BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERRY DOTTS,	:	
Claimant,	:	File No. 20700979.01
vs.	:	
CITY OF DES MOINES,	:	ARBITRATION DECISION
Employer,	:	
Self-Insured,	:	Head Notes: 1402.30, 1402.40, 1803,
Defendant.	:	1806

STATEMENT OF THE CASE

Terry Dotts, claimant, filed a petition in arbitration seeking workers' compensation benefits from City of Des Moines, a self-insured employer. The hearing occurred before the undersigned on January 13, 2022, via CourtCall video conferencing.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

The evidentiary record also includes Joint Exhibits 1 through 4, Claimant's Exhibits 1 through 3, and Defendant's Exhibits A through C. Claimant testified on his own behalf. The evidentiary record closed at the conclusion of the January 13, 2022, hearing.

The parties submitted post-hearing briefs on January 28, 2022, at which time the case was considered fully submitted to the undersigned.

ISSUES

1. Whether claimant sustained an injury on October 22, 2020, that arose out of and in the course of his employment;

2. Whether the alleged injury caused temporary disability;

3. Whether the alleged injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent partial disability benefits;

4. Apportionment; and

5. Costs.

FINDINGS OF FACT

Terry Dotts was born on May 30, 1954, making him sixty-seven (67) years old at the time of the evidentiary hearing. (Hearing Transcript, page 12) He resides in Des Moines, Iowa. (Id.) He attended high school at Des Moines Technical High school, which is now Central Campus. He obtained his GED through Central Texas College. (Hr. Tr., p. 13). After obtaining his GED, Dotts enlisted in the Army. (Id.) He worked as a wheel and track vehicle mechanic in the Army between December 1973, and November 1976. (Hr. Tr., pp. 13-14)

Claimant began working for the City of Des Moines in March 1996. (Hr. Tr., p. 15) Claimant planned on working for the city until he turned 75 years old; however, he ultimately decided to retire in March 2021 when he felt his job duties were too strenuous for his abilities. (Hr. Tr., p. 19) In total, he worked twenty-five years for the City of Des Moines.

Mr. Dotts' medical history is relevant to the matter at hand. On January 25, 2019, Mr. Dotts sustained injuries to his neck, left shoulder, and left knee following a slip and fall on ice. (Hr. Tr., p. 25; Joint Exhibit 2, page 33) Mr. Dotts' shoulder was surgically repaired. (Hr. Tr., p. 25; Exhibit C, page 8) He received conservative treatment for his neck, and no medical treatment for his left knee. (Hr. Tr., pp. 25-26)

The parties entered into an Agreement for Settlement which was approved by this agency on December 11, 2020. (Exhibit C, page 10) In that settlement, the parties stipulated Mr. Dotts was entitled to permanent partial disability of 5.2 percent of the body as a whole resulting in 26 weeks of compensation under Iowa Code section 85.34(2)(v) as the result of the January 25, 2019, work injury. If this decision awards industrial disability benefits, defendant will be entitled to a credit for the proceeds of the prior agreement for settlement.

On October 22, 2020, Mr. Dotts suffered his second work-related injury in two years. The injury occurred as Mr. Dotts was loading and securing sanders into a dump truck. In order to secure the sanders, Mr. Dotts had to pull down on a bar, which in turn tightened a strap. According to Mr. Dotts, he was pulling down on the bar when it unexpectedly slipped off the crank. Mr. Dotts fell to the concrete floor below landing on his buttock and lower back. (Hr. Tr., pp. 19-20) Mr. Dotts was able to collect himself and continue working; however, his pain increased over the next few days and he decided to report the injury and request medical treatment. (See Hr. Tr., p. 20) Defendant authorized care and directed Mr. Dotts to Jon Yankey, M.D. (See JE2, p. 35)

Dr. Yankey conducted an initial evaluation of Mr. Dotts on November 9, 2020. (JE2, p. 35) Dr. Yankey's medical notes include a discussion of Mr. Dotts' past medical history. (Id.) The notes provide,

> The patient reports that he injured his back in January 2019 when he fell on ice while working. He states that he saw Dr. Schmitz, at Iowa Ortho,

> for his back at that time. He states that he had x-rays and MRI of his back. He states that he was told that he had 3 "bad" vertebrae. He states that Dr. Schmitz discussed surgery. However, the patient states that he declined and has had no back surgery. The patient reports that he has continued to have intermittent low back pain since that injury.

(Id.)

At the November 9, 2020, appointment, Mr. Dotts described low back and bilateral leg pain, noting the low back pain presented immediately after his fall on October 22, 2020. (Id.) Dr. Yankey assessed Mr. Dotts with a low back strain and a flare up of the degenerative joint disease and degenerative disc disease of the lumbar spine. (Id.) He recommended close observation and conservative treatment. (Id.)

Mr. Dotts returned to Dr. Yankey's office for a follow-up appointment on November 16, 2020. (JE2, p. 37) He reported that his low back and bilateral leg pain persisted despite taking his medications as directed. (Id.) According to the November 16, 2020, medical record, Mr. Dotts told Dr. Yankey that he had been experiencing low back and bilateral leg pain for at least two to three months, including "before he fell on 10/22/2020." (Id.) Given the persistence of symptoms, Dr. Yankey recommended obtaining an MRI of the lumbar spine. (JE2, p. 37)

The MRI, dated November 30, 2020, revealed a herniated disk, with some right subarticular disk protrusion at L4-5 contacting the traversing right L5 nerve root. (See JE3, p. 38) Mr. Dotts' care was subsequently referred to Thomas Klein, D.O. (See JE1, p. 1)

Dr. Klein conducted an evaluation of Mr. Dotts on January 12, 2021. (JE1, p. 1) Mr. Dotts continued to complain of persistent low back pain and occasional bilateral leg pain. (Id.) After reviewing the diagnostic imaging and examining Mr. Dotts, Dr. Klein assessed spinal stenosis of the lumbar region, lumbar radiculopathy, and spondylosis with radiculopathy. (JE1, p. 3) He then recommended and eventually administered a series of epidural steroid injections at L4-5. (Id.) The injections were administered on January 29, 2021, March 16, 2021, and May 7, 2021. (JE1, pp. 5, 10, 15) The injections provided Mr. Dotts with some short-term relief of his symptoms. (See JE1, pp. 7, 12, 17)

After approximately seven months of conservative treatment, Dr. Klein placed Mr. Dotts at maximum medical improvement from an interventional pain management perspective. (JE1, p. 25) In his final report, Dr. Klein provided he did not have any other treatment options to offer and referred Mr. Dotts to a spine surgeon for possible definitive care. (Id.)

Trevor Schmitz, M.D. conducted an orthopedic evaluation of Mr. Dotts on August 25, 2021. (JE1, p. 26) Dr. Schmitz discussed treatment options with Mr. Dotts, including surgical intervention. Dr. Schmitz opined the surgery would be a bilateral L3-4 and L4-5 posterior lumbar decompression spinal fusion with possible transforaminal lumbar interbody fusion (TLIF). (JE1, p. 28) When Mr. Dotts informed Dr. Schmitz that he did not want to proceed with surgery, Dr. Schmitz placed him at MMI. (JE1, pp. 28-29)

Mr. Dotts asserts that he chose not to pursue surgical intervention because Dr. Schmitz told him he would lose approximately 30 percent of his spinal mobility. (See Ex. 1, p. 3)

Dr. Schmitz's initial medical record contains several errors. First, it is apparent that Dr. Schmitz conflates the two work injuries. In his August 25, 2021, medical notes, Dr. Schmitz described Mr. Dotts as a work comp patient that was injured in December 2019 when he slipped and fell on ice. (JE1, p. 26) The record further notes that Mr. Dotts reported a nearly two-year history of low back and bilateral thigh pain. (Id.) Mr. Dotts slipped and fell on ice in January 2019, and the medical records in evidence reveal that claimant began experiencing low back and bilateral leg pain in August 2020 or September 2020. (See JE2, p. 37) At most, Mr. Dotts had only been experiencing low back and bilateral leg pain for approximately one year at the time of Dr. Schmitz's August 25, 2021, appointment.

In a letter, dated September 10, 2021, Dr. Schmitz addressed several questions posed by defense counsel. (JE1, p. 30) Dr. Schmitz opined that claimant's need for surgery is more likely related to a personal condition rather than the work injury. (Id.) He further opined that the need for surgery would specifically be related to his pre-existing degenerative spondylolisthesis and lumbar stenosis. (Id.) Interestingly, Dr. Schmitz also opined,

> I should note that if Mr. Dotts felt as though he could not live with his pain and that the aggravation was significant enough to cause a need for surgery now, I would likely relate that surgery to an alleged work injury on October 22, 2020. Should he feel as though his symptoms are at a relative baseline level at this time and more consistent with his chronic low back pain, I would not relate the need for any future surgery to any alleged work injury.

(Id.) Dr. Schmitz concluded his letter by assessing Mr. Dotts' permanent impairment. Dr. Schmitz placed Mr. Dotts in DRE Lumbar Category II and assigned five percent (5%) whole person impairment for axial low back pain without significant alteration in the structural integrity of the spine. (Id.)

In a follow-up letter, dated October 21, 2021, Dr. Schmitz opined the 5 percent whole person impairment rating would not be related to the alleged work injury. (JE1, p. 32)

In response, Mr. Dotts sought an independent medical evaluation with Robert Rondinelli, M.D. The examination took place on November 9, 2021. (Ex. 1, p. 1) After reviewing the medical records and examining Mr. Dotts, Dr. Rondinelli causally related his low back condition and need for surgery to the October 22, 2020, work injury. (Ex. 1, pp. 8-9) Dr. Rondinelli explained that the January 2019 fall may have activated claimant's low back problem as the documentation from Dr. Yankey and Dr. Klein suggest; however, he could not verify the same from the pre-existing records he reviewed since Dr. Schmitz's involvement at that point in time was entirely focused on Mr. Dotts' neck pain. (Ex. 1, p. 8) Dr. Rondinelli noted that Mr. Dotts' axial and radicular low back pain became clinically problematic immediately following the October 2020

work injury. He also noted that Mr. Dotts' functional disability has persisted in spite of treatment, and he has not returned to his pre-injury functional baseline. (Id.)

Dr. Rondinelli assessed permanent impairment as part of his IME. (Ex. 1, pp. 7-8) Dr. Rondinelli utilized the range of motion (ROM) method, which he opined is the more appropriate approach when compared to the DRE method utilized by Dr. Schmitz. (Ex. 1, p. 7) Dr. Rondinelli opined that Mr. Dotts meets the criteria for a Category II-C disorder as his low back condition is "Unoperated on, stable, with medically documented injury, pain, and rigidity, associated with moderate to severe degenerative changes on structural tests: includes herniated nucleus pulposus with or without radiculopathy." Dr. Rondinelli assigned seven percent (7%) whole person impairment. (Id.; Ex. 1, p. 10)

Dr. Rondinelli recommended limiting claimant to a "Medium" physical demand category, or the ability to occasionally lift up to 50 pounds. (Ex. 1, p. 10) This restriction appears reasonable, given claimant's injury and current functional ability.

According to the Hearing Report, the first issue to be addressed is whether claimant sustained an injury, arising out of and in the course of employment, on October 22, 2020; however, the parties agree that Mr. Dotts fell at work on October 22, 2020. More accurately, the first issue to be addressed is whether the October 22, 2020, fall resulted in an injury to the low back.

In this regard, defendant disputes that Mr. Dotts' low back pain is related to the October 22, 2020, injury date. Defendant asserts that Mr. Dotts' low back pain was caused by his underlying degenerative condition, or as a result of the January 25, 2019, work injury. I do not find defendant's argument persuasive.

On January 25, 2019, Mr. Dotts slipped and fell on ice. According to the medical records in evidence, Mr. Dotts injured his neck, left shoulder, and left knee as a result of the injury. Claimant's shoulder was repaired by undergoing a rotator cuff surgery, his neck pain was addressed through physical therapy and injections, and he did not receive any treatment specific to the left knee. There is no evidence Mr. Dotts sustained a permanent injury to his low back on January 25, 2019. Defendant's argument is predicated upon the various references in the medical records of Dr. Yankey and Dr. Klein to a prior "back" injury or pain. Mr. Dotts' testimony and the medical records support a finding that the only back injury he sustained as a result of the January 25, 2019, injury was to the cervical spine. As noted in Dr. Rondinelli's report, Mr. Dotts' axial and radicular low back pain only became clinically problematic after the October 2020 work injury. Moreover, it was only after the October 22, 2020, injury that Mr. Dotts' functional capabilities significantly decreased without returning to his baseline status.

The undersigned is cognizant of the November 16, 2020, medical record wherein Mr. Dotts reported that his low back and radiating pain began a month or two prior to the October 22, 2020, work injury. That being said, he was not diagnosed with a low back condition prior to the October 22, 2020, work injury. There is no evidence of diagnostic imaging for the lumbar spine prior to the October 22, 2020, work injury. On October 22, 2020, claimant sustained a fall, which directly traumatized his lower back and buttocks. He experienced immediate pain in the low back. Dr. Yankey initially diagnosed claimant

with a flare-up of degenerative joint disease and degenerative disc disease without direct trauma-related disc pathology or radiculopathy. An MRI later revealed a broad-based right central/right subarticular disc protrusion contacting the traversing right L5 nerve root. Claimant received epidural steroid injections for his low back pain with radiculopathy, and Dr. Schmitz provided that surgical intervention was an option for claimant to consider. I find the expert opinions of Dr. Rondinelli to carry greater weight than those of Dr. Schmitz. I accept Dr. Rondinelli's opinion that the October 22, 2020, work injury permanently aggravated any pre-existing and underlying degenerative spinal condition. (Ex. 1, p. 8)

Dr. Schmitz was in the unique position of treating Mr. Dotts following both injuries. Unfortunately, Dr. Schmitz did not call upon his prior knowledge when offering his causation opinion. Dr. Schmitz offers no clarifying statement on whether he previously treated Mr. Dotts' lumbar spine, despite being in the best position to do so. Instead, Dr. Schmitz offered a causation opinion that amounts to a shrug. The report provides,

> I should note that if Mr. Dotts felt as though he could not live with his pain and that the aggravation was significant enough to cause a need for surgery now, I would likely relate that surgery to an alleged work injury on October 22, 2020. Should he feel as though his symptoms are at a relative baseline level at this time and more consistent with his chronic low back pain, I would not relate the need for any future surgery to any alleged work injury.

(JE1, p. 30) Such an opinion ignores the fact that Dr. Schmitz recommended surgical intervention for Mr. Dotts' condition. The fact Mr. Dotts did not want to move forward with surgery does not negate the fact that his condition warrants surgical intervention.

Additionally, in defendant's August 31, 2021, letter to Dr. Schmitz, defendant asked Dr. Schmitz to address permanent functional impairment "If you feel his current condition is related to the work injury on October 22, 2020." (See Id.) In response, Dr. Schmitz opined that Mr. Dotts likely sustained a DRE lumbar category II, 5 percent impairment of the whole person. (Id.) By responding to defendant's question without any qualifications, it is reasonable to assume Dr. Schmitz "[felt] his current condition is related to the work injury on October 22, 2020."

Despite these indications that Dr. Schmitz believed, at the very least, that Mr. Dotts' condition could be related to the October 22, 2020, work injury, Dr. Schmitz's October 21, 2021, addendum letter specifically provides that the 5 percent whole person impairment rating would not be related to the alleged work injury. Dr. Schmitz offers no explanation for altering his causation opinion with the October 21, 2021, addendum opinion. Given these inconsistencies, and lack of justification for the same, I do not afford any weight to the causation opinions of Dr. Schmitz.

I accept Dr. Rondinelli's opinions regarding permanent impairment and find that Mr. Dotts has shown by a preponderance of the evidence that he sustained permanent disability as a result of the October 22, 2020, work injury. Specifically, I find that Mr.

Dotts sustained 7 percent functional impairment to his body as a whole as a result of the October 22, 2020, work injury.

Having found that Mr. Dotts sustained an injury to his body as a whole which resulted in permanent impairment, I now turn to the issue of industrial disability. At the time of the hearing Mr. Dotts was 67 years old. He obtained his GED through Central Texas College. He worked for the City of Des Moines for 25 years. He intended to work until he was 75 years old; however, he asserts that he was forced into early retirement because of his injuries. Mr. Dotts testified that he is bored in retirement and is looking for feasible part-time work to pass the time. His job search had been unsuccessful as of the date of hearing.

Considering Mr. Dotts' age, anticipated retirement, educational background, employment history, ability to retrain, motivation, permanent impairment, and the other industrial disability factors set forth by the Iowa Supreme Court, I find that he has sustained a 15 percent loss of future earning capacity as a result of his work injury with the defendant employer. As such, Mr. Dotts is entitled to 75 weeks of permanent partial disability benefits, less 26 weeks for the 2019 Agreement for Settlement.

The issue of costs will be addressed in the Conclusions of Law section.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e).

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

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v.

Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

In this case, I found that the claimant proved by a preponderance of the evidence that he sustained a material aggravation and injury to his low back as a result of his work activities on October 22, 2020. Therefore, I conclude that claimant carried his burden of proof to establish that he sustained an injury that arose out of and in the course of his employment on October 22, 2020. Having found the opinion of Dr. Rondinelli to be the most convincing, I further found that claimant carried his burden of proving he sustained permanent disability as a result of the October 22, 2020, low back injury.

On the Hearing Report, the parties stipulated that if the injury was found to be a cause of permanent disability, the disability is an industrial disability, with benefits commencing on August 25, 2021.

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Having considered the relevant industrial disability factors outlined by the Iowa Supreme Court, I found that Mr. Dotts has proven he sustained a 15 percent loss of future earning capacity as a result of his work-related injury. A 15 percent loss of future earning capacity entitles claimant to a 15 percent industrial disability award. Therefore, I conclude that claimant is entitled to an award of 75 weeks of permanent partial disability benefits as a result of his work injury at the City of Des Moines. Iowa Code section 85.34(2)(v).

Defendant seeks apportionment of disability pursuant to Iowa Code section 85.34(7). Defendant asserts it is entitled to a credit for the 5.2 percent industrial

disability awarded in the Agreement for Settlement for the January 25, 2019, neck injury.

Claimant asserts the defendant is not entitled to any apportionment as claimant returned to work for the defendant employer and, as such, compensation for the January 25, 2019, injury was limited to his functional impairment. Claimant asserts the January 25, 2019, injury was "treated like a scheduled member case."

Arguably, Iowa Code section 85.34 currently provides no mechanism for apportioning the loss between the present injury and the prior injury. This is in direct contrast to prior apportionment statutes, which explained how the offset was to be calculated when an employee suffers successive injuries while working for the same employer. Iowa Code section 85.34(7)(b) (2016) (". . . the employer is liable for the combined disability that is caused by the injuries, measured in relation to the employee's condition immediately prior to the first injury. In this instance, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer.")

That being said, the plain language meaning of the statute indicates that an employer is only liable for compensation of the disabilities relating to the injury that is being litigated. Based on the plain language meaning of the statute, it does not appear that the intent of Iowa Code section 85.34(7) (2017) has changed to suddenly allow double recoveries.

The current Iowa Code section 85.34(7) provides a straightforward approach to apportionment when compared to prior versions. Mr. Dotts received 26 weeks of permanent partial disability benefits for the January 25, 2019, work injury. Claimant's January 25, 2019, injury was an injury to the body as a whole, regardless of the fact it was compensated based on a loss of functional impairment. In the current decision, I found that Mr. Dotts sustained 15 percent industrial disability regarding the October 22, 2020, date of injury. Based on this, defendant shall pay Mr. Dotts 49 weeks of permanent partial disability benefits.

Mr. Dotts is seeking an assessment of his costs. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. Claimant brought a successful petition in arbitration. I conclude it is appropriate to assess costs in some amount.

Mr. Dotts seeks the costs associated with his filing fee. The cost of the filing fee is appropriate and assessed pursuant to 876 IAC 4.33(7).

Mr. Dotts also seeks the costs associated with the deposition transcript. The cost of the deposition transcript is appropriate and assessed pursuant to 876 IAC 4.33(2).

Lastly, Mr. Dotts is seeking reimbursement in the amount of $4,250.00 for Dr. Rondinelli's IME. Claimant did not assert entitlement for reimbursement of Dr. Rondinelli's IME pursuant to Iowa Code section 85.39 as an issue on the Hearing Report.

Agency rule 876 IAC 4.33(6) permits the assessment of "the reasonable costs of obtaining no more than two doctors' or practitioners' reports." The Iowa Supreme Court has held that only the cost of drafting the expert's report is permissible in lieu of testimony. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 845-846 (Iowa 2015).

Dr. Rondinelli's invoice is included within the evidentiary record. Dr. Rondinelli charged $4,250.00 for "Independent Medical Evaluation (IME) (physical exam, record review, & comprehensive report)." The invoice further provides that Dr. Rondinelli charges $500.00 per hour. According to the invoice, Dr. Rondinelli spent 1.5 hours drafting the IME report. (Ex. 3, p. 22) As such, I find the cost of obtaining the IME report ($750.00) is appropriate and assessed pursuant to 876 IAC 4.33(6).

ORDER

THEREFORE IT IS ORDERED:

Defendant shall pay to claimant forty-nine (49) weeks of permanent partial disability benefits commencing on August 25, 2021. All weekly benefits shall be payable at the rate of seven-hundred thirty-six and 49/100 dollars ($736.49) per week.

Defendant shall pay accrued weekly benefits in a lump sum together with interest 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, as required by Iowa Code section 85.30.

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

Costs are taxed to defendant pursuant to 876 IAC 4.33, as set forth in the decision.

Signed and filed this 15th day of July, 2022.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Christopher Spaulding (via WCES)

Luke DeSmet (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.