ex. G, p. 32)

Following the hearing, Hansen attended an independent medical examination with Dr. Lee, an orthopedic surgeon, on June 21, 2021. (Ex. H) Dr. Lee examined Hansen and reviewed her medical records. (Ex. H) Dr. Lee found

[i]t appears that [Hansen] historically sustained a cervical strain and right shoulder strain. These injuries should have resolved uneventfully with a brief course of rest, medications, and perhaps some physical therapy treatment. She has a variety of subjective complaints, none of which I can substantiate or explain with objective findings. It appears that this woman has reached maximum medical improvement and will not require any further examination or treatment in the future based upon today's evaluation.

(Ex. H, pp. 40-41)

Dr. Lee opined Hansen's cervical spine examination findings correlate with a DRE Category I, finding she fails to demonstrate any of the seven clinical differentiators set forth in the AMA Guides, noting she has no muscle spasm or guarding, loss of deep tendon reflexes, no atrophy, she "never had an EMG," she has no instability on lateral flexion extension x-rays, and no loss of bowel or bladder function, which correlates with a zero percent whole person impairment. (Ex. H, p. 39)

Dr. Lee opined his examination of the right shoulder was similar, noting:

[t]he patient has a variety of subjective complaints involving her shoulder functionally and on examination she is tender everywhere. This means absolutely nothing to an orthopaedic surgeon because it is not localized under any sort of anatomic structure. From an objective perspective, there is no instability. There is no atrophy. She has no crepitus that would indicate rotator cuff inflammation or pathology. She has no instability in any direction, whether it be anteriorly, inferiorly, or posteriorly. The cervical spine examination already established the fact that she does not have any sort of weakness involving the right upper extremity. On patient compliance range of motion examination, the patient attempts to

demonstrate to me diminution in range of motion. However, I cannot demonstrate any objective explanation for this decrease in range of motion. In other words, she does not have objective, clinical findings of muscular, tendinous, bony, or neurologic pathology that could cause a decrease in motion. Again, I am going to have to defer to the medical records regarding whether this is actually a real finding or patient compliance related.

Historically, the patient describes the June, 2019 events. It is certainly conceivable that she sustained a strain to her right shoulder when lifting the patient or when the patient reportedly fell on her. As is the case with muscle injuries to the neck, these are typically self-limited, soft tissue injuries that resolve completely and leave the patients with no permanent sequela whatsoever. I certainly cannot demonstrate any objective indication of a permanent problem involving this woman's right shoulder.

Based upon today's examination, the patient has a 0% whole person impairment in application of the American Medical Association Guidelines.

(Ex. H, pp. 39-40)

CONCLUSIONS OF LAW

I. Applicable Law

These cases involve the issues of nature and extent of disability, entitlement to temporary benefits and refusal of suitable work, recovery of medical bills, recovery of the cost of an independent medical examination, and costs. In 2017, the Iowa Legislature enacted changes to Iowa Code chapters 85, 86, and 535 effecting workers' compensation cases. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.71, 86.26, 86.39, and 86.42 apply to injuries occurring on or after the effective date of the Act. These cases involve injuries occurring after July 1, 2017, therefore, the provisions of the new statute involving the nature and extent of disability, entitlement to temporary benefits and refusal of suitable work, and recovery to the cost of the independent medical examination under Iowa Code sections 85.33, 85.34, and 85.39 apply.

The calculation of interest is governed by Deciga-Sanchez v. Tyson, File No. File No. 5052008 (Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of

injury, plus two percent. Again, given these cases involve injuries occurring after July 1, 2017, the new provision on interest applies.

II. Nature of the Injury

The parties stipulated Hansen sustained a temporary and a permanent impairment caused by the work injuries. Hansen avers she sustained permanent impairments to her right shoulder and neck, to the body as a whole, entitling her to industrial disability benefits. Helping Hands and Technology Insurance aver Hansen has not sustained a permanent impairment to her neck and body as a whole and any permanent benefits are based on the functional loss to her right shoulder.

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

. . . it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

It is well-established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability is found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

[a] disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

Two physicians have provided causation opinions regarding Hansen's cervical spine, Dr. Bansal, an occupational medicine physician who performed an independent medical examination for Hansen, and Dr. Lee, an orthopedic surgeon who performed an independent medical examination for Helping Hands and Technology Insurance. I find Dr. Lee's opinion to be more persuasive than Dr. Bansal's opinion on the issue of causation.

Dr. Lee found no objective evidence Hansen sustained a permanent impairment to her cervical spine caused by her work injuries. As an orthopedic surgeon, Dr. Lee has superior training to Dr. Bansal. Moreover, Dr. Lee personally examined Hansen. Dr. Bansal conducted a video interview with her and did not physically examine her. (Tr., p. 37)

Dr. Bansal noted following her work injuries, Hansen complained of pain radiating to her right shoulder blade and down her arm into her fingers, and that her neck pain increases when reading a book or looking at a computer screen and she reported limited range of motion when turning her head to the right. (Ex. 4, p. 8) Dr. Bansal diagnosed Hansen with cervical myofascial pain syndrome with symptoms characteristic of disc pathology and radiculopathy in her neck. (Ex. 4, p. 9) With respect to her neck, Dr. Bansal opined Hansen's neck, trapezius, and shoulder blade pain are related to a cervical discogenic problem, noting he had provided a "provisional" diagnosis and that confirmation is needed by magnetic resonance imaging testing. (Ex. 4, pp. 10-11) Dr. Bansal provided Hansen with a "provisional" diagnosis. He did not physically examine her at any time or order any additional assessments before providing his provisional diagnosis. I do not find his opinion persuasive.

Dr. Lee opined Hansen's cervical spine examination findings correlate with a DRE Category I, finding she fails to demonstrate any of the seven clinical differentiators set forth in the AMA Guides, noting she has no muscle spasm or guarding, loss of deep tendon reflexes, no atrophy, she "never had an EMG," she has no instability on lateral flexion extension x-rays, and no loss of bowel or bladder function, which correlates with a zero percent whole person impairment. (Ex. H, p. 39) No physician, other than Dr.

Bansal, has opined Hansen sustained a permanent condition to her cervical spine caused by her work injuries. I rejected his opinion for the reasons stated above. I do not find Hansen has proven she sustained a permanent impairment to her cervical spine caused by her work injuries.

III. Extent of Disability: Right Shoulder

In her post-hearing brief Hansen averred she sustained an injury to her right shoulder and to her cervical spine, extending into her body as a whole. Hansen's own expert, Dr. Bansal, diagnosed Hansen with right shoulder rotator cuff tendinitis. (Ex. 4, p. 9) Hansen did not attempt to aver the injury to her right shoulder was to her arm or some other body part other than her cervical spine. Cf. Chavez v. MS Technology, LLC, File No. 5066270, 2020 WL 6037534 (Sept. 30, 2020 Iowa Workers' Comp. Comm'n) (finding injuries to rotator cuff and labrum should be compensated as a shoulder).

Iowa Code section 85.34(2) governs compensation for permanent partial disabilities. The law distinguishes between scheduled and unscheduled disabilities. The Division of Workers Compensation evaluates disability using two methods, functional and industrial. Simbro v. Delong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983).

The Division applies the functional method for a scheduled injury to each part of the body listed in the statute, including: (1) a thumb; (2) a first finger; (3) a second finger; (4) a third finger; (5) a fourth finger; (6) a first or distal phalange of the thumb or any finger; (7) loss of more than one phalange of the thumb or a finger; (8) a great toe; (9) one of the toes other than the great toe; (10) a first phalange of any toe; (11) loss of more than one phalange of any toe; (12) a hand; (13) an arm; (14) a shoulder (added in 2017); (15) a foot; (16) a leg; (17) an eye; (18) "loss of an eye, the other eye having been lost prior to the injury;" (19) hearing, other than occupational loss; (20) occupational hearing loss; (21) "loss of both arms, or both hands, or both feet, or both legs, or both eyes, or any two thereof, caused by a single accident;" and (22) disfigurement of the face or head. Iowa Code § 85.34(2)(a)-(u); Westling v. Hormel Foods Corp., 810 N.W.2d 247, 252 (Iowa 2012). Each of these subsections provides a maximum number of weeks of compensation for the complete loss of a scheduled member or body part.

Since 2017, compensation or functional loss for scheduled injuries is determined by taking the number of weeks allowed for a complete loss of the body part or scheduled member, multiplied by a percentage of impairment determined using the AMA Guides. Iowa Code § 85.34(2)(x). The statute also requires compensation be awarded for functional loss if an employee returns to work or is offered work "for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury." Id. § 85.34(2).

The Division uses the industrial method for "all cases of permanent partial disability other than those" set forth in Iowa Code section 85.34(a) through (u). All other cases are classified as "unscheduled injuries." Westling, 910 N.W.2d at 252-53.

Compensation for unscheduled injuries is determined examining the reduction of earning capacity. Id. at 53.

In 2017, the Iowa Legislature made substantial changes to Iowa Code chapter 85, including a change to how compensation is determined for an injury “for a loss of a shoulder.” Before 2017, shoulder injuries were treated as injuries to the body as whole and were compensated industrially under what is now Iowa Code section 85.34(2)(v) (2017), formerly Iowa Code section 85.34(2)(u) (2016). Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). In 2017, the Legislature enacted Iowa Code section 85.34(2)(n), which provides “compensation shall be paid as follows . . . (n) For the loss of a shoulder, weekly compensation during four hundred weeks.”

When determining compensation for functional loss for a scheduled member disability, the extent of loss is to be determined “solely” by using the AMA Guides. Iowa Code § 85.34(2)(x). The statute provides “[l]ay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs “a” through “u”, or paragraph “v” when determining functional disability and not loss of earning capacity. Id.

Three physicians have given opinions on the extent of functional loss to Hansen’s right shoulder, Dr. Chang, a treating physiatrist, Dr. Bansal, an occupational medicine physician who conducted an independent medical examination for Hansen without a physical exam, and Dr. Lee, an orthopedic surgeon who conducted an independent medical examination for Helping Hands and Technology Insurance. Dr. Lee assigned Hansen a rating of zero. I do not find his opinion persuasive. Dr. Chang assigned Hansen an 8 percent loss to the right upper extremity, which Dr. Bansal concurred with. Dr. Chang treated Hansen over time and based his findings on objective measurements. I find his opinion to be the most persuasive on extent of disability. Based on his rating, I find Hansen has sustained an 8 percent functional loss to her shoulder, multiplied by 400 weeks, which entitles her to 32 weeks of permanent partial disability benefits, at the stipulated weekly rate of \$442.86, commencing on the stipulated commencement date of January 22, 2020.

IV. Temporary Benefits

Iowa Code section 85.33 (2019) governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012).

An employee has a temporary partial disability when because of the employee’s medical condition, “it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee’s disability.” Iowa Code § 85.33(2). Temporary partial disability benefits are payable, in lieu of temporary total disability and healing period benefits, due to the reduction in earning ability as a result of the employee’s temporary partial disability, and “shall not be considered benefits payable to an employee, upon termination of temporary partial or temporary total disability, the healing period, or permanent partial

disability, because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury." Id.

As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Dunlap, 824 N.W.2d at 556. In this case the parties stipulated Hansen sustained a permanent impairment to her right shoulder. Therefore, if she is entitled to temporary benefits, she is entitled to healing period benefits.

Temporary total, temporary partial, and healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986); Stourac-Floyd v. MDF Endeavors, File No. 5053328 (App. Sept. 11, 2018); Stevens v. Eastern Star Masonic Home, File No. 5049776 (App. Dec. Mar. 14, 2018).

Hansen seeks temporary disability benefits from June 29, 2019 through January 22, 2020. The parties stipulated Hansen was off work for this period of time. Helping Hands and Technology Insurance aver Hansen is not entitled to additional temporary benefits because she refused suitable work. Helping Hands and Technology Insurance paid Hansen weekly temporary benefits from October 10, 2019 through November 13, 2019. (Ex. G, p. 25)

Refusal of suitable work has been an affirmative defense in workers' compensation cases for many years. In 2017, the Iowa Legislature codified the affirmative defense, and imposed requirements on the parties that were not required under the common law.

Iowa Code section 85.33(3) now provides:

a. If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employer offers the employee suitable work and the employee refuses to accept the suitable work offered by the employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. Work offered at the employer's principal place of business or established place of operation where the employee has previously worked is presumed to be geographically suitable for an employee whose duties involve travel away from the employer's principal place of business or established place of operation more than fifty percent of the time. If suitable work is not offered by the employer for whom the employee was working at the time of the injury and the employee who is temporarily, partially disabled elects to perform work with a different employer, the employee shall be compensated with temporary partial benefits.

b. The employer shall communicate an offer of temporary work to the employee in writing, including details of lodging, meals, and transportation, and shall communicate to the employee that if the employee refuses the offer of temporary work, the employee shall communicate the refusal and the reason for the refusal to the employer in writing and that during the period of the refusal the employee will not be compensated with temporary partial, temporary total, or healing period benefits, unless the work refused is not suitable. If the employee refuses the offer of temporary work on the grounds that the work is not suitable, the employee shall communicate the refusal, along with the reason for the refusal, to the employer in writing at the time the offer of work is refused. Failure to communicate the reason for the refusal in this manner precludes the employee from raising suitability of the work as the reason for the refusal until such time as the reason for the refusal is communicated in writing to the employer.

Thus, the statute precludes an employee who refuses suitable work offered by the employer, consistent with the employee's disability, from receiving temporary or healing period benefits during the period of refusal. Id.; Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 520 (Iowa 2012). The employer bears the burden of providing the affirmative defense. Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 559 (Iowa 2010).

The issue of whether an employer has offered suitable work is ordinarily an issue for the trier of fact. Neal, 814 N.W.2d at 518. The Iowa Supreme Court has held under the express wording of the statute, the offered work must be "suitable" and "consistent with the employee's disability" before the employee's refusal to accept such work will disqualify [the employee] from receiving temporary partial, temporary total, and healing period benefits." Id. at 519.

Helping Hands made three offers of work to Hansen in writing, on July 23, 2019, to work in the office, on July 25, 2019, to work in the office in Sioux City, and on August 29, 2019, to work in Dell Rapids. The attorneys for the parties exchanged correspondence, which also include offers of work and responses to the offers. The statute requires the parties to comply with several procedural steps before the actual refusal is analyzed.

Topete testified she sent a text message to Hansen on July 23, 2019. (Tr., pp. 105-06) The message states, "[h]i Miranda it's Melissa can you respond to the email that I sent you on Friday. We do have work for you at the office." (Ex. F, p. 15) Under the statute, the offer must be in writing and include the details regarding lodging, meals and transportation. Id. The offer does not provide any of the details required by the statute. The statute also provides, the employer "shall communicate to the employee that if the employee refuses the offer of temporary work, the employee shall communicate the refusal and the reason for the refusal to the employer in writing and that during the period of the refusal the employee will not be compensated with temporary partial, temporary total, or healing period benefits, unless the work refused is not suitable." Id. The text message does not comply with this requirement. While the statute does not provide this second requirement must be in writing, the statute requires

the employer to communicate the information to the employee. There was no evidence presented at hearing Topete, or anyone from Helping Hands, informed Hansen on July 23, 2019, that if she refused the offer, she would need to communicate the refusal and reason for the refusal in writing to Helping Hands, and that during the period of refusal she would not be compensated with temporary benefits, unless the work was not suitable. Helping Hands did not comply with the requirements of the statute.

Topete sent Hansen a written offer of work on July 25, 2019, which provides, Helping Hands Nursing Solutions, Inc. ("HHNS") has been notified of the work restrictions you were given by your healthcare provider. Please be advised that HHNS is able to accommodate these restrictions of modified duty work, keeping your right elbow in a neutral position. We do understand you can perform light duty work with your right hand. Accordingly, HHNS will schedule you for work commensurate with the current restrictions. You will be expected to provide updates to HHNS each time you visit the doctor.

HHNS is offering you hours at the office located at 4300 S. Lakeport Sioux City, IA 51106 Monday thru [sic] Friday 8:00a to 5:00p with an hour lunch. You will be filing, answering the phone and transferring the calls to the specific staffing specialist, and any miscellaneous tasks around the office. You are expected to commence working these office shifts immediately and will report to Melissa Topete. Your first day will be on 7/29 starting at 8 am.

(Ex. F, p. 17) The offer is in writing, and communicates the details of the hours and lunch break. There was no evidence presented at hearing Topete, or anyone from Helping Hands, informed Hansen on July 25, 2019, or before, that if she refused the offer, she would need to communicate the refusal and reason for the refusal in writing to Helping Hands, and that during the period of refusal she would not be compensated with temporary benefits, unless the work was not suitable, as required by the statute. Helping Hands did not comply with the requirements of the statute.

The next communication from Helping Hands is an email on August 16, 2019, from Defendants' counsel to Hansen's counsel, as follows:

DeAnn - I presume you are referring to Auxier notice of the termination of weekly benefits, which is not required when the termination of benefits is due to the worker's refusal of suitable work. I believe there are several authorities supporting this proposition. As examples, I can reference Struecker v. Fibre Body Industries, File No. 1187618 (Arb. Dec. 2000) citing to McCormick v. North Star Foods, Inc., File No. 1003296 (App. Dec. 1993). If you have any contrary legal authority to support your claim, please forward to our attention for consideration.

As for the objection relative to travel, I did not see any cited legal authorities to support Ms. Hansen's claim the work offered was unsuitable because it was outside her "geographic proximity". Please provide any

legal authority that you claim would support Ms. Hansen's contention. My understanding is that Ms. Hansen was a traveling employee and the employer offered several different work options to Ms. Hansen during her recuperation that she declined. I am looking into the matter further and hope to obtain more specific information soon.

(Ex. 3, p. 2) This communication does not state that if Hansen was refusing the offer, she would need to communicate the refusal and reason for the refusal in writing, and that during the period of refusal she would not be compensated with temporary benefits, unless the work is not suitable. There was no evidence presented at hearing Topete, or anyone from Helping Hands, informed Hansen on August 16, 2019, or before, that if she refused the offer, she would need to communicate the refusal and reason for the refusal in writing to Helping Hands, and that during the period of refusal she would not be compensated with temporary benefits, unless the work was not suitable. Helping Hands has not proven it complied with the requirements of the statute as of August 16, 2019.

On August 23, 2019, Defendants' counsel sent Hansen's counsel a letter stating Defendants had discontinued her temporary benefits because she had refused suitable work in the Sioux City office. (Ex. 3, p. 5; G, p. 20) In response to her complaints that the travel was too far and would increase the cost of her child care, Helping Hands' counsel stated: (1) Hansen regularly had to travel from her home to work, to cities in Iowa, including, Sutherland, a distance of 97.1 miles, Lake Park, a distance of 86.9 miles, Orange City, a distance of 65.8 miles, and to Menno, South Dakota, a distance of 64.5 miles, and the distance to the Sioux City office is 92.7 miles; (2) Hansen had opted to work a set hourly wage rate instead of being paid mileage; and (3) Hansen regularly worked varied and different shifts. (Exs. 3, pp. 5-6; G, pp. 20-21) Counsel for Helping Hands further stated contrary to her assertion that she spoke to Helping Hands twice per week regarding returning to work, she only spoke with Helping Hands' representatives on August 1, 2019, August 5, 2019, August 8, 2019, and August 19, 2019. (Exs. 3, p. 6; G, p. 21) This communication does not state that if Hansen was refusing the offer, she would need to communicate the refusal and reason for the refusal in writing to Helping Hands, and that during the period of refusal she would not be compensated with temporary benefits, unless the work was not suitable. There was no evidence presented at hearing Topete, or anyone from Helping Hands, informed Hansen on August 23, 2019, or before that if she refused the offer, she would need to communicate the refusal and reason for the refusal in writing to Helping Hands, and that during the period of refusal she would not be compensated with temporary benefits, unless the work is not suitable. Helping Hands has not proven it complied with the requirements of the statute as of August 23, 2019.

On August 29, 2019, Topete sent Hansen an e-mail, as follows,

Dell Rapids located at 1400 Thresher Drive, Dell Rapids, SD, 57022 is willing to work with your restrictions. They are offering you to work as a dietary aid Monday - Friday. The hours are 7a-10 and 5p-8p.

You would be feeding the residents and documenting intake for the morning and feeding residents, clearing the tables, documenting

intakes and also helping the manager input into the system what was fed to the residents and giving snacks during the 5p-8p shift. The rate of pay will be \$18 per hour.

(Ex. F, p. 19) The offer is in writing and communicates the details of the work. There was no evidence presented at hearing Topete, or anyone from Helping Hands, communicated to Hansen on August 29, 2019, or before, that if she refused the offer, she would need to communicate the refusal and reason for the refusal in writing to Helping Hands, and that during the period of refusal she would not be compensated with temporary benefits, unless the work was not suitable, as required by the statute.

Following a telephone conversation, Defendants' counsel sent Hansen's counsel a letter on August 29, 2019, as follows:

[t]hank you for your recent telephone conversation pertaining to Ms. Hansen's request for TTD benefits. I appreciate your efforts to seek an amenable compromise. Your proposal was that our clients pay Ms. Hansen a \$35 per diem in order to travel to the Sioux City office. I have addressed this matter with our clients. I am informed that, contrary to her claim, Ms. Hansen was not paid a per diem during her regular work. Our clients will not agree to now begin a per diem payment to Ms. Hansen as part of their offer of suitable work.

As you know, our clients previously offered Ms. Hansen suitable work in the Sioux City office. To date, Ms. Hansen has refused to accept this suitable work offer. More recently, I understand our clients made an additional suitable work offer to Ms. Hansen on 8/23/19 at a facility in Dell Rapids with shifts of 7a-10a and 5p-8p. I understand Ms. Hansen has indicated she wants to speak with yourself before providing a response and she wants to find different shifts. Ms. Hansen's lack of acceptance of this second offer is unfortunate, and would presently constitute an additional refusal of suitable work. . . .

(Ex. G, p. 22) The offer is in writing, and communicates the details of the work at Dell Rapids. There was no evidence presented at hearing Topete, or anyone from Helping Hands, communicated to Hansen on August 29, 2019, or before, that if she refused the offer, she would need to communicate the refusal and reason for the refusal in writing to Helping Hands, and that during the period of refusal she would not be compensated with temporary benefits, unless the work was not suitable, as required by the statute. Helping Hands has not proven it complied with the requirements of the statute as of August 29, 2019.

The next letter from Defendants' counsel is dated October 28, 2019, and provides,

We are in receipt of your 10/28/19 email requesting TTD benefits be commenced in light of opinions from Dr. Chang, the physiatrist

providing Ms. Hansen with trigger point injections. We are enclosing herewith records our office received today reflecting Ms. Hansen's visits with Dr. Chang on 10/10/19 and 10/24/19.

I am sure you recall Ms. Hansen has previously been offered accommodated work duties consistent with the restrictions from her treating physicians, which Ms. Hansen has refused to accept stating she does not want to travel the distance required to perform the offered work. Now, it seems Ms. Hansen is seeking to overcome her refusal and obtain TTD benefits based upon opinions from Dr. Chang reportedly taking her off work. We question whether Dr. Chang has concluded Ms. Hansen is unable to work.

Dr. Chang's initial office note includes a history stating "[Ms. Hansen] had injury at work and reinjured herself while she was going back to light duties and now she is completely off work for now." Of course, while Ms. Hansen was "off work" it was due to her refusal to perform the work offered to her – not because she had been taken off work by a physician. This important distinction is not apparent from the history section of Dr. Chang's office note. Dr. Chang goes on to state in the recommendations section "[f]or now, she will remain off work. . ." This entry suggests Dr. Chang intended only to maintain the status quo, which had allowed for Ms. Hansen to perform limited work.

We will be investigating Ms. Hansen's entitlement to temporary disability benefits by requesting Dr. Chang's clarification of his opinion upon Ms. Hansen's ability to perform work. Our office will be requesting a conference with Dr. Chang in order to address this subject. We will let you know when we have received a response from Dr. Chang.

(Ex. G, p. 23) This letter is in writing, but does not communicate any details concerning the past offers. There was no evidence presented at hearing Topete, or anyone from Helping Hands, communicated to Hansen on October 23, 2019, or before, that if she refused the offers of work, she would need to communicate the refusal and reason for the refusal in writing to Helping Hands, and that during the period of refusal she would not be compensated with temporary benefits, unless the work was not suitable, as required by the statute. Helping Hands has not proven it complied with the requirements of the statute as of October 23, 2019.

On November 11, 2019, Defendants' counsel sent Hansen's counsel a letter stating,

[t]his letter is to follow my 10/28/19 correspondence. We had an opportunity to speak with Dr. Chang this past Friday, 11/8/19. Dr. Chang advised he restricted Ms. Hansen's work duties because Ms. Hansen had reported she was unable to perform any light duty work. Of course, in

actuality, Ms. Hansen has been offered suitable light duty work in accordance with the restrictions from her treating physician, Dr. Baumgartner, but she has refused the work as she does not wish to commute.

Our clients will voluntarily commence TTD benefits. Please be advised our clients claim a credit pursuant to Iowa Code 85.34(4) & (5) for any and all weekly benefits paid in the past, present, and future.

(Ex. G, p. 24) This letter is in writing, but does not communicate any details concerning the past offers. There was no evidence presented at hearing Topete, or anyone from Helping Hands, communicated to Hansen on November 11, 2019, or before, that if she refused the offers of work, she would need to communicate each refusal and reason for the refusal in writing to Helping Hands, and that during the period of refusal she would not be compensated with temporary benefits, unless the work was not suitable, as required by the statute. Helping Hands has not proven it complied with the requirements of the statute as of November 11, 2019.

Defendants' counsel sent Hansen's counsel a letter on November 15, 2019, stating,

[w]e have received Dr. Chang's 11/12/19 office note (enclosed). Dr. Chang has revised Ms. Hansen's restrictions to allow for "light duty work with no use of the right upper extremity". As such, Ms. Hansen's restrictions have reverted back to the prior restrictions in place over the course of Ms. Hansen's ongoing refusal of the light duty work offered to her by Helping Hands Nursing Solutions. As such, our clients will not be providing Ms. Hansen with further temporary disability benefits in light of her ongoing refusal of work.

If Ms. Hansen were to reconsider her refusal of the suitable work offered to her, please let us know.

Ms. Hansen was provided with weekly benefits for 10/10/19-11/13/19. Our clients claim a credit for and the recovery of these weekly benefit payments pursuant to Iowa Code 85.34(4) & (5).

(Ex. G, p. 25) This letter is in writing, but does not communicate any details concerning the past offers. There was no evidence presented at hearing Topete, or anyone from Helping Hands, communicated to Hansen on November 15, 2019, or before, that if she refused the offers of work, she would need to communicate each refusal and reason for the refusal in writing to Helping Hands, and that during the period of refusal she would not be compensated with temporary benefits, unless the work was not suitable, as required by the statute. Helping Hands has not proven it complied with the requirements of the statute as of November 15, 2019.

The next communication from Defendants' counsel is March 23, 2020, as follows,

[w]e have received Dr. Chang's impairment rating report, which is enclosed with this letter and is being served via Notice of Service of Medical Records. As you will see, Dr. Chang has issued an 8% Upper Extremity impairment rating for Ms. Hansen's shoulder condition with an MMI date of 1/22/20. Ms. Hansen was previously overpaid TTD benefits for 2 days from 11/12/19-11/13/19 for which our clients claim a credit and overpayment of \$126.77.

Our clients will be initiating weekly benefit payments to Ms. Hansen pursuant to the impairment rating. The weekly benefit rate has been paid at \$442.86. Ms. Hansen's initial PPD payment will cover ten (10) weeks time from 1/22/20 through 3/31/20. The amount will total \$4,301.94 (10weeks x \$442.86 = \$4,428.60 - \$126.66 credit = \$4,301.94). Our clients will then continue weekly benefit payments through 9/1/20 at which time weekly benefits will terminate.

If Ms. Hansen disagrees with this determination she may initiate proceedings before the Commission. Please consider this letter our Auxier notice of the anticipated termination of weekly benefits.

(Ex. G, p. 26)

Defendants provided Hansen with offers of work in writing. However, there was no evidence presented at hearing Topete, or anyone from Helping Hands, communicated to Hansen between July 23, 2019, and January 22, 2020, that if she refused the offers of work, she would need to communicate each refusal and reason for the refusal in writing to Helping Hands, and that during the period of refusal she would not be compensated with temporary benefits, unless the work was not suitable, as required by the statute. Helping Hands did not comply with the procedural requirements of the statute. Helping Hands has not proven its affirmative defense. Hansen is awarded healing period benefits from July 29, 2019, through January 22, 2020, at the stipulated rate of \$453.41. Defendants are entitled to a credit for the temporary benefits paid from October 10, 2019, through November 13, 2019.

V. Penalty

Iowa Code section 86.13 governs compensation payments. Under the statute's plain language, if there is a delay in payment absent "a reasonable or probable cause or excuse," the employee is entitled to penalty benefits, of up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse. Iowa Code § 86.13(4); see also Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 260 (Iowa 1996) (citing earlier version of the statute). "The application of the penalty provision does not turn on the length of the delay in making the correct compensation payment." Robbenolt v. Snap-On Tools Corp., 555 N.W.2d 229, 236 (Iowa 1996). If a delay occurs without a reasonable excuse, the commissioner is required to award penalty benefits in some amount to the employee. Id.

The statute requires the employer or insurance company to conduct a "reasonable investigation and evaluation" into whether benefits are owed to the

employee, the results of the investigation and evaluation must be the “actual basis” relied on by the employer or insurance company to deny, delay, or terminate benefits, and the employer or insurance company must contemporaneously convey the basis for the denial, delay, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits. Iowa Code § 86.13(4). An employer may establish a “reasonable cause or excuse” if “the delay was necessary for the insurer to investigate the claim,” or if “the employer had a reasonable basis to contest the employee’s entitlement to benefits.” Christensen, 554 N.W.2d at 260. “A ‘reasonable basis’ for denial of the claim exists if the claim is ‘fairly debatable.’” Burton v. Hilltop Care Ctr., 813 N.W.2d 250, 267 (Iowa 2012). “Whether a claim is ‘fairly debatable’ can generally be determined by the court as a matter of law.” Id. The issue is whether the employer had a reasonable basis to believe no benefits were owed to the claimant. Id. “If there was no reasonable basis for the employer to have denied the employee’s benefits, then the court must ‘determine if the defendant knew, or should have known, that the basis for denying the employee’s claim was unreasonable.’” Id.

Benefits must be paid beginning on the eleventh day after the injury, and “each week thereafter during the period for which compensation is payable, and if not paid when due,” interest will be imposed. Iowa Code § 85.30. In Robbennolt, the Iowa Supreme Court noted, “[i]f the required weekly compensation is timely paid at the end of the compensation week, no interest will be imposed As an example, if Monday is the first day of the compensation week, full payment of the weekly compensation is due the following Monday.” Robbennolt, 555 N.W.2d at 235. A payment is “made” when the check addressed to the claimant is mailed, or personally delivered to the claimant. Meyers v. Holiday Express Corp., 557 N.W.2d 502, 505 (Iowa 1996) (abrogated by Keystone Nursing Care Ctr. v. Craddock, 705 N.W.2d 299 (Iowa 2005) (concluding the employer’s failure to explain to the claimant why it would not pay permanent benefits upon the termination of healing period benefits did not support the commissioner’s award of penalty benefits)).

When considering an award of penalty benefits, the commissioner considers “the length of the delay, the number of the delays, the information available to the employer regarding the employee’s injuries and wages, and the prior penalties imposed against the employer under section 86.13.” Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 336 (Iowa 2008). The purposes of the statute are to punish the employer and insurance company and to deter employers and insurance companies from delaying payments. Robbennolt, 555 N.W.2d at 237.

Helping Hands and Technology Insurance did not follow the procedural requirements of Iowa Code section 85.33 when they denied Hansen’s requests for additional temporary benefits. Failure to follow the procedural requirements of the statute is not a reasonable or probable excuse for paying temporary benefits late or for refusing to pay benefits. Hansen is awarded \$4,500.00 in penalty benefits to deter Defendants and other employers and insurance carriers from similar conduct in the future.

VI. Medical Bills

Hansen seeks to recover the \$3,908.00 cost of services she received from Leading Edge Chiropractic and Acupuncture from August 31, 2019, through March 25, 2020, \$752.00 for emergency medical services she received from Avera Health on June 23, 2019, \$82.00 for outstanding physical therapy services she received from Avera Health from June 27, 2019, and August 27, 2019, that were not covered by worker's compensation, and \$266.25 for an attorney conference held by Defendants' counsel with Dr. Chang. (Ex. 5) In Defendants' post-hearing brief, Defendants agreed Dr. Chang should not have invoiced Hansen for the attorney conference. Defendants are responsible for this charge and for the outstanding \$82.00 billed by physical therapy ordered by the treating physician.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability"). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

Hansen sought chiropractic and acupuncture services from Leading Edge Chiropractic and Acupuncture from August 31, 2019, through March 25, 2020, on her own. She reported she received benefit from the services. (Tr., pp. 33-34, 65-66) Months after she received the services, in response to a question from Defendants' counsel regarding whether chiropractic treatment would be reasonable or necessary if pain complaints continued after six to eight weeks, Dr. Baumgarten, opined "[a] short course of chiropractic treatment might be reasonable. If sustained relief was not obtained by 3 months, I would cease chiropractic treatment." (Ex. A) On March 12, 2020, Dr. Chang recommended Hansen receive chiropractic treatment for two months in response to her request for additional care. (Ex. B) Neither opinion supports the treatment Hansen received was unnecessary or not beneficial. Dr. Baumgarten did not make a finding Hansen received no sustained relief from the treatment. Hansen testified she received relief and benefit from the treatment. I find the treatment was reasonable and beneficial and that Helping Hands and Technology Insurance are responsible for the \$3,908.00 cost of services she received from Leading Edge Chiropractic and Acupuncture from August 31, 2019, through March 25, 2020.

I also find Helping Hands and Technology Insurance are responsible for the \$752.00 cost of the emergency room visit on June 23, 2019. The service was due to Hansen's shoulder pain following her work injury. The treatment was not for a personal condition. Hansen received benefit from the treatment. I find the service was reasonable and necessary.

VII. Costs

Hansen seeks to recover the \$2,879.00 for the cost of Dr. Bansal's independent medical examination. (Ex. 5, p. 9) Iowa Code section 85.39(2), provides:

[i]f an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination. . . . An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection, shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

Dr. Bansal provided an impairment rating after Dr. Chang provided an impairment rating in this case. Hansen sustained a compensable injury under the statute and is entitled to recover the cost of the independent medical examination for this injury.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendants shall pay Claimant 32 weeks of permanent partial disability benefits at the stipulated weekly rate of four hundred forty-two and 86/100 dollars (\$442.86), commencing on the stipulated commencement date of January 22, 2020.

Defendants shall pay Claimant healing period benefits from July 29, 2019 through January 22, 2020, at the stipulated weekly rate of four hundred forty-two and 86/100 dollars (\$442.86).

Defendants are entitled to a credit for all benefits paid to date.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Claimant is awarded four thousand five hundred and 00/100 dollars (\$4,500.00) in penalty benefits.

Defendants are responsible for all causally connected medical bills and care set forth in this opinion.

Defendants shall reimburse Claimant two thousand eight hundred seventy-nine and 00/100 dollars (\$2,879.00) for the cost of Dr. Bansal's independent medical examination.

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

Signed and filed this 5th day of January, 2022.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Al Sturgeon (via WCES)

Andrew Tice (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.