

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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DONNA BOLTON, SURVIVING  
SPOUSE OF STEVE BOLTON,  
DECEASED,

Claimant,

vs.

MARCUS LUMBER,

Employer,

and

REDWOOD FIRE & CASUALTY CO.,

Insurance Carrier,  
Defendants.

File No. 20015335.01

ARBITRATION DECISION

Headnotes: 1100, 1402.30, 1805

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Claimant Donna Bolton, the surviving spouse of Steven Bolton, deceased, filed a petition in arbitration on January 28, 2021, alleging Steve contracted Covid-19 while working for Defendant Marcus Lumber Company ("Marcus Lumber"), causing his death. Marcus Lumber and its insurer, Redwood Fire and Casualty Insurance Company ("Redwood"), filed an answer on February 8, 2021, denying Steven Bolton sustained a work injury.

An arbitration hearing was held *via* Zoom video conference on January 28, 2022. Attorney Ronald Pohlman represented Donna Bolton. Donna and her son, Tim Bolton, appeared and testified. Attorneys Robert Gainer and Gregory Taylor represented Marcus Lumber and Redwood. Tom Leavitt appeared and testified on behalf of Marcus Lumber and Redwood. Joint Exhibits ("JE") 1 through 14, and Exhibits 1 through 3 and A through L were admitted into the record. The record was held open through March 4, 2022, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

At the start of the hearing the parties submitted a Hearing Report, listing stipulations and issues to be decided. Marcus Lumber and Redwood waived all affirmative defenses. The Hearing Report was approved at the conclusion of the hearing.

### STIPULATIONS

1. An employer-employee relationship existed between Marcus Lumber and Steve Bolton at the time of the alleged injury.
2. Temporary and permanent disability benefits are not in dispute.
3. At the time of the alleged injury, Steven Bolton's gross earnings were \$1,343.27 per week, he was married and entitled to two exemptions and the parties believe the weekly rate is \$856.34.

### ISSUES

1. Did Steven Bolton sustain an injury, which arose out of and in the course of his employment with Marcus Lumber on December 14, 2020?
2. Is Donna Bolton entitled to recover medical expenses for Steven Bolton?
3. Is Donna Bolton entitled to recover death benefits and burial costs?

### FINDINGS OF FACT

Donna and Steve Bolton married in 1983 and they had two sons, Tim and Dan. (Transcript:10-11; JE 4:2; 4:3) Tim and his wife, Rachel, have two sons. (Tr.:11; JE 4:1) Dan is married to Krista. (Tr.:12; JE 4:2; 4:4)

Steve Bolton commenced employment with Marcus Lumber in January 1981 after graduating from high school. (Tr.:12) Marcus Lumber operates a hardware store in Marcus, Iowa. (Tr.:14-15) Marcus Lumber has offices, a showroom, a hardware area, and an outside area with larger items, including lumber and other building supplies. (Tr.:15) Steve had an office inside the building at Marcus Lumber. (Tr.:14) He worked with power tools, he did some truck driving and made deliveries to customers, he worked with customers with garage door orders and repairs, he worked with maintenance and purchasing of equipment, and he supervised the yard. (Tr.:14, 16-17)

When he was away from work, Steve enjoyed spending time with his family and farming. (Tr.:12) Steve grew upon a farm and he and Donna lived on an acreage near Oyens, Iowa. (Tr.:13) Steve and Donna raised livestock on their acreage, including cattle. (Tr.:13) The acreage was approximately 25 miles from Marcus Lumber. (Tr.:14)

Steve, Donna, Tim, and Dan were volunteers with the Oyens Fire Department, a volunteer fire department. (Tr.:18) In November 2020, the Oyens Fire Department had 14 active members. (Tr.:19) Donna was the secretary of the department. (Tr.:19)

On a typical day in November 2020, Steve would get up at 6:00 a.m., watch the local and national news, dress, perform morning chores outside on the acreage, pack his lunch, and then he would go to work. (Tr.:19-20) On his way to work he would stop at Mrs. B's in the morning in Remsen to buy coffee and something to eat. (Tr.:20-21; JE 4:11-12) While working he would eat his lunch at Marcus Lumber with two coworkers. (Tr.:22) Before the pandemic he typically ate his lunch in the breakroom at Marcus Lumber. (Tr.:22) During the pandemic, Marcus Lumber reduced the number of people

it allowed to be together in a room and Steve took his lunch break with a coworker in the conference room. (Tr.:22) Steve would leave work at 5:00 p.m. and he would go home. (Tr.:22) After he arrived home he would watch the local and national news and then he would go outside and do his chores on the acreage. (Tr.:22) When he came back inside, he would have supper with Donna and either go back outside or do some other work and then he would go to bed by 9:00 p.m. (Tr.:23)

Donna initially testified Steve did not go out for lunch at work. (Tr.:65) On cross-examination she admitted he went to a convenience store on Fridays to pick up lunch. (Tr.: 65)

On his way home from work Steve did not stop to eat or drink anything. (Tr.:23) If he needed gas he would stop for gas, but normally he came home after work, unless Marcus Lumber had him drop off something to a customer on his way home. (Tr.:23) Steve did not give anyone a ride home from work. (Tr.:24) Steve and Donna did not go out for dinner in the evening. (Tr.:23-24)

In November 2020, Donna worked for the MMCRU School District as a paraprofessional. (Tr.:24; Ex. J:97) As a paraprofessional, Donna worked one-on-one with a student that needed special help, sitting by, and guiding the student through the day to help him stay on track. (Tr.:24) She also worked with transitional kindergarten. (Tr.:24-25) Donna worked in a classroom with her student, 10 other children and a teacher. (Tr.:25) There were no other paraprofessionals in the classroom where she worked. (Tr.:25)

In November 2020 the MMCRU School District had a mask policy that was enforced by the school and a strict seating arrangement where students had to remain six feet apart. (Tr.:25-26) The staff did a lot of cleaning and the students had special seating at lunch. (Tr.:26) When in the hallways, the staff and students tried to keep a six-foot distance and no one was allowed into the building unless they had a pass. (Tr.:26) In November 2020 parents did not come into the classroom. (Tr.:27) Donna reported it was a challenge for the four- and five-year-olds to wear masks, but they were generally good and sometimes the staff would have to remind them to keep their masks on. (Tr.:26) Donna ate lunch in the classroom with the teacher. (Tr.:27) When eating lunch she would stay socially distanced from the teacher. (Tr.:27) During the months of October and November 2020, there were documented Covid-19 cases at the school where Donna worked. (Tr.:67)

Donna worked from 8:00 a.m. until 3:30 p.m. (Tr.:27-28) She did not ride with anyone to or from work. (Tr.:28) Donna did not stop anywhere on her way to work, but she would occasionally stop for gas or at the grocery store in Marcus to pick up supplies on her way home from work. (Tr.:28) If she had something important, Donna might stop in Sioux City. (Tr.:28) Donna testified she wore a mask in the grocery store in November 2020. (Tr.:28)

In November 2020 Tim and Dan would stop by at the acreage after work during the week to work on machinery, assist with the livestock, and bale corn stalk with Steve, but they would not stay for dinner. (Tr.:31-33; Ex. J:97) Tim would occasionally bring his son, Briggs, but no one else from outside of their family. (Tr.:32-33) Donna

admitted during November 2020, Steve gathered with Tim and Dan at least twice between Monday and Friday every week. (Tr.:68)

On four Sundays in November, November 8th, 15th, 22nd, and 29th, Steve, Tim, Dan and Briggs worked on the family farm where Dan and Krista live. (Tr.:33-34; Ex. J:97) They worked on machinery, livestock, fencing, and harvesting. (Tr.:34) The group would not dine together on the farm. (Tr.:34) They did not wear masks while working. (Tr.:51, 68)

On November 13, 2020, Dan married Krista at the Plymouth County Courthouse. (Tr.:35; Ex. J:97) Steve, Donna, Rachel, Tim, Linda Nilles, John Nilles, Pete Nilles, Judy Nilles, Lorraine Berkenpas, Steve Ohm, Jody Ohm, Abby Phillips, Daniel, Krista, and the judge attended the wedding. (Tr.:36) The Plymouth County Courthouse had signs telling visitors they were required to wear masks and to stay six feet apart. (Tr.:36-37) Donna had 13 masks made for the wedding. (Tr.:37) The wedding lasted about 15 minutes. (Tr.:38) The judge allowed the participants to take their masks off for pictures. (Tr.:37) The judge did not wear a mask in the pictures. (Tr.:70)

The evening after the wedding there was a reception at Archie's Waeside in Le Mars. (Tr.:38) Between the ceremony and the reception Donna and Steve went home. (Tr.:38) They did not go anywhere else that day. (Tr.:38)

The people invited to the reception entered the dining area through the restaurant with masks on. (Tr.:39) The reception was held in a private dining room away from the restaurant's other patrons. (Tr.:39) There were eight people at each table at the reception. (Tr.:39) When the guests were seated at their respective tables they were allowed to take off their masks and to socialize. (Tr.:39) The reception lasted 90 minutes. (Tr.:39) The servers wore masks. (Tr.:39) The wedding party and guests did not wear masks during the dinner. (Tr.:39) After the dinner Steve and Donna went home. (Tr.:39) They did not stop anywhere on the way home. (Tr.:40)

In November 2020, Steve attended a training session and a meeting at the Oyens Fire Department. The meetings and training sessions lasted 90 minutes. (Tr.:41) Donna attended the training on November 2, 2020. (Tr.:41-42) The training was held outside. (Tr.:65)

On November 16, 2020, Steve attended a meeting at the Oyens Fire Department. (Tr.:40-41) Donna was absent from the meeting. (Tr.:41) During department meetings the officers would sit at a table and the firefighters would sit in chairs around the room during the business meeting. (Tr.:41) During the business meeting the volunteers would eat pizza or something else before the meeting started. (Tr.:41) The members of the department did not wear masks or socially distance during the meetings.

The department received a fire call on November 19, 2020. (Tr.:42) Steve was at work when he received the call and he met the volunteers with the fire truck at the scene of the fire. (Tr.:42-43) The fire department records show 10 people responded to the fire. (Ex. F:88)

On November 26, 2020, Steve, Donna, Tim, Rachel, Daniel and Krista and their two sons went to Donna's mother's home for Thanksgiving dinner for three hours. (Tr.:50) None of the participants, except Donna's mother, wore a mask. (Tr.:51, 86) After the dinner Steve and Donna went home. (Tr.:50)

There was another fire call the evening of November 26, 2020. (Tr.:43) A motorhome with seven people had rolled over and the people had multiple injuries. (Tr.:43) Steve drove to the scene with Danny Smith. (Tr.:44) Steve and Smith did not wear masks when they were in the vehicle together. (Tr.:44) Donna also went to the scene and rode with her son, Tim, and Scott Kneip. (Tr.:44; Ex. F:89) They also did not wear masks in the vehicle. (Tr.:44) It took about five minutes for them to arrive on the scene. (Tr.:46) The firefighters did not return to the station for approximately one hour. (Tr.:46) Donna believes eight people responded to the call. (Tr.:46-47) Records from the fire department document 10 people responded to the call and they assisted the seven entrapped people and the emergency helicopter personnel. (Ex. F:89) After the call Steve and Donna went home together. (Tr.:46)

On cross-examination Donna admitted Steve did not wear a mask when attending fire department meetings or responses. (Tr.:79-80) Tim also testified the participants in the meetings did not wear masks or social distance at meetings. (Tr.:96-97) If a member of the department did not feel well the member would not attend the meeting. (Tr.:97)

On cross-examination Donna relayed she spoke with Smith the night of the fire and he said he had not been tested, but he thought he could have had Covid-19. (Tr.:86-87) Donna admitted Smith and Steve were in the fire truck within six feet of each other for six or seven minutes on Thanksgiving evening. (Tr.:87) Donna relayed Smith did not appear to be sick that night. (Tr.:92) Donna reported Smith had indicated he had been sick approximately a month earlier, but he had not been tested. (Tr.:92)

Donna testified on November 27, 2020, Steve sat in Bob Leavitt's office and performed his dispatching duties, taking orders, making lists, picking tickets, and delivering items to customers. (Tr.:51-52) Steve interacted with employees working outdoors at Marcus Lumber, and gave the employees orders, picked tickets, and supervised the loading of orders. (Tr.:52) At that time Marcus Lumber had a mask policy. (Tr.:52) Employees did not have to wear masks in their private offices inside the building, but they wore masks outside of their private offices. (Tr.:52) If an employee went into another employee's office, both employees were supposed to wear a mask. (Tr.:52-53) Employees working outside did not have to wear masks. (Tr.:53) There is no evidence Marcus Lumber disciplined any employees for not following the mask policy.

On November 27, 2020, Steve made a purchase at The Junction. (Tr.:54) Donna believes he purchased treats for the workers for the next day, a Saturday, but she does not know for certain. (Tr.:54) I find Donna's testimony speculative.

Steve did not work on November 28, 2020, a Saturday. (Tr.:54) He went to their farm where Dan lives and worked outside with Dan repairing an electric fence. (Tr.:54) Tim testified on Saturday he worked with his dad, Briggs, his son Cal, and Krista.

(Tr.:99) The next day, a Sunday, Steve went to the farm again and hauled manure with Tim and Dan. (Tr.:54) Tim testified he worked with Steve, Dan, Briggs, and Krista. (Tr.:99)

On November 30, 2020, Steve went to work at his normal time. (Tr.:55) That evening when he returned home he told his wife, "I'm so cold. I just can't warm up." (Tr.:55) Donna took her husband's temperature, which was elevated. (Tr., p. 55) The next day he did not go to work. (Tr., p. 55) Steve never returned to work.

From December 1, 2020 through December 4, 2020, Steve had a fever, sore throat, and diarrhea. (Tr.:55) He tried to hydrate himself, but his condition did not improve. (Tr.:55) On December 1, 2020 Steve went to a walk-in clinic in Orange City and he received a Covid test. (Tr.:55; JE 1:1) Steve received a positive test result for Covid-19 on Friday, December 4, 2020. (Tr.:56; JE 1:4)

On December 9, 2020, Donna took Steve to Floyd Valley Healthcare, a hospital in Le Mars, after he collapsed in the kitchen on the way to the bathroom. (Tr.:56-57) The nurse would not let Donna come in and the nurse took Steve into the hospital. (Tr.:57) Steve was admitted to the hospital with shortness of breath, hypoxia, and acute renal failure on December 10, 2020. (JE 2:2-4)

The doctors from the hospital called Donna on December 12, 2020 and told her Steve was not improving and they wanted to send him to Avera in Sioux Falls. (Tr.:57; JE 2:12, 20) Steve was transported by air ambulance to Avera and he died the morning of Monday, December 14, 2020, from acute respiratory failure with hypoxia and pneumonia due to Covid-19. (Tr.:57-58; JE 3:7, 9) At the time of his death Steve was 59. (Tr.:62; JE9) Donna testified she did not receive any medical bills from Steve's treatment at the hospitals or from the air ambulance transfer. (Tr.:59)

Donna testified on December 10, 2020, she started feeling ill after she took Steve to the hospital. (Tr.:59) Donna reported she tested positive for Covid-19 on December 11, 2020. (Tr.:59)

Donna testified Dan, Krista, Tim and Rachel and their two sons did not test positive for Covid-19 in November or December 2020. (Tr.:58) On cross-examination Donna admitted she did not know if Krista, Briggs, or Dan had ever been tested for Covid-19. (Tr.:69) Tim testified he, Rachel, and their children were not tested for Covid-19 in November or December 2020. (Tr.:98)

During the month of November Dan and Tim went to the livestock sale barn. (Tr.:89) Donna admitted they did not wear masks at the sale barn, but relayed the sale was outside. (Tr.:89)

Donna reported she did not know if anyone who attended the wedding tested positive for Covid-19 in November or December 2020. (Tr.:58) Donna testified she does not know if the judge who presided over the wedding tested positive for Covid-19 in November 2020. (Tr.:70-71) Donna relayed she did not know if anyone who went on the fire calls in November 2020 tested positive for Covid-19. (Tr.:58-59)

On cross-examination Donna admitted that in November 2020 there was a spike of Covid-19 cases in the county where she and Steve lived. (Tr.:90)

In November 2020 Tim was working for Preferred Auto Body. (Tr.:95) Tim testified he had brief interactions with customers. (Tr.:95) He would speak to a customer on the telephone, the customer would either drop off the car if it were a lengthy estimate and he would inspect the car, noting repairs were done in the shop in a big open space with one person working on one vehicle at a time. (Tr.:95-96)

Leavitt works for Marcus Lumber, a family business. (Tr.:102-03) Leavitt testified after Covid-19 hit in March 2020, Marcus Lumber took safety precautions to try to curb the spread of Covid-19. (Tr.:103) The business posted signs stating if a person was ill not to come to work, they implemented a cleaning schedule, they closed the doors to the public, put up shields in front of the computers, and moved their gas grill displays in front of the shields. (Tr.:104) Marcus Lumber could not obtain N95 masks, but it found masks at Staples and handed them out to the employees. (Tr.:105) Marcus Lumber did not require employees to wear a mask if they were six feet apart from other employees. (Tr.:105)

Marcus Lumber has a Lennox PureAIR Air Purification System that has UV lights and filters to clean the air that was installed before the pandemic. (Tr.:107-08) Marcus Lumber also tested the employees' temperatures in the morning when they arrived for work in November 2020. (Tr.:108-09) If an employee was ill with Covid-like symptoms, Marcus Lumber would send the employee home and the employee could not return until the employee had been tested for Covid-19. (Tr.:110)

Leavitt described Steve as a rule-follower and testified he would always wear a mask, consistent with Marcus Lumber's policy. (Tr.:110) Leavitt could not recall a time when he saw Steve inside Marcus Lumber within six feet of someone without a mask on. (Tr.:110)

Donna testified Steve told her that his coworkers at Marcus Lumber had gotten sick in November 2020. (Tr.:60-61, 79) During his deposition, Leavitt testified an employee of Marcus Lumber tested positive for Covid-19 the day after Thanksgiving, a second employee testified positive for Covid-19 the first part of December 2020, and a third employee/company owner tested positive for Covid-19 in early December. (JE 6:12) A fourth employee tested positive in mid-December 2020. (JE 6:13) Steve also tested positive for Covid-19 in December.

Paul Davenport, an employee of Marcus Lumber, signed an affidavit stating he did not work at Marcus Lumber from November 26, 2020 through November 29, 2020 during Thanksgiving. (Ex. B:19) Davenport reported he first felt symptoms of Covid-19, a loss of smell, on Sunday, November 29, 2020, when he was at home. (Ex. B:19) Davenport tested for Covid-19 later that day and his result was positive. (Ex. B:19) Davenport relayed he quarantined for the period recommended by the CDC. (Ex. B:19) Davenport stated he did not work near Steve at Marcus Lumber, noting his work station is located in the back of the showroom on the opposite side of the building from Steve's private office, and relayed he had no reason to go near Steve's office for his job and he

did not go near Steve's office at any point in November 2020. (Ex. B:20) Davenport reported he was never within 10 feet of Steve at any time. (Ex. B:20)

Jim Sutter, also an employee of Marcus Lumber, signed an affidavit stating on December 1, 2020, he first felt symptoms of Covid-19 when he lost his sense of smell. (Ex. B:21) Sutter reported he did not have any additional symptoms and he did not come back to work until December 14, 2020, after quarantining at home. (Ex. B:21) Sutter recalled seeing Steve on Friday, November 27, 2020, the day after Thanksgiving, when Sutter was working at his work station with his mask on. (Ex. B:21) Sutter reported Steve also had a mask on and he was walking into his office and more than 10 feet away. (Ex. B:21)

On December 15, 2021, Burton Golub, M.D., an infectious disease specialist, conducted an independent medical examination for Marcus Lumber and Redwood. (Ex. A) Dr. Golub reviewed Steve's medical records and records related to the case. (Ex. A) Dr. Golub opined Steve died of acute respiratory failure with hypoxia, acute respiratory distress syndrome and pneumonia all compatible with and caused by his known diagnosis of Covid-19 viral infection. (Ex. A:1) In response to a question about the positive rate and/or rate of community spread for Covid-19 in Cherokee County, Iowa in October and November 2020, Dr. Golub responded, a New York Times article reported

that cases of Coronavirus had increased in November and December 2020 and January 2021 and were extremely high in Cherokee County, Iowa with 55 new cases and a 7 day average of 8 cases per day, a 62% increase from the average two weeks prior. As of those dates and since the beginning of the pandemic, at least 1 in 5 residents had been infected, a total of 2,180 reported cases. November 2020 was the month of the most reported cases in Cherokee County. The epidemic curve of Covid-19 virus cases was at its peak in Cherokee County from November 2020 to January 2021.

(Ex. A:2)

While the strain of Covid-19 Steve was infected with was not reported, Dr. Golub opined that the time from exposure to symptom onset or the incubation period is thought to be between 2 and 14 days though symptoms typically appear within four or five days after exposure and an individual may be contagious 48 hours before starting to experience symptoms. (Ex. A:2) With respect to Steve's infection, Dr. Golub noted Donna reported Steve developed a fever the evening of November 30, 2020, and he was diagnosed with Covid-19 on December 4, 2020. (Ex. A:4) Dr. Golub opined Steve was "possibly infected with the Covid-19 virus as early as November 16 and most likely infected on or after November 26, 2020." (Ex. A:4)

Dr. Golub noted the medical literature shows asymptomatic people account for between 40 and 45 percent of Covid-19 infections and they can transmit the virus to other people for an extended period, perhaps longer than 14 days without their knowledge. (Ex. A:3) When asked about studies involving masks and social distancing, Dr. Golub noted results from more than 30 studies from around the world showed a statistically significant reduction of 53 percent in the incidence of Covid



infection with mask wearing and a 25 percent reduction with physical distancing. (Ex. A:3)

When asked for his opinion whether it is more likely than not Steve contracted Covid-19 at Marcus Lumber or his work activities were more likely than not a substantial factor in causing him to contract Covid-19, Dr. Golub opined, more likely than not, the records related to this case do not permit a conclusion that Steve's exposure to Covid-19 occurred at Marcus Lumber. (Ex. A:5) In reaching his conclusion, Dr. Golub noted Marcus Lumber followed CDC guidelines and implemented precautions to prevent the transmission within the workplace and while numerous employees at Marcus Lumber tested positive at one time or another for Covid-19, there was "no specific interaction in the workplace . . . which placed Steve Bolton at obvious risk of acquiring the Covid-19 virus in the workplace." (Ex. A:4) Dr. Golub noted Steve did not strictly adhere to the precautions followed at Marcus Lumber outside the workplace and he came in close contact with other persons without mask wearing or social distancing, including a Thanksgiving family dinner on November 26, 2020, driving to a fire scene with Smith on November 26, 2020, attending family gatherings every Sunday and twice during the week, attending the November 16, 2020 Oyens Fire Department meeting, frequenting Mrs. B's gas station to buy coffee, and eating lunch at the Shell Gas Station. (Ex. A:4-5)

On December 24, 2021, Michael Freeman, MedDr, PhD, DC, conducted an independent medical examination for Donna using his expertise as a medical scientist and not as a medical clinician. (Ex. 1:2) Dr. Freeman reviewed Steve's medical records and records related to the case. (Ex. 1:3) Dr. Freeman opined it is more likely than not Steve's exposure to Covid-19 occurred at Marcus Lumber and that his work was a substantial factor in causing him to contract Covid-19 and his subsequent complication-related death. (Ex. 1:33)

In reaching his conclusions, Dr. Freeman noted that 19.5 percent of Steve's coworkers tested positive for Covid-19 during November and December 2020, with at least two coworkers symptomatic before he was. Dr. Freeman noted this rate was approximately three times higher than in the counties where he lived and worked during the same time period. (Ex. 1:17) Dr. Freeman further noted there was no evidence Steve was exposed to anyone with Covid-19 outside of his work setting prior to his diagnosis and that "[b]ased upon these facts, along with the fact that Mr. Bolton spent the majority of his waking hours at the workplace, the commonsense explanation is that Mr. Bolton's COVID-19 disease most probably resulted from exposure to SARS-CoV-2 at work." (Ex. 1:17)

Dr. Freeman noted the incubation period for Covid-19 is generally within 14 days of exposure, with most cases occurring approximately 4 to 5 days after exposure. (Ex. 1:18) With respect to Marcus Lumber, Dr. Freeman found at least five individuals tested positive for Covid-19 within five days of one another, and opined, "[t]he occurrence of at least 5 identified cases of COVID-19 at the same workplace within one week provides strong evidence for a disease outbreak and ongoing transmission at the work site since the chances that all 5 were infected outside the workplace are essentially zero." (Ex. 1:28-29) In considering other possible sources of exposure, Dr. Freeman noted that

during the two weeks prior to his symptom onset Steve spent 90 hours working for Marcus Lumber, he participated in three events as a volunteer firefighter, he made occasional stops at two establishments for coffee or lunch, and he spent Thanksgiving with his immediate family at his mother-in-law's home. (Ex. 1:29) Dr. Freeman noted,

[a]part from his workplace and his wife, none of Mr. Bolton's contacts from the other venues was ever diagnosed with COVID-19. The timing of his wife's illness onset suggested transmission occurred from Mr. Bolton to her. Notably, Mr. Bolton's son Tim, who shared most of the same non-work venues as his father, tested negative in the SARS-CoV-2 IgG antibody test in 2021, indicating he had never been infected with SARS-CoV-2.

(Ex. 1:29) Dr. Freeman then looked at the infection rate between November 24, 2020 and December 2020 in Plymouth and Cherokee counties, and found of the 36,412 residents, approximately 1 in 102 or 1 percent were new Covid-19 cases during those 8 days. (Ex. 1:30) Dr. Freeman found Steve's risk of developing Covid-19 at work was 12.4 times greater than residents of Plymouth and Cherokee counties that were not employees of Marcus Lumber. (Ex. 1:30)

When considering Dr. Golub's report, Dr. Freeman stated that he partially disagreed with Dr. Golub's opinion that the incubation period for Covid-19 is between two and 14 days though symptoms typically appear within four or five days after exposure because he believes the statement is vague, noting,

[a]s I discussed previously, in one study median incubation period was 4 days with an interquartile range 2 to 7 days, meaning that 75 percent of patients had incubation periods between 2 and 7 days. Another study showed a median incubation period in this study was 5.1 days, meaning that 50% of patients had incubation times more than 5.1 days and 50% fewer than 5.1 days.

(Ex. 1:30) Dr. Freeman disagreed with Dr. Golub's opinion that Steve was most likely infected on or after November 26, 2020, opining Steve was possibly infected with Covid-19 as early as November 16, 2020 and "probably (75% likelihood) was infected between November 24 and November 28, 2020. (Ex. 1:31)

In his response to Dr. Golub's opinion that asymptomatic people account for approximately 40 to 45 percent of Covid-19 infections and they can transmit the virus to others for an extended period, perhaps longer than 14 days, Dr. Freeman stated, "[i]n my review I summarized study findings indicating asymptomatic rates ranging from 6.3% to 96%. The Oran review estimated asymptomatic rates to be between 40 and 45%, based on data from large cohorts that identified cases through population-based testing." (Ex. 1:31) Dr. Freeman agreed with Dr. Golub that wearing a mask and physical distancing reduce the likelihood of transmission of Covid-19, but he found no evidence Marcus Lumber had policies to ensure employees complied with the precautionary measures or advised the employees on how to properly position masks and the studies showed a reduction, not an elimination of transmission risk. (Ex. 1:31)

## CONCLUSIONS OF LAW

### I. Applicable Law

This case involves legal and factual causation, entitlement to surviving spouse death benefits, reimbursement of burial expenses, and responsibility of medical expenses under Iowa Code sections 85.27, 85.28, 85.31. 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. Steve's death occurred after the changes to the statute, so the new provisions of the statute apply to this case.

### II. Arising Out of and in the Course of Employment

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 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).

This case involves the unfortunate death of Steve. Steve contracted Covid-19 and within two weeks of the onset of symptoms he was dead at the age of 59.

The main issue in this case is whether a preponderance of the evidence supports Steve's work was a substantial factor in causing him to contract Covid-19, which caused his subsequent death. This is not a situation where Steve worked in a packing plant or factory in close proximity to unmasked coworkers. Steve was not a healthcare professional working in a hospital or long-term care facility taking care of Covid-19 patients. Steve worked for a busy hardware store, Marcus Lumber.

Steve had a private office at Marcus Lumber. He also interacted with the public. During the two-week period prior to the onset of his symptoms, Marcus Lumber had a mask and social distancing policy. Leavitt's testimony supports Steve was a rule-follower at work and that he wore a mask at work when he was inside or could not socially distance. There was no evidence presented to the contrary. Steve took regular lunch breaks with a coworker. While there were infections at Marcus Lumber, the evidence supports Marcus Lumber and Steve were following CDC Guidelines at work within two weeks of the onset of his symptoms.

The evidence also supports Steve did not follow CDC Guidelines in his personal life outside of his immediate household he shared with Donna. He did not wear a mask during frequent interactions he had with family members multiple times per week during the month of November. He did not wear a mask or social distance during a three-hour Thanksgiving dinner with multiple members of his family that do not live in his immediate household. He did not wear a mask when riding in an enclosed fire vehicle

with Smith, another firefighter on Thanksgiving, November 26, 2020. He did not wear a mask while fighting the fire on November 26, 2020 or when assisting the injured people. He did not wear a mask or social distance when attending a 90-minute meeting with the fire department on November 16, 2020. Steve went out for lunch occasionally at work. He stopped for coffee and food in the morning on his way to work.

While Donna avers none of Steve's family members were symptomatic or tested positive for Covid-19 before or immediately following Steve's death, there was no evidence presented that any of his family members, apart from Donna, took a Covid-19 test within the 14 days of when Steve was symptomatic or after his death in December 2020. While Tim's antibody test in 2021 was negative, no evidence was presented concerning antibody tests taken by Steve's other family members, including his grandchildren.

Dr. Freeman compared the infection rate at Marcus Lumber, with five cases, with an eight-day infection rate of 1 percent from testing for Cherokee and Plymouth counties, where Steve worked and lived. His report and Dr. Golub's report, do not indicate the percentage of people with Covid-19-like symptoms who actually tested for Covid-19 in Cherokee or Plymouth counties during this period and those with Covid-19-like symptoms who did not seek out testing. No information was produced concerning infection rates involving asymptomatic people in either county or Iowa. The evidence from studies presented by Drs. Golub and Freeman support that asymptomatic rates ranged from 6.3 percent to 96 percent. Asymptomatic people transmit the virus.

Had Steve always worn a mask outside of work, with the exception of his immediate household with Donna, Donna's argument might be more persuasive. That is not the case. The evidence supports Steve wore a mask at work. Steve did not wear a mask during multiple extended encounters with individuals outside of the immediate household he shared with Donna. No evidence was provided regarding any contact tracing following his death to bolster he contracted Covid-19 from someone at work. Based on the foregoing, I do not find Dr. Freeman's report persuasive. I do not find Donna has met her burden of proof Steve's work was a substantial factor in causing him to contract Covid-19, which caused his death. Based on this finding, the remaining issues are moot.

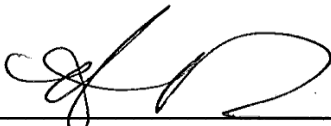
### **ORDER**

IT IS THEREFORE ORDERED, THAT:

Claimant shall take nothing in this case.

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 24<sup>th</sup> day of March, 2022.



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HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served as follows:

Ron Pohlman (via WCES)

Robert Gainer (via WCES)

Gregory Taylor (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.