

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEXTER MALCOM,

Claimant,

vs.

SALMON COMPANIES,

Employer,

and

ACE AMERICAN INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

AUG 18 2016

WORKERS COMPENSATION

File No. 5052180

ARBITRATION DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Dexter Malcom, filed petitions in arbitration seeking workers' compensation benefits from Salmon Companies, employer, and Ace American Insurance Company, insurance carrier, both as defendants, as a result of a stipulated injury sustained on February 14, 2014. This matter came on for hearing before Deputy Workers' Compensation Commissioner, Erica J. Fitch, on February 29, 2016, in Des Moines, Iowa. The record in this case consists of claimant's exhibits 1 through 11, defendants' exhibits 12 through 13, and the testimony of the claimant and Eric Shonka.

ISSUES

The parties submitted the following issues for determination:

1. Whether the stipulated work injury of February 14, 2014 is a cause of permanent disability;
2. The extent of claimant's industrial disability;
3. Whether defendants are responsible for claimed medical expenses detailed in Exhibit 11;
4. Whether claimant is entitled to reimbursement of an independent medical evaluation pursuant to Iowa Code section 85.39; and
5. Specific taxation of costs.

STIPULATIONS

The stipulations of the parties in the hearing report are incorporated by reference in this decision and are restated as follows:

1. The existence of an employer-employee relationship at the time of the alleged work injury.
2. Claimant sustained an injury on February 14, 2014 which arose out of and in the course of employment.
3. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.
4. The commencement date for permanent partial disability benefits, if any are awarded, is August 12, 2014.
5. At the time of the alleged injury, claimant's gross earnings were \$1,089.33 per week, claimant was single, and claimant was entitled to one exemption.
6. Affirmative defenses were waived.
7. With reference to the itemized list of disputed medical expenses: the fees or prices charged by providers are fair and reasonable; the treatment was reasonable and necessary; and the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and defendants did not offer contrary evidence.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Claimant's testimony was consistent as compared to the evidentiary record and the testimony of Mr. Shonka. Claimant's demeanor at the time of evidentiary hearing was excellent and gave the undersigned no reason to doubt his veracity. Claimant is found credible.

Claimant was 45 years of age on the date of evidentiary hearing. He is single, with no dependent children. Claimant was born and raised in Georgia, where he graduated from high school and subsequently attended the police academy. Claimant's work history includes manufacturing of beds, as a police officer, and truck driver. In one driving position for Ace Hardware, claimant earned nearly \$73,000.00 per year, but was required to maneuver items weighing 500 to 1,500 pounds. He ultimately resigned this position for familial reasons. (Claimant's testimony; Exhibit 9, page 92)

Claimant has resided in the Des Moines metropolitan area since 2004. He worked as a tire delivery person, which required him to move tires weighing up to 1,500 pounds. (Claimant's testimony) Claimant suffered an alleged work related injury in September 2006, when he developed low back pain while lifting a tire. Claimant was referred for care with Richard McCaughey, D.O. Dr. McCaughey assessed a lumbar strain and recommended conservative care, including stretching, Skelaxin, physical therapy, and light duty work. (Ex. 13, pp. 12a-17) Dr. McCaughey also referred claimant for evaluation with an orthopedic specialist. (Ex. 13, p. 19)

Thereafter, claimant received treatment from orthopedist, Lynn Nelson, M.D. Claimant underwent MRIs of the lumbar, thoracic, and cervical spines. (Ex. 13, pp. 1-3) Dr. Nelson reviewed claimant's MRIs and opined the lumbar spine MRI demonstrated L4-L5 degenerative disc disease with a degenerative disc protrusion; however, he opined claimant's symptoms did not support a finding that the protrusion was symptomatic. Dr. Nelson opined claimant's care to date had been reasonable and appropriate. (Ex. 13, pp. 8-9, 16-17) Dr. Nelson ultimately opined claimant suffered from myofascial mid- and low-back pain. He found no significant impingement and an unremarkable neurologic exam. Dr. Nelson opined claimant's condition was non-surgical. (Ex. 13, p. 10)

Following Dr. Nelson's evaluations, claimant returned to Dr. McCaughey on January 16, 2007. Dr. McCaughey opined claimant sustained no permanent impairment as a result of the lumbar strain and required no formal permanent restrictions. (Ex. 13, p. 23)

While in the Des Moines area, claimant also worked as a security guard in a shopping mall and associate/installer at an auto parts store. Since 2007, claimant has worked as a truck driver for defendant-employer, tasked with transporting mail. His position requires a valid CDL. Initially, claimant did not drive a set route; however, for the two years preceding evidentiary hearing, claimant worked a set route between Des Moines and Kansas City, Missouri. Claimant regularly is required to perform pre- and post-trip checks of the truck, drive, and hook and unhook trailers. On occasion, he is also required to load or unload mail. Claimant works full time and earns benefits including health, life, dental, and vision insurance; he testified his compensation is the highest it has been since leaving Ace Hardware. (Claimant's testimony)

On February 14, 2014, claimant walked to his car which was parked in defendant-employer's parking lot. Claimant testified while in the lot, he fell to the ground; he realized he was lying on his back and felt dazed. Although he is uncertain if he lost consciousness, claimant testified a coworker informed claimant he had been unconscious on the ground. A coworker assisted claimant into the building, where he reported the incident and completed required paperwork. While completing this paperwork, claimant testified his back and shoulder began to ache and he began to experience pain running down his leg. Due to his symptoms, defendant-employer sent claimant for medical attention. (Claimant's testimony)

That same day, February 14, 2014, claimant presented for evaluation by Daniel Miller, D.O. Claimant reported he had slipped on snow and ice and fell to the ground. Though he did not recall losing consciousness, claimant reported a coworker indicated he had. Claimant described discomfort of his neck, right shoulder, low back and left thigh. He denied headache or visual disturbance. (Ex. 1, p. 14) Dr. Miller assessed a concussion, back pain, and a leg injury. He implemented a course of conservative care, including use of over-the-counter medications and a work restriction against driving or operating equipment. (Ex. 1, pp. 15-16)

Claimant returned to Dr. Miller on February 17, 2014. At that visit, claimant reported continued neck and shoulder discomfort, slightly improved low back pain, the development of a limp, and a pulling sensation of the right temporal area. (Ex. 1, p. 13) Dr. Miller released claimant to return to full duty work and recommended continued over-the-counter medications. (Ex. 1, pp. 14, 17)

On February 24, 2014, claimant returned to Dr. Miller with complaints of pain, swelling, and bruising of the right side; some right arm pain with movement; some neck pain; limping; and a pin-prick sensation on his side/back with driving. (Ex. 1, p. 12) Dr. Miller assessed a concussion, back pain/cervical strain, resolved leg injury, and a sprain/strain of the right shoulder/upper arm. Dr. Miller ordered additional conservative care, including over-the-counter medications and a course of physical therapy. (Ex. 1, pp. 13, 18)

On March 11, 2014, claimant returned to Dr. Miller in follow up. Claimant reported good and bad days, with complaints of headaches, pain and swelling of the right side and right shoulder, improvement in limping, and resolution of the pin-prick sensation. Dr. Miller recommended continued physical therapy and over-the-counter medications; he also ordered a brain CT. (Ex. 1, pp. 11-12, 19) Claimant underwent the ordered CT on March 13, 2014, which the radiologist read as normal. (Ex. 7, p. 85)

On March 18, 2014, Dr. Miller evaluated claimant. He assessed back pain/cervical strain, sprain/strain of the right shoulder/upper arm, and headaches. He opined claimant's concussion and leg injury had resolved. He continued conservative measures of physical therapy and over-the-counter medication. (Ex. 1, pp. 10-11, 20)

Following evaluation on April 1, 2014, Dr. Miller ordered an MRI of claimant's cervical spine. In the interim, he placed a hold on physical therapy, but recommended use of ibuprofen and Elavil. (Ex. 1, pp. 9-10, 21) Claimant underwent the recommended MRI on April 9, 2014. (Ex. 7, pp. 88-89) On April 14, 2014, Dr. Miller recommended claimant's right shoulder be evaluated by an orthopedist. He prescribed prednisone and amitriptyline. (Ex. 1, pp. 8-9, 22)

At Dr. Miller's referral, on April 28, 2014, claimant's right shoulder was evaluated by Mark Kirkland, D.O. Dr. Kirkland ordered and reviewed x-rays of claimant's right shoulder, as well as the cervical spine MRI report. Dr. Kirkland assessed right shoulder acromioclavicular (AC) joint internal derangement and possible old grade II AC joint separation. Dr. Kirkland related the right shoulder diagnosis to the work injury, but

expressed no opinion as to the causal connection between the work injury and claimant's cervical spine symptoms. Dr. Kirkland recommended conservative care, including a home exercise program and meloxicam. He also imposed work restrictions relative to the right shoulder. (Ex. 2, pp. 30-32)

On May 5, 2014, Dr. Kirkland performed a right AC joint injection. He continued the remainder of claimant's conservative treatment plan. (Ex. 2, pp. 33-34)

On May 12, 2014, claimant returned to Dr. Miller for evaluation of his right shoulder. Dr. Miller noted claimant expressed belief Dr. Miller was not "taking him seriously." (Ex. 1, p. 14) Dr. Miller described claimant's care to date. He noted claimant's cervical MRI revealed only possible slight left C7 nerve root irritation, the brain CT was negative, and a referral had been issued to a specialist. Dr. Miller recommended continued medication use, ordered a lumbar spine MRI, and indicated claimant's right shoulder care should be managed by Dr. Kirkland. (Ex. 1, pp. 4-5, 25)

On May 14, 2014, claimant returned to Dr. Kirkland and reported receiving no relief with the AC joint injection. Dr. Kirkland added an additional diagnosis of a rhomboid muscle/scapulothoracic pain/strain. He recommended continued work restrictions, physical therapy and a home exercise program; he also prescribed a Medrol Dosepak. (Ex. 2, pp. 35-36) Following evaluation on May 28, 2014, Dr. Kirkland prescribed another Medrol Dosepak, to be followed with resumption of meloxicam. (Ex. 2, pp. 37-38) Dr. Kirkland subsequently continued claimant's orders for physical therapy and meloxicam, and lessened claimant's work restrictions for the right shoulder. (Ex. 2, pp. 39-40)

On May 29, 2014, claimant underwent the recommended lumbar spine MRI. (Ex. 7, p. 90) On June 12, 2014, Dr. Miller reviewed claimant's lumbar spine MRI and assessed an exacerbation of degenerative disc disease. Dr. Miller recommended continued medications, ordered physical therapy, imposed work restrictions, and referred claimant to Cassim Igram, M.D. for evaluation. (Ex. 1, pp. 3-4, 27)

At the referral of Dr. Miller, on July 7, 2014, claimant presented to Dr. Igram for evaluation of back pain. On examination, Dr. Igram noted myofascial-type symptoms, with limited range of motion of the back, but no signs of radiculopathy. Dr. Igram reviewed claimant's lumbar spine MRI and opined it revealed segmentation anomaly and degenerative changes, but no significant nerve root impingement. Following examination, Dr. Igram assessed myofascial back pain. He opined claimant was not a surgical candidate and recommended continuation of the conservative treatment plan initiated by Dr. Miller. (Ex. 3, pp. 55-56, 58)

Claimant followed up with Dr. Miller on July 23, 2014, at which time claimant complained of right arm/shoulder symptoms and tightness of the low back. Dr. Miller imposed work restrictions as a result of the low back condition and recommended continued physical therapy and medication use. (Ex. 1, pp. 2-3, 28)

Claimant continued to follow up with Dr. Kirkland in June and July 2014. Throughout this period, Dr. Kirkland continued a course of conservative care. (Ex. 2,

pp. 41-45) On July 30, 2014, Dr. Kirkland opined claimant's treatment to date had been adequate, despite claimant's contrary feelings. Dr. Kirkland prescribed meloxicam, recommended continued performance of a home exercise program, and released claimant to return to his duties as a truck driver with respect to his right shoulder. (Ex. 2, pp. 46-47)

On August 13, 2014, Dr. Miller evaluated claimant regarding the low back complaints. Dr. Miller opined claimant's lumbar degenerative disc disease was stable and placed claimant at maximum medical improvement (MMI). He imposed no permanent restrictions. (Ex. 1, pp. 2, 29)

Claimant continued to follow up with Dr. Kirkland on a monthly basis in August, September and October 2014. During this period, Dr. Kirkland continued claimant's conservative treatment plan and opined claimant was not a surgical candidate. He also advised claimant it would take time for his shoulder to heal. (Ex. 2, pp. 48-52)

On October 22, 2014, claimant presented to personal physician, Ronnie Hawkins, M.D. with complaints of dizzy spells on and off since the accident; pain and pressure in the right side of his head and ear; and headaches. Dr. Hawkins assessed headaches and dizziness; he ordered a brain MRI. (Ex. 4, pp. 59-60) Claimant underwent the brain MRI on October 24, 2014, with the results read as negative for intracranial abnormality. Dr. Hawkins referred claimant to otolaryngology for evaluation. (Ex. 4, pp. 61, 63; Ex. 7, p. 87)

At Dr. Hawkins' referral, claimant was evaluated by Marshall Greiman, M.D. on November 7, 2014. Dr. Greiman ordered an audiogram, which he opined revealed mild low-frequency symmetric sensorineural hearing loss; he also reviewed claimant's brain MRI. Dr. Greiman cautioned if claimant experienced balance issues while driving, he would pose a safety risk to himself and others. Accordingly, he advised claimant not to drive pending evaluation by neurologist, Matthew Carfrae, M.D. (Ex. 4, pp. 65-66)

At Dr. Greiman's referral, on November 19, 2014, claimant presented to Dr. Carfrae for evaluation. Dr. Carfrae noted claimant suffered from episodic vertigo and occasional associated nausea, as well as right-sided headaches. Dr. Carfrae opined claimant's MRI results were negative for inner abnormality or retrocochlear pathology. He assessed episodic disequilibrium and vertigo, but noted the etiology of claimant's symptoms was "difficult to determine." He ordered a CT scan and vestibular studies. (Ex. 5, p. 68) Claimant underwent the recommended imaging studies on November 26, 2014. (Ex. 7, p. 86)

On December 22, 2014, claimant returned to Dr. Kirkland. Claimant reported experiencing good and bad days, with Dr. Kirkland noting claimant appeared to be tolerating full duty work. Dr. Kirkland placed claimant at MMI. He opined claimant sustained no permanent impairment and required no permanent restrictions. Dr. Kirkland did issue refills for claimant's meloxicam and recommended claimant continue to perform his home exercise program. (Ex. 2, pp. 53-54)

Claimant returned to Dr. Carfrae on December 23, 2014. Dr. Carfrae noted claimant had experienced difficulty with episodic vertigo and headaches persisting since the work injury. Dr. Carfrae assessed right posterior semicircular canal dehiscence. He and claimant discussed treatment options, including continued observation and transmastoid repair. Dr. Carfrae indicated the condition may progress and require intervention, but there currently was no harm in continued observation. (Ex. 5, p. 67)

Claimant testified Dr. Carfrae explained his condition as a "broken bone" in his ear. (Claimant's testimony)

At the arranging of claimant's counsel, on February 18, 2015, claimant presented for an independent medical evaluation (IME) with John Kuhnlein, D.O. Dr. Kuhnlein is board certified in occupational and environmental medicine. Dr. Kuhnlein issued a report of his findings and opinions dated March 18, 2015. In interview of claimant, claimant reported he slipped on ice and snow on February 14, 2014. When he fell, he struck his head on a car and then fell backwards. Claimant denied recollection of how he landed, with his next memory being lying upon the ground. (Ex. 6, p. 70)

Dr. Kuhnlein reviewed medical records and discussed the course of care with claimant; however, he noted he lacked complete treatment records. Claimant complained of headaches two to three times per week, constant right shoulder pain in the posterior trapezium area, and constant right low back and flank pain. (Ex. 6, pp. 71-74) Claimant reported he was performing his full duty job as a driver, but stopped more frequently in order to stretch. (Ex. 6, p. 75) Dr. Kuhnlein also performed a physical examination. (Ex. 6, pp. 76-78)

Following records review, interview, and examination, Dr. Kuhnlein assessed: history of concussion; history of cervical strain; right shoulder strain/scapulothoracic strain; and back strain without radiculopathy. Dr. Kuhnlein causally related each of these diagnoses to the work injury. He also noted claimant had mentioned a "broken bone" of his ear, but given he did not have the medical records to review, Dr. Kuhnlein would not discuss the ear complaints further. (Ex. 6, p. 78)

Dr. Kuhnlein opined claimant achieved MMI on August 14, 2014. He opined claimant sustained the following permanent impairments as a result of the injury: no impairment for headaches or cervical strain; 2 percent whole person for reduced range of motion of the right shoulder; and 3 percent whole person as a result of falling between DRE Lumbar Categories I and II. In total, he found a combined permanent impairment of 5 percent whole person as a result of the work injury. With respect to further medical care, Dr. Kuhnlein indicated claimant could utilize meloxicam or over-the-counter medication for the headaches and for the spinal complaints, and should perform core exercises and lose weight. Dr. Kuhnlein recommended the following permanent restrictions: lifting of 50 pounds occasionally floor-to-shoulder and 40 pounds occasionally over shoulder level; changing positions as needed; and occasional work at or above shoulder level. (Ex. 6, pp. 78-79)

Claimant testified he believes the restrictions recommended by Dr. Kuhnlein actually may overstate his abilities. He explained he generally attempts to limit his lifting to 15 to 20 pounds. (Claimant's testimony)

Dr. Kuhnlein was subsequently provided with additional medical records for review. After doing so, he authored an addendum to his IME report dated May 6, 2015. As an initial matter, Dr. Kuhnlein opined his review of additional records did not change his opinions on the previously-diagnosed conditions. He focused upon medical records pertaining to claimant's ear condition. (Ex. 6, pp. 82-83)

Dr. Kuhnlein opined based upon the mechanism of work injury, with the onset of vertigo symptoms thereafter, it was more likely than not that claimant's dehiscence occurred as a result of the work injury. Absent further treatment, Dr. Kuhnlein opined claimant had achieved MMI for this condition, but noted the condition might progress and require additional care. If this occurred, Dr. Kuhnlein opined the treatment would be causally related to the work injury. As a result of the vestibular condition, Dr. Kuhnlein opined claimant sustained a permanent impairment of 3 percent whole person. The addition of this rating raised claimant's combined permanent impairment to 8 percent whole person as a result of the work injury. Dr. Kuhnlein suggested claimant refrain from commercial driving pending clarification from Dr. Carfrae and evaluation by a Department of Transportation examiner regarding a need for restrictions on driving. (Ex. 6, p. 83)

Claimant continues to complain of right shoulder pain, which can worsen with specific positions or movements. Generally, his back symptoms are tolerable, but can become painful, prevent claimant from standing upright, interfere with activities, and cause him to avoid bending. In the event he develops a significant headache or balance issues, claimant testified he stays home from work out of safety concerns. He is uncertain how often he experiences balance issues, as he has become accustomed to the symptoms and either sits or leans against a wall to regain his balance. Claimant testified he typically avoids heavy lifting out of fear of injury and similarly relies upon the left arm more heavily, to avoid increasing symptoms in his right arm. Claimant testified he underwent evaluation by a Department of Transportation examiner, disclosed the balance concerns, and was cleared to drive. (Claimant's testimony)

As of the date of evidentiary hearing, claimant remained employed as a driver for defendant-employer. He testified he is capable of performing his current duties. Claimant has no difficulty performing the driving aspect of his job; he does stop for breaks. Claimant testified he intends to remain working for defendant-employer. (Claimant's testimony)

Eric Shonka, terminal manager for defendant-employer, testified at evidentiary hearing. Mr. Shonka testified claimant's description of his job duties as a driver was accurate, including the physical aspects. Mr. Shonka testified claimant was working without permanent restrictions and like other drivers, had to be cleared to drive by a CDL examiner. He testified claimant has not complained to him of issues with dizziness, but had expressed passing complaints of shoulder or back soreness.

Mr. Shonka did not recall claimant expressing concern about performing his job; however, claimant had called into work as a result of conditions he related to the work injury. (Mr. Shonka's testimony)

Mr. Shonka's testimony was clear and consistent with the testimony of claimant. His demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt his veracity. Mr. Shonka is found credible.

CONCLUSIONS OF LAW

The first issue for determination is whether the stipulated work injury of February 14, 2014 is a cause of permanent disability.

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 Rule of Appellate Procedure 6.14(6).

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

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

Dr. Kirkland opined claimant sustained no permanent impairment and required no permanent restrictions as a result of the right shoulder condition. Dr. Miller opined claimant did not require permanent restrictions as a result of the back condition. No treating physician authored opinions regarding the extent, if any, of permanent disability claimant sustained as a result of the concussion/headaches, cervical strain, or dehiscence/vertigo.

Claimant credibly testified he continues to suffer with symptoms of his back, shoulder, vertigo/balance, and headaches. Only Dr. Kuhnlein evaluated each of the

conditions claimant relates to the stipulated work injury. Dr. Kuhnlein opined as a result of the work injury, claimant sustained injuries in the form of a concussion, headaches, cervical strain, right shoulder strain, back strain, and dehiscence/vertigo. There are no contradictory opinions which indicate these complaints are not related to the stipulated work injury. Therefore, it is determined claimant sustained each of these injuries as a result of the work injury.

As stated, Dr. Kuhnlein is the only provider to examine and consider all of the work-related conditions. Therefore, the undersigned finds his opinion best reflects the entirety of claimant's work-related injuries. Dr. Kuhnlein performed a detailed review of medical records and interview of claimant, as well as a physical examination of each of the affected injuries. The physical examination denotes specific measurements which are utilized in determining the extent of claimant's permanent disability in accordance with the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. Dr. Kuhnlein's methodology is detailed and consistent with the AMA Guides. Therefore, I find his opinions on the extent of claimant's permanent disability entitled to the greatest weight. As Dr. Kuhnlein opined claimant sustained a total permanent impairment of 8 percent whole person and should follow permanent restrictions, it is determined the work injury of February 14, 2014 is a cause of permanent disability.

The next issue is the extent of claimant's industrial disability.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The parties have stipulated claimant's disability shall be evaluated industrially.

Claimant was 45 years of age on the date of evidentiary hearing. He successfully graduated high school and completed police academy training. He subsequently earned his CDL licensure, which he utilizes in his employment with defendant-employer. The claimant's work history has been in physically demanding positions, including manufacturing, policing, tire delivery, and hardware supply delivery. He also performed auto parts sales/installation and mall security, which were less physically demanding than his other positions. Claimant currently remains employed as a driver for defendant-employer, a position which is not particularly physically demanding given the general "no touch" nature of loads he drives. Although claimant does not have to secure and tarp loads, he does have to perform vehicle inspections, hook and unhook trailers, and on occasion will physically handle mail. Claimant testified he hopes to remain employed in his current position, as he is able to physically tolerate the work and the position brings him the second-highest earnings of his professional career.

As a result of the stipulated work injury on February 14, 2014, claimant suffered a concussion with headaches; strains of his cervical spine, right shoulder region, and back; and dehiscence/vertigo. As outlined supra, the undersigned finds the opinions of Dr. Kuhnlein on the extent of claimant's permanent impairment entitled to the greatest weight. Dr. Kuhnlein found claimant sustained no permanent impairment as a result of

the concussion, headaches, or cervical strain. He did find permanent impairment of 2 percent whole person due to decrements of right shoulder motion, 3 percent whole person due to falling between DRE Lumbar Category I and II, and 3 percent whole person due to the dehiscence/vertigo. I find Dr. Kuhnlein's opinion claimant sustained a combined permanent impairment of 8 percent whole person is an accurate reflection of claimant's functional impairment sustained as a result of the work injury of February 14, 2014.

Claimant has successfully returned to full duty work for defendant-employer, after each of his treating physicians, Drs. Miller and Kirkland, opined he could resume his driving duties. Claimant also subsequently was cleared to drive by a Department of Transportation examiner. Therefore, it is determined claimant does not labor under any permanent restrictions in his employment with defendant-employer. Dr. Kuhnlein recommended permanent restrictions; however, these recommended restrictions do not interfere with claimant's ability to successfully perform his preinjury position for defendant-employer. Dr. Kuhnlein's recommended restrictions are therefore, relevant only to the impact of the injury upon claimant's ability to participate in the labor market generally. Also relevant to consideration is claimant's credible testimony that he has missed work as a result of symptoms he relates to the work injury, particularly balance and dizziness concerns. Therefore, claimant's injuries have resulted in a lasting impact on claimant's ability to participate in the labor market.

Upon consideration of the above and all other relevant factors of industrial disability, it is determined claimant sustained a 20 percent industrial disability as a result of the stipulated work-related injury of February 14, 2014. Such an award entitles claimant to 100 weeks of permanent partial disability benefits (20 percent x 500 weeks = 100 weeks), commencing on the stipulated date of August 12, 2014. The parties stipulated at the time of the work injury, claimant's gross weekly earnings were \$1,089.33, and claimant was single and entitled to 1 exemption. The proper rate of compensation is therefore, \$631.26.

The next issue for determination is whether defendants are responsible for claimed medical expenses detailed in Exhibit 11.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

By this decision, the undersigned determined claimant sustained compensable injuries in the form of a concussion, headaches, cervical spine, right shoulder, back, and dehiscence/vertigo as a result of the stipulated work injury of February 14, 2014. In treatment or evaluation of these conditions, claimant incurred medical expenses. As the

expenses were incurred on compensable claims, defendants properly bear the cost of these expenses. Defendants are found responsible for the medical expenses claimed in Exhibit 11.

The next issue for determination is whether claimant is entitled to reimbursement of an independent medical evaluation pursuant to Iowa Code section 85.39.

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

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

Claimant seeks reimbursement for Dr. Kuhnlein's IME in the amount of \$2,265.00. At the time of Dr. Kuhnlein's IME on February 18, 2015, Dr. Miller had issued an opinion regarding claimant's need for permanent restrictions relative to his back condition and Dr. Kirkland had opined claimant sustained no permanent impairment and required no permanent restrictions as a result of the right shoulder injury. These opinions triggered claimant's right to a section 85.39 independent medical evaluation. There is no evidence Dr. Kuhnlein's IME charge was unreasonable. Defendants shall reimburse claimant for Dr. Kuhnlein's IME in the amount of \$2,265.00.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Claimant requests taxation of the costs of: filing fee (\$100.00) and Dr. Kuhnlein's independent medical evaluation (\$2,265.00). The cost of filing fee is an allowable cost and is taxed to defendants. The cost of Dr. Kuhnlein's IME was found reimbursable pursuant to Iowa Code section 85.39 and therefore, need not be taxed as a cost.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant one hundred (100) weeks of permanent partial disability benefits commencing August 12, 2014 at the weekly rate of six hundred thirty-one and 26/100 dollars (\$631.26).

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall receive credit for benefits paid.

Defendants shall pay claimant's prior medical expenses submitted by claimant at the hearing as set forth in the decision.

Defendants shall reimburse claimant for Dr. Kuhnlein's IME in the amount of two thousand two hundred sixty-five and 00/100 dollars (\$2,265.00).

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

Costs are taxed to defendants pursuant to rule 876 IAC 4.33.

Signed and filed this 18th day of August, 2016.


ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876 4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.