BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CYRUS FREIDHOF,	:	
Claimant,	:	File Nos: 5060321.01
	:	5060322.01
vs.	:	5060323.01
JOHN DEERE WATERLOO WORKS,	:	ARBITRATION DECISION
Employer,	:	
Self-Insured,	:	Head Notes: 1108.50, 1402.40,
Defendant.	:	1403.10, 1803, 2501, 2907

STATEMENT OF THE CASE

Cyrus Freidhof, claimant, filed three petitions in arbitration seeking workers' compensation benefits from John Deere Waterloo Works, self-insured employer, as defendant. Hearing was held on October 26, 2020. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via video means, using CourtCall. Accordingly, this case proceeded to a live video hearing via CourtCall with all parties and the court reporter appearing remotely.

The parties filed a hearing report for each agency file at the commencement of the arbitration hearing. On the hearing reports, 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.

Claimant, Cyrus Freidhof, was the only witness to testify live at trial. After the hearing, the court reporter, while preparing the transcript, noticed that the undersigned neglected to swear the witness in at the hearing. The undersigned contacted the parties to bring this to their attention. On February 9, 2021, the parties filed a stipulation that claimant's testimony was true and correct and was intended to be given under oath. The evidentiary record also includes joint exhibits JE1-JE14, claimant's exhibits 1-5, and defendant's exhibits A-C, H, I, and J. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on November 25, 2020, at which time the case was fully submitted to the undersigned.

ISSUES

File No. 5060321.01 (DOI: 09/18/2017)

The parties submitted the following issues for resolution:

1. Whether claimant sustained any permanent disability as a result of the stipulated September 18, 2017, work injury. If so, the nature and extent of permanent disability claimant sustained.
2. Whether defendant should be responsible for past medical benefits.
3. Whether claimant is entitled to be reimbursed pursuant to Iowa Code section 85.39 for the IME.
4. Whether penalty benefits are appropriate.
5. Assessment of costs.

File No. 5060322.01 (DOI: 11/07/2017)

The parties submitted the following issues for resolution:

1. Whether claimant sustained any permanent disability as a result of the stipulated November 7, 2017, work injury. If so, the nature and extent of permanent disability claimant sustained.
2. Whether defendant should be responsible for past medical benefits.
3. Whether claimant is entitled to be reimbursed pursuant to Iowa Code section 85.39 for the IME.
4. Whether penalty benefits are appropriate.
5. Assessment of costs.

File No. 5060323.01 (DOI: 08/15/2017)

The parties submitted the following issues for resolution:

1. Whether claimant sustained any permanent disability as a result of the stipulated November 7, 2017, work injury. If so, the nature and extent of permanent disability claimant sustained.
2. Whether defendant should be responsible for past medical benefits.
3. Whether claimant is entitled to be reimbursed pursuant to Iowa Code section 85.39 for the IME.
4. Whether penalty benefits are appropriate.
5. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Cyrus Freidhof, was 33-years old at the time of hearing. He has filed three petitions against the defendant, John Deere Waterloo Works ("Deere"). Mr. Freidhof has performed heavy, manual jobs for most of his life. He has worked in landscaping, building maintenance, and heavy assembly. He was hired by Deere in 2015. He applied at Deere because it was one of the best paying jobs in the area. Deere was aware that he had a history of low back symptoms. Mr. Freidhof underwent a pre-employment physical and was cleared to work without any restrictions. (Testimony)

Mr. Freidhof's first job at Deere was a blast cell operator in department 580. This job required him to pull metal castings covered in sand and then to clean out the nooks and crannies of the parts; he sprayed them with what he described as a fire hose with BBs shooting out of it. (Testimony)

In 2013, Mr. Freidhof began working in department 871 as a "setup man." Part of his job required him to add shot or BBs to blasting machines. He also had to change out the sand return tubs. These were large plastic tubs filled with sand and shot that had been blasted onto the parts he was preparing. Mr. Freidhof used a forklift to move the tub full of sand and shot. However, to dump the tub into the dumpsters he had to reach above his head to push and pry the release lever that kept the tub secure to the forks on the forklift. Mr. Freidhof testified that pushing the release lever on the tubs required a significant amount of force. At times, the workers put a pipe on the lever in order to obtain more leverage. The duties of this position also required manually pulling the sand and shot tubs in order to get them to dump into the dumpster. Mr. Freidhof estimated that 85 percent of the time the tubs were exceedingly heavy due to an excess amount of shot inside the tubs. The tubs were heavy enough to require two to three workers to pull the tub down to dump it. (Testimony)

Mr. Freidhof performed the setup job until Deere laid him off from 2015-2017. While he was laid off, Mr. Freidhof went back to his prior employer performing landscaping work. He did not have any difficulty performing this work. Mr. Freidhof returned to Deere from layoff in 2017 and passed another pre-employment physical without restrictions. (JE4, pp. 154-157, Def. Ex. H, p. 1; testimony)

Defendant contends that Mr. Freidhof is less than credible and makes self-serving statements. At hearing, Mr. Freidhof testified that he does not recall having a chiropractor pop his shoulder back in place during the autumn of 2017. However, when the defendant took his deposition in this case, Mr. Freidhof testified that the chiropractor popped his shoulder back in. (Def. Ex. I, p. 9) The November 13, 2017 notes from Deere Occupational reflect that Mr. Freidhof reported that he had been to his chiropractor who told him his shoulder was out and the chiropractor adjusted his shoulder twice. (JE4, pp. 158-159) He also reported this to Ms. Barnett and Dr. Broghammer. (JE8, p. 222; Def. Ex. A, p. 29) During the hearing, Mr. Freidhof was less than forthcoming about the chiropractic treatment he received for his neck and back prior to the work injuries. He testified that he might have been treated one or two

times; however, the chiropractic records demonstrate he received nearly 50 treatments. (JE1) At the hearing Mr. Freidhof testified that he has been to see a neurosurgeon in Iowa City for his back and/or shoulder. However, the evidentiary record in this case is void of any medical records for these visits. Based on the questioning during the hearing, it is clear that if these records exist, they have never been provided to the defendant in this case. At the request of his attorney, claimant saw David H. Segal, M.D. for an independent medical examination (IME). There is no mention of any such records in Dr. Segal's IME report. If Mr. Freidhof did see a neurosurgeon in Iowa City, even his own IME doctor did not have the benefit of those notes. Mr. Freidhof has been involved in manual labor for the vast majority of his work history. He testified that he wants to work at Deere due to the high pay and benefits. While, I do not doubt claimant's motivation to work and desire to receive high pay and benefits, there are inconsistencies in his testimony. I find that the claimant is a poor historian and has been less than forthcoming regarding his treatment before and after the alleged dates of injury in these cases. Thus, I am giving greater weight to the records that were generated at the time treatment was rendered and conversations occurred than I am to Mr. Freidhof's recollection of events. I find the contemporaneous documentation of events to be more credible than claimant's testimony.

The first stipulated injury date is August 15, 2017. On August 15, 2017, a machine malfunctioned and Mr. Freidhof was struck in the mouth with shot blast. He went to Deere Medical and reported chipped teeth. (JE4, p. 171)

That same day he went to his dentist at Kimball Beecher Waterloo. Mr. Freidhof reported that his pain began at 5:30 that morning while at work. He was shot in the mouth by a BB-like machine. He reported a hole that he did not notice earlier and also has severe cold sensitivity. Mr. Freidhof also brought in a broken portion of tooth #13. He reported that he thought tooth #12 was also broken. He was finding pieces of his tooth and grit in his mouth since the accident. Kimball Beecher Waterloo extracted tooth #13 due to broken tooth/decay/non-restorable. The treatment records note accident at work, broken tooth, decay tooth #13. Broken filling tooth #12. (JE6, pp. 197-200) Mr. Freidhof returned to work the next day.

Mr. Freidhof had dental issues prior to August 15, 2017. The records demonstrate that he went to the dentist on July 25, 2017. This was the first time he had been to a dentist since 2006. At the July 2017 visit he established care with Kimball Beecher Waterloo. He reported that he had horrible teeth and wanted to discuss dentures or implants. His mom had dentures at the age of 24 and he has the same problem; he has no enamel on his teeth. Mr. Freidhof reported that he has constant headaches and his teeth are tender to chew and hot/cold temperatures. At times, he has a toothache that throbs. He was unable to state which teeth bother him the most. He was noted to have several areas of decay. Mr. Freidhof was informed that tooth #4 was broken to the gum line and will need extraction. Tooth #13 will need RCT/BU/CRN in order to save the tooth or it would need to be extracted. He decided he would rather

extract tooth #13. Mr. Freidhof was advised that he would need fillings in approximately 14 other teeth. Mr. Freidhof did not want to undergo any treatment that was not fully covered by his insurance benefits. He underwent a cleaning. (JE6, pp. 195-196)

On August 18, 2017 Mr. Freidhof saw Jamie L. Barnett, ARNP to establish care. He reported that he was seen at urgent care on August 16 for depression and anxiety. He also reported that he has a history of low back pain with some abnormalities with disc bulging. His previous primary care provider was prescribing him hydrocodone. He has not been on hydrocodone for over 4 months so he does not feel he needs that at this time. He requested a leave of absence from work due to his depression and anxiety. (JE8, pp. 210-213)

At the request of the defendant, Mr. Freidhof underwent an independent medical evaluation (IME) with R.L. Broghammer, M.D. on July 2, 2018. With regard to the August 15, 2017 work injury, Dr. Broghammer assessed Mr. Freidhof with broken filling in tooth #12 and fracture of tooth #13. Dr. Broghammer opined that the August 15, 2017 injury resulted in a temporary condition, which would have resolved after the appropriate treatment from Dr. Kimball. He further opined that any dental complaints are due to Mr. Freidhof's poor state of dentition, which was noted prior to the work injury. Dr. Broghammer stated that there was no impairment and no permanent restrictions as the result of the July 2, 2018 incident. (Def. Ex. A)

At the request of his attorney, Mr. Freidhof underwent an IME with David H. Segal, M.D. on August 10, 2018. Mr. Freidhof reported that he was hit in the face with small metal pellets. He had a mouthful of shot and when hit, instinctively bit down; one tooth broke and two others were chipped. Mr. Freidhof was sent to the dentist. Tooth #13 was extracted and fillings were replaced in two other teeth. Mr. Freidhof states that he was offered a bridge, which he would have accepted, but workers' compensation denied the claim. He also reported that the fillings that were done after the injury are already wearing out. Dr. Segal noted that Mr. Freidhof's primary problem related to the August 15, 2017 injury is a problem with eating. He cannot chew properly due to the missing tooth and the weakness of the other two affected teeth. Since the injury, he cannot chew steak or other hard items. (Cl. Ex. 1, p. 15) Dr. Segal's diagnoses related to the August 15, 2017 injury were: Broken tooth #31, broken tooth #13, broken fillings tooth #12. Dr. Segal noted that the AMA Guides do not provide impairment rating for difficulty in chewing due to broken teeth. Dr. Segal stated,

> [t]he treatments that were done, however, are clearly work-related. The residual effects of his work injury—specifically the gap in his teeth due to the tooth that was removed and the teeth that were repaired due to the work injury—are causing impairment and should be appropriately considered within this Workers' Comp injury. The treatment that is needed to repair the gap is also related to his work injury.

(Cl. Ex. 1, p. 22)

Defendant contends that because the extraction of tooth #13 was discussed prior to the August 2017 injury, the extraction is not related to the work injury. Defendant, in part, relies on the opinions of Dr. Broghammer. Mr. Freidhof argues that prior to the work injury, he had the option of repairing the tooth; however, after his work injury the only option was extraction.

With regard to the August 15, 2017 injury, I find the opinion of Dr. Segal to be more persuasive than that of Dr. Broghammer. Based on the treatment records, it does appear that prior to the injury, Mr. Freidhof had the option of repairing tooth #13. Additionally, on the day of the accident, Mr. Freidhof brought a piece of his tooth with him to the dentist that was broken during the accident. I find Dr. Segal's opinions to be persuasive. I find that as the result of the August 15, 2017, Mr. Freidhof sustained broken tooth #31, broken tooth #13, broken fillings tooth #12. I find that the treatment he received for these conditions are related to the August 2017 work injury. Mr. Freidhof testified that he has difficulty chewing and his tooth pain also interferes with his sleep. He also testified that he did have tooth problems prior to August 15, 2017, but not severe enough to affect his sleep. Furthermore, based on Dr. Segal's opinion, I find the treatment that is needed to repair the gap is also related to his work injury. I further find that pursuant to the AMA Guides, 5th edition, Mr. Freidhof has not sustained any permanent impairment as the result of the August 2017 work injury. I find that Mr. Freidhof does not have any restrictions as the result of the August 2017 injury.

Mr. Freidhof seeks payment of past dental expenses in connection with the August 15, 2017 work injury. I find the expenses incurred on August 15, 2017 are related to the work injury and are the responsibility of the defendant. I find that the evidence does not show that the expenses incurred on the remaining dates are connected with teeth #31, #13, and #12 or related to the work injury. Thus, the remaining dental charges are not the responsibility of the defendant.

We now turn to the stipulated September 18, 2017 work injury to his upper back. Mr. Freidhof began experiencing sharp, upper to mid back pain while working. Initially, he thought it was a chest/heart issue. He saw Michell Brunning, RN at Deere Occupational. He reported sharp pains around his rib cage and spine and that he was experiencing shortness of breath. He reported that the pain came on as soon as he began driving his fork truck. He did not twist or bend wrong. He worked through the pain for about an hour and a half before he went to Deere Occupational. He could not think of anything he did at home or at work to cause back pain. Because he was having difficulty breathing, he was taken via ambulance to the emergency room. (JE4, pp. 167-168; Testimony)

At the emergency room, Mr. Freidhof reported chest pain and mid back pain. He had a fire sensation around his entire chest. He said exertion made him sob. He was at work this morning when he suddenly started having pain to his mid-thoracic back wrapping around his lower rib cage. The pain started when he was riding his fork lift. He also reported shortness of breath, chills, and numbness to his legs when rotating his

trunk. This occurred when he was performing what would be considered normal work for him. At the emergency room, he underwent an MRI which revealed degenerative changes and multiple herniated discs in the thoracic spine. The impression was degeneration of thoracic or thoracolumbar intervertebral disc, acute bilateral thoracic back pain, atypical chest pain, and thoracic disc herniation. He was discharged home that same day. (JE9, pp. 224-235)

Mr. Freidhof returned to work the next day. He reported that while at the emergency room he underwent an MRI, CT scan, and x-rays. He was diagnosed with three bulging discs in his upper back. Mr. Freidhof told the nurse at John Deere that he has never had any problems with his upper back. He said he was fine when he reported to work on September 18, 2017. While at work, he was emptying a sand hopper and he pushed up on the handle. He believes this is the only thing he did that could have caused his upper back pain. He said when he got up on the forklift, he felt like a knife was stabbing him and he became short of breath. Mr. Freidhof was prescribed muscle relaxers. (JE4, pp. 166-167; Def. Ex. I, p. 7; testimony)

Mr. Freidhof saw Chad D. Abernathey, M.D. for a neurosurgical opinion on October 16, 2017. He was referred there from the emergency room visit. Mr. Freidhof reported a recent history of mid back pain. Dr. Abernathey stated that the MRI and CT scan of the chest and thoracic spine are essentially unrevealing. Dr. Abernathey noted that Mr. Freidhof presented with a thoracic strain. He did not recommend an aggressive neurosurgical stance due to a paucity of clinical and radiographic findings. He felt that Mr. Freidhof may benefit from a pain clinic evaluation. Dr. Abernathey advised Mr. Freidhof to contact him if he developed any new neurologic symptoms or signs. (JE11, pp. 237-239)

On October 30, 2017, Mr. Freidhof saw Jamie L. Barnett, ARNP for follow-up of acute thoracic and lumbar back pain. He reported he had been to see a neurosurgeon who recommended a pain clinic. Ms. Barnett noted that he was requesting a pain clinic referral and also stating that the neurosurgeon said we should prescribe him narcotics. We advised him that we do not prescribe narcotics for back pain, but we will provide referral for pain clinic. The referral to the pain clinic was for acute midline thoracic back pain as well as low back pain. (JE8, pp. 217-220)

Mr. Freidhof testified that in between September 18, 2017 and November 7, 2017 the only other treatment he received was from his chiropractor. He believes he saw his chiropractor a couple of times for back adjustments. A review of the chiropractic records shows he was not seen during this timeframe. (Def. Ex. I, p. 8; JE1, pp. 109-110)

Mr. Freidhof does have a history of chiropractic treatments which predate the work injury. The evidentiary record contains treatment notes from Better Health Chiropractic from June 25, 2008 through December 31, 2019. During this timeframe, he received just under fifty treatments for his thoracic and cervical spine. (JE1) The last

visit Mr. Freidhof had with the chiropractor prior to the September 18, 2017 injury was on October 24, 2016. He was seen for radiculopathy, lumbar region; sprain of ligaments of lumbar spine; cervicalgia, and pain in thoracic spine. The records show Mr. Freidhof was seen on October 24, 2016 and then there is a gap in treatment until November 8, 2017, which is after the third alleged date of injury. (JE1, pp. 106-111)

With regard to the September 18, 2017 incident, in his IME report Dr. Broghammer assessed an upper back strain. Mr. Freidhof complained that he was unable to move his neck and look down without pain in his upper back region. He gets short of breath due to rib pain. He opined that Mr. Freidhof's ongoing symptoms in his upper back are not related to the September 18, 2017 injury. He felt that Mr. Freidhof's initial symptoms of shortness of breath were more consistent with an acute anxiety attack and his history of anxiety disorder, rather than any alleged injury that occurred as the result of pulling on a lever. He noted that Mr. Freidhof's pre-existing anxiety disorder was documented on multiple occasions in the medical records. Dr. Broghammer stated that even if Mr. Freidhof did have an upper back strain, this would have been expected to have resolved within a few days or weeks of the injury. He noted that the MRI from the emergency room demonstrated chronic degenerative changes only. Dr. Broghammer stated that for an upper back strain with workup demonstrating chronic degenerative changes of the thoracic spine there would be no ratable impairment. He opined that Mr. Freidhof did not require any permanent restrictions due to the September 18, 2017 injury. (Def. Ex. A)

In Dr. Segal's IME report he assigned several diagnoses related to the September 18, 2017. Dr. Segal diagnosed permanent aggravation of minimally symptomatic thoracic degenerative changes. Based on history and exam, he diagnosed traumatic thoracic facet arthropathy. Based on the description of nerve pain, Dr. Segal diagnosed thoracic radiculopathy. He recommended epidural and facet injections to start with and maximize medical treatment for the pain. Dr. Segal opined it was possible that some areas of degenerative stenosis could have been lit up, and degenerative changes could have been lit up. For the thoracic spine, Dr. Segal assigned 18 percent whole person impairment. (Cl. Ex. 1, pp. 21-23)

In forming his opinions Dr. Segal relied, at least in part, on the history provided to him by Mr. Freidhof. As noted above, I find Mr. Freidhof is a poor historian and has been less than forthcoming in this case.

Dr. Segal disagreed with Dr. Broghammer's opinions. Dr. Segal noted that Mr. Freidhof's symptoms began in relation to the September 18, 2017 work injury and his symptoms have continued. His thoracic pain wrapped around his ribs and was so painful that it caused him to have shortness of breath. According to Dr. Segal, this is common with thoracic injuries. Dr. Segal noted that the symptoms from the thoracic spine started with the September 18, 2017 work injury and remained; therefore, they are causally connected to the work injury. Additionally, Dr. Segal stated that an acute back sprain would have been expected to resolve within a few days or weeks.

A MRI of the lumbosacral spine was performed on September 6, 2018. The impression was lateral disc protrusion at the level L4-L5 on the left side producing moderate neuroforaminal stenosis and disc bulging at the level L3-L4 as well as L5-S1 without producing any significant spinal canal stenosis. (JE14, p. 254)

Mr. Freidhof returned to the chiropractor on November 21, 2018. He had mid back pain that originated from T5 and T6. He described the pain as stabbing. He reported the onset was on June 26, 2018. He was reaching overhead and felt the back go. (JE1, pp. 119-122)

On December 30, 2019 Mr. Freidhof returned to the chiropractor with mid back pain that originated from T5 and T6. The pain was a stabbing pain. Again, he reported that his pain began on June 26, 2018. (JE1, pp. 123-126)

Mr. Freidhof testified that when he first wakes up he has some stiffness and soreness in his upper back that works itself out in a few of hours. He also has troubles bending down. He takes over-the-counter ibuprofen approximately once a week for his upper back. (Testimony, Def. Ex. I)

Mr. Freidhof was seen at the emergency room on September 19, 2017 and released a few hours later. He returned to full duty work the next day. He has not had any surgery on his back. He does not take any prescription medications for his upper back. No physician, not even his own IME physician, has recommended any permanent restrictions for his upper back. (Def. Ex. I, p. 7, depo. p. 28; testimony)

When the testimony and evidentiary record is viewed as a whole, I find the opinions of Dr. Abernathey and Dr. Broghammer to be more persuasive than that of Dr. Segal. I find the opinions of Dr. Abernathey and Dr. Broghammer are consistent with one another and the record as a whole. Thus, as the result of the stipulated September 18, 2017 work injury, I find Mr. Freidhof sustained a thoracic strain. I further find that Mr. Freidhof did not sustain any permanent functional impairment, nor does he require any permanent restrictions as the result of the September 18, 2017 injury.

Mr. Freidhof is seeking payment of past medical expenses in connection with the September 18, 2017 stipulated work injury. Specifically, he seeks the expenses from treatment he sought on his own at Better Health Chiropractic. Chiropractic treatment was not recommended by an authorized physician. (Cl. Ex. 5). I find that this treatment was not authorized by the defendant.

Next, Mr. Freidhof seeks the expenses associated with the September 19, 2017 emergency room visit. Mr. Freidhof was taken from work via ambulance to UnityPoint. Defendant makes no argument that this bill should not be their responsibility. I find that the expenses for this treatment are the responsibility of the defendant.

Mr. Freidhof sustained a third stipulated work injury on November 7, 2017. Mr. Freidhof contends he injured his right shoulder due to the awkward posture of his “setup

man" job in the Foundry. He was reaching above head height and pulling a heavy tub. The tub was so heavy that it sometimes required the strength of two to three people to move it. While he was reaching above head height and pulling a heavy tub of sand and shot, he lost all feeling in his right arm all the way up to his shoulder. His right arm was numb and he was unable to move his arm. He finished his shift and told his supervisor about his shoulder pain. Mr. Freidhof then sought treatment on his own at UnityPoint. They told him they thought he had a pinched nerve. No treatment was recommended. No referrals were made. (Testimony; Def. Ex. I, pp. 8-9)

Mr. Freidhof went to Better Health Chiropractic on November 8, 2017. His chief complaint was low back pain. Mr. Freidhof reported that he woke Saturday morning with extreme pain into both calves and he could hardly move his legs below his knees. He had been to the emergency room three times and they believed he tore some muscles in his calf. He also reported a dull ache at the T5-T6 motor area, he rated that pain as a level 6. The diagnoses were: cervicalgia, radiculopathy in the cervical and lumbar regions, and pain in the thoracic spine. (JE1, pp. 110-111)

On November 8, 2017, around 8:30 a.m. Mr. Freidhof saw Shelli Grapp, ARNP at Deere Occupational. He gave her a note returning him back to work after what is believed to be a pinched nerve. He reported that he woke up about 1-½ weeks ago with the tips of his fingers feeling tingly. He went to his doctor for evaluation because he was progressively getting worse. He was restricted by his medical provider to no twisting with the right hand, limited lifting of the right hand, no use of the right hand and no repetitive motion of the right hand. (JE4, pp. 158-161)

Mr. Freidhof returned to the chiropractor on November 10, 2017. His chief complaint was low back pain. He woke Saturday morning with extreme pain into both of his calves and he could hardly move his legs below his knees. He reported that he had been to the emergency room three times, they believed he had torn some calf muscles. He also reported some generalized neck soreness. He also had a dull ache at the T5-T6 motor areas. A postural analysis revealed a high shoulder on the left. The diagnoses included cervicalgia, radiculopathy of the cervical and lumbar region and pain in the thoracic spine. (JE1, pp. 112-113)

On November 13, 2017, Mr. Freidhof saw Jamie L. Barnett, ARNP for right upper extremity radiculopathy with some cervical pain. He reported he was off work due to numbness in his right hand, and this was improving with prednisone and ibuprofen. The problem list included anxiety state, cervical spine pain – primary, and radiculopathy affecting upper extremity. He was allowed to return to work without restrictions. (JE8, pp. 221-223)

Mr. Freidhof returned to Deere Occupational on November 13, 2017. He was still having itching to the tips of his fingertips and numbness. He brought a return to full duty work note. He also reported that he had been to his chiropractor who told him his

shoulder was out. According to Mr. Freidhof, the chiropractor adjusted his shoulder twice. (JE4, pp. 158-159)

On December 6, 2017, Mr. Freidhof went to UnityPoint Occupational Health. He reported that on approximately September 25, 2017, he was repeatedly pulling a green hopper lever up and down above head level. He had right shoulder pain; today his pain was 0 out of 10. The diagnosis was right shoulder pain – resolved. No injury at this time. Return to work full duty. (JE12, pp. 240-246)

Mr. Freidhof saw Jeffrey A. Clark, D.O. for evaluation of his right hand on March 15, 2018. He reported that 2 weeks ago he slipped on ice while carrying his son. He landed on his right hand in a fist formation. He was referred to a neurologist. He was eventually diagnosed with bilateral carpal tunnel syndrome. (JE13, pp. 248-253) Because of the numbness in his right hand, Mr. Freidhof was evaluated for carpal tunnel syndrome. He underwent a right carpal tunnel release, but his symptoms did not improve. (Testimony)

With regard to the November 7, 2017 injury, Dr. Segal diagnosed traumatic shoulder arthropathy and possible ligamentous or tendon disruption. He also noted that brachial plexopathy or thoracic outlet syndrome were possible diagnoses. He examined Mr. Freidhof, but stated it was difficult to diagnosis him without an MRI. He noted he had pain and tenderness in the shoulder proximal to the glenohumeral joint as part of his traumatic shoulder arthropathy. Dr. Segal stated that this injury is proximal to the glenohumeral joint and causes pain and symptoms with range of motion and impairment. Dr. Segal stated that the shoulder injury of November 7, 2017 started with that work injury, the symptoms continue, and they are directly and casually related to that work injury. Based on the current shoulder injury with the pain with range of motion and limitation in abduction, he assigned 12 percent impairment of the upper extremity. (Cl. Ex. 1)

Dr. Broghammer examined Mr. Freidhof on July 2, 2018. Mr. Freidhof reported that he had a burning pain in the front side of his shoulder as well as a knot over his shoulder blade. Examination of the right shoulder revealed symmetric range of motion bilaterally. He had normal muscle bulk and symmetry in both upper extremities. With regard to the November 7, 2017 injury, Dr. Broghammer diagnosed an upper back strain. He did not diagnose any right shoulder conditions. Dr. Broghammer stated:

> Regarding Mr. Freidhof's alleged November 7, 2017, injury, it should be first and foremost noted that the medical records fail to support any injury to Mr. Freidhof's shoulder and the only mention of an injury to his shoulder occurs in Mr. Freidhof's deposition. There has been no ongoing treatment for any alleged shoulder condition, and Mr. Freidhof appears to have been appropriately treated by his chiropractor on two separate occasions with full resolution of symptoms afterwards. In my medical opinion, to a reasonable degree of medical certainty, if Mr. Freidhof does have ongoing

> symptoms in the shoulder, they are not due to the alleged injury and are instead due to personal factors unrelated to his alleged November 7, 2017, injury.

(Def. Ex. A, p. 35)

Mr. Freidhof testified that his right shoulder continues to be stiff and sore and painful. I find the opinions of Dr. Broghammer to carry greater weight than those of Dr. Segal. I find Dr. Broghammer's opinions are more consistent with the record as a whole and are better reasoned than those of Dr. Segal's. Thus, I find Mr. Freidhof has failed to demonstrate that he sustained any permanent impairment as the result of the November 7, 2017 right shoulder injury.

Mr. Freidhof is seeking payment of medical benefits as set forth in claimant's exhibit 5. It is not entirely clear which expenses claimant contends are related to the November 7, 2017 date of injury. There are chiropractic expenses incurred after November 7, 2017. There is no evidence in the record that any chiropractic treatment was ever authorized by the defendant. As such, I find that the chiropractic treatment was not authorized and is not the responsibility of the defendant.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily 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 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).

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

The first date of injury to be addressed is August 15, 2017. Based on the above findings of fact, I conclude that Mr. Freidhof did sustain broken tooth #31, broken tooth #13, broken fillings tooth #12 as the result of the August 15, 2017. I further conclude that Mr. Freidhof failed to show by a preponderance of the evidence that he sustained any permanent impairment or has any permanent restrictions as the result of the August 15, 2017 work injury. As such, Mr. Freidhof is entitled to no weekly benefits for the August 15, 2017 work injury.

Claimant is seeking medical benefits in connection with the stipulated August 15, 2017 work injury. Based on the above findings of fact, I conclude the dental treatment Mr. Freidhof received for teeth #31, #13, and #12 are related to the August 2017 work injury. Claimant is seeking payment of past medical benefits as set forth in claimant's exhibit 5, p. 52. I conclude that the dental treatment, including extraction claimant received on August 15, 2017, is related to the work injury. However, I find that claimant has failed to demonstrate that the dental treatment he received on September 28, 2017 and October 13, 2017 were for teeth #31, #13, and #12. Thus, defendant is not responsible for the dental expenses incurred on September 28, 2017 or October 13, 2017. Mr. Freidhof testified that he has difficulty chewing and his tooth pain also interferes with his ability to sleep. Based on Dr. Segal's opinion, I find the treatment that is needed to repair the gap left by the extraction of the tooth is also related to his work injury. As such, defendant is responsible for that treatment.

The next date of injury to be addressed is September 18, 2017. Mr. Freidhof sustained an injury to his upper back. The central dispute in this case is whether he sustained any permanent disability, and if so, how much. I conclude that the opinions of Dr. Abernathey and Dr. Broghammer are consistent with one another and the record as a whole. Thus, as the result of the stipulated September 18, 2017 work injury, I conclude Mr. Freidhof sustained a thoracic strain. I further conclude that Mr. Freidhof did not sustain any permanent impairment, nor does he require any permanent restrictions as the result of the September 18, 2017 injury. Based on the above findings of fact, I conclude that Mr. Freidhof failed to carry his burden of proof to show by a preponderance of the evidence that he sustained any permanent disability as the result of the stipulated September 18, 2017 work injury. As such, Mr. Freidhof has failed to carry his burden of proof to show that he is entitled to any weekly benefits as the result of the September 18, 2017 injury.

We now turn to the issue of past medical benefits. Mr. Freidhof seeks the expenses from treatment he sought on his own at Better Health Chiropractic.

Chiropractic treatment was not recommended by an authorized physician. (Cl. Ex. 5). I conclude that this treatment was not authorized by the defendant. Next, Mr. Freidhof seeks the expenses associated with the September 19, 2017 emergency room visit. Mr. Freidhof was taken from work via ambulance to UnityPoint. Defendant makes no argument that this bill should not be their responsibility. I conclude that the expenses for this treatment are the responsibility of the defendant.

The next date of injury to be addressed is November 7, 2017. Mr. Freidhof alleged an injury to his right shoulder. Again, the central dispute is whether he sustained any permanent disability as the result of this work injury. Based on the above findings of fact, I conclude the opinions of Dr. Broghammer carry greater weight than those of Dr. Segal. I find Dr. Broghammer's opinions are more consistent with the record as a whole and are better reasoned than those of Dr. Segal's. Thus, I find Mr. Freidhof has failed to carry his burden of proof to demonstrate by a preponderance of the evidence that he sustained any permanent impairment as the result of the November 7, 2017 right shoulder injury. As such, he is not entitled to any weekly permanency benefits for the November 7, 2017 date of injury.

We now turn to the issue of past medical benefits. Based on the above findings of fact, I conclude Mr. Freidhof failed to demonstrate that defendant is responsible for any past medical expenses related to the November 7, 2017 date of injury.

In all three files, Mr. Freidhof has alleged penalty benefits. Under Iowa law, if weekly compensation benefits are not fully paid when due, section 86.13 requires that additional benefits be awarded unless the employer shows reasonable cause or excuse for the delay or denial. Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996).

If the employer fails to show reasonable cause or excuse for the delay or denial, the commissioner shall impose a penalty in an amount up to 50 percent of the amount unreasonably delayed or denied. Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996). The factors to be considered in determining the amount of the penalty include the length of the delay, the number of delays, the information available to the employer and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238. In the present case, claimant failed to show entitlement to any weekly compensation benefits. Thus, any claim for penalty benefits is moot.

With regard to all three files, Mr. Freidhof is seeking reimbursement for the IME performed by Dr. Segal. 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.

Defendant obtained an IME report from Dr. Broghammer on July 2, 2018 regarding the three stipulated dates of injury. Dr. Segal's examination took place on

August 10, 2018 which is after Dr. Broghammer's IME. I conclude that the prerequisites of Iowa Code section 85.39 were met. Defendant is responsible for reimbursing claimant for the IME of Dr. Segal in the amount of two thousand and no/100 dollars ($2,000.00).

Defendant is 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).

Finally, claimant is seeking an assessment of costs as set forth in claimant's exhibit 4. Costs are to be assessed at the discretion of the Iowa Workers' Compensation Commissioner or the deputy commissioner hearing the case. 876 IAC 4.33. I find that claimant was generally not successful in his claims. I exercise my discretion and do not assess costs in these cases. Each party shall bear their own costs in these cases.

ORDER

THEREFORE, IT IS ORDERED:

File No. 5060321.01 (DOI: 09/18/2017)

Claimant shall not take any weekly benefits as the result of this proceeding.

Defendant shall pay past medical expenses as set forth above.

Pursuant to Iowa Code section 85.27, defendant is responsible for future dental expenses that are shown to be reasonable and necessary as the result of the September 18, 2017 injury.

Defendant is responsible for the cost of Dr. Segal's IME pursuant to Iowa Code section 85.39.

Each party shall bear their own costs.

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.

File No. 5060322.01 (DOI: 11/7/2017)

Claimant shall not take any weekly benefits as the result of this proceeding.

Defendant is responsible for the cost of Dr. Segal's IME pursuant to Iowa Code section 85.39.

Each party shall bear their own costs.

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.

File No. 5060323.01 (DOI: 08/15/2017)

Claimant shall not take any weekly benefits as the result of this proceeding. Defendant shall pay past medical expenses as set forth above.

Defendant is responsible for the cost of Dr. Segal's IME pursuant to Iowa Code section 85.39.

Each party shall bear their own costs.

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

Signed and filed this ____27th____ day of April, 2021.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Charles Showalter (via WCES)

James Kalkhoff (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.