BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

IZET TAHIROVIC,

Claimant,

vs.

METOKOTE CORPORATION,

Employer,

and

AIG,

Insurance Carrier,
Defendants.

File No. 5039492

ARBITRATION

DECISION

Head Note Nos.: 1402.40; 1402.60; 1802; 1803; 2501; 2701; 2907 4100

STATEMENT OF THE CASE

Izet Tahirovic, claimant, filed a petition in arbitration seeking worker's compensation benefits from Metokote Corporation, as his employer, and AIG, as the insurance carrier. This case proceeded to an arbitration hearing on January 26, 2015 in Des Moines, Iowa.

Claimant testified on his own behalf and called his wife, Mine Tahirovic, and his daughter, Irma Tahirovic, to testify. Mine Tahirovic and claimant both testified utilizing the services of a Bosnian interpreter, Zeljka Krvavica. Ms. Krvavica explained her credentials and all parties were offered the opportunity to question Ms. Krvavica about her credentials as a Bosnian to English interpreter. All parties consented to using Ms. Krvavica as the hearing interpreter. No other witnesses testified live.

Claimant offered Exhibits 1 through 40. Defendants offered Exhibits A through R. All exhibits were received into evidence despite an objection asserted to claimant's Exhibit 7, pages 4 and 5. The evidentiary record was suspended at the conclusion of the hearing and defendants were permitted an opportunity to obtain a rebuttal report in response to Exhibit 7. Defendants ultimately declined the opportunity to submit rebuttal evidence.

The parties also submitted a hearing report, which contains stipulations. The parties' stipulations are accepted and relied upon in entering this decision. No findings or conclusions will be entered with respect to the parties' stipulations and the parties are bound by those agreements.

Counsel for the parties requested the opportunity to file post-hearing briefs. This case was considered fully submitted upon the simultaneous filing of post-hearing briefs on February 27, 2015.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the July 5, 2011 work injury caused a temporary disability and, if so, the extent of claimant's entitlement to temporary total or healing period benefits.

2. Whether the July 5, 2011 work injury caused a permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits, including a claim for permanent total disability and/or odd-lot status.

3. The proper commencement date for permanent disability benefits, if any are awarded.

4. Whether claimant is entitled to an award of past medical expenses, including a claim for mileage for medical treatment.

5. Whether claimant is entitled to an award of alternate medical care.

6. Whether costs should be assessed against either party.

FINDINGS OF FACT

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

Izet Tahirovic is a 46 year old man, who sustained a left shoulder injury while working for Metokote on July 5, 2011. Mr. Tahirovic is a native of Bosnia and graduated from high school in Bosnia and Herzegovina. He moved to Iowa in 1999. Mr. Tahirovic has not obtained any additional educational training in either Bosnia or the United States. He testified that he is not able to read, write or speak in the English language. However, he was able to obtain his commercial driver's license in 2003.

In 2006, claimant was involved in a serious motor vehicle accident while driving a semi. As a result of the motor vehicle accident, the load in Mr. Tahirovic's trailer shifted, crashed through the trailer and into the cab pinning Mr. Tahirovic bent forward at the waist. Claimant reported significant left shoulder symptoms, among various other injuries and symptoms, following the 2006 accident.

Unfortunately, it appears that claimant was not entirely forthcoming about his prior left shoulder problems when providing a history to physicians after this 2011 injury. Mr. Tahirovic did not provide a convincing response or explanation as to why he provided this inaccurate history to physicians.

Medical records demonstrate numbness down claimant's left arm into his hand after the 2006 accident. Claimant now denies those symptoms existed after the 2006 accident. Medical records document that Dr. Delbridge injected claimant's left shoulder after the 2006 accident. Claimant testified he does not recall such an injection occurring. Following the 2006 accident, medical records document that Mr. Tahirovic had significant enough symptoms in his shoulders that he had difficulty getting his shirt on and off. Claimant testifies that he does not recall experiencing such difficulties after the 2006 accident.

I find the medical records pertaining to these reported symptoms after the 2006 accident to be convincing and find Mr. Tahirovic's testimony not credible in this respect. I doubt that a person would have symptoms of the magnitude reported after the 2006 accident and would not recall those symptoms. I doubt that Mr. Tahirovic had an injection in his shoulder after the 2006 accident and simply does not recall.

Nevertheless, I find that Mr. Tahirovic has proven he sustained a permanent work injury to his left shoulder on July 5, 2011. Although he had significant symptoms and treatment after the 2006 semi accident, Mr. Tahirovic did not seek medical treatment for his left shoulder between January 2009 and July 2011. When Metokote hired claimant, they required him to submit to a pre-employment physical. Metokote's physician cleared claimant to work without physical restrictions and claimant actually performed relatively physical employment duties at Metokote between April 2010 and July 5, 2011. I find it unlikely that claimant could have had significant and ongoing symptoms in his left shoulder when he started at Metokote and still performed the work duties he performed until July 5, 2011. In his current condition, claimant is clearly not capable of performing the job duties he performed on July 5, 2011. Therefore, I find that the July 5, 2011 accident caused a permanent work injury.

Mr. Tahirovic testified that he has ongoing sharp pains in his left arm, radiating up his neck and into his head if he moves his left arm even a little. He also testified that he has a tingling and pins and needles feeling down his arm to his fingers. He described the tingling down his arm as constant. Mr. Tahirovic testified that he has a constant ache in his left shoulder with sharp pains occurring whenever he moves his arm.

Tahirovic's testimony about his current symptoms does not correspond with the findings of even his own chosen evaluator (Dr. Neiman) that he has no atrophy in his left arm. I find that Mr. Tahirovic exaggerates the extent and severity of his symptoms when trying to explain those symptoms and physical limitations.

The medical evidence demonstrates possible symptom magnification. In fact, this appears to be a tendency of claimant even before this date of injury. (Exhibit A, page 3; Ex. B, pp. 3-4; Ex. C, p. 2) Despite testifying that he cannot move his arm more than a little bit, objective medical observation demonstrates no atrophy in his left arm. (Ex. E, p. 12; Ex. F, p. 1) It is difficult to believe Mr. Tahirovic's testimony that he is almost unable to move his arm yet his left arm demonstrates no atrophy. As noted, I find that claimant exaggerates his physical symptoms and functional abilities when describing them under oath. That does not, however, mean that claimant is symptom free.

Mr. Tahirovic was able to pass a pre-employment physical for Metokote. He worked for the company without medical restrictions from April 2010 until July 5, 2011. He immediately reported the work injury and his medical records document increased symptoms since that date. While acknowledging the contrary medical opinions of Kenneth McMains, M.D., Thomas Gorsche, M.D., William Boulden, M.D., and Jerry Jochims, M.D., I find that Mr. Tahirovic has proven by a preponderance of the evidence that he sustained a permanent work injury to his left shoulder on July 5, 2011.

Although he had a pre-existing motor vehicle accident and left shoulder injury, Mr. Tahirovic did not seek treatment for his left shoulder between January 2009 and July 5, 2011. He passed the employer's pre-employment physical and worked without restrictions prior to the date of injury. (Ex. 8, p. 19) According to Joseph Nora, M.D., claimant's post-injury MRI in August 2011 demonstrated fluid in the bursa, which is likely the result of a 106 pound piece of steel falling on claimant's left shoulder. (Ex. 1, p. 25) Medical records immediately after the July 5, 2011 accident demonstrate objective findings of spasms, demonstrating a relatively significant injury to claimant's shoulder. (Ex. 1, p. 1; Ex. 1, p. 6) Other physicians have similarly opined that claimant sustained a material aggravation of his left shoulder as a result of the July 5, 2011 work accident. (Ex. 5, p. 30; Ex. 33, p. 24; Ex. 37, p. 4; Ex. F, p. 2; Ex. G, p. 1) I find Dr. Nora's causation opinion to be a reasonable medical analysis and accept Dr. Nora's opinion in this respect. Therefore, I find that claimant has proven an objective change in his left shoulder directly resulting from the July 5, 2011 work injury.

I acknowledge but reject the causation analyses offered by Dr. McMains, Dr. Gorsche, Dr. Boulden, and Dr. Jochims in this case. Although claimant had pre-existing injuries and symptoms in the left shoulder, he did not require ongoing medical care for the left shoulder prior to the July 5, 2011 work injury. Claimant has treated for the left shoulder ever since the July 5, 2011 injury and requires additional medical treatment into the future.

After the work injury, claimant was unable to return to work without medical restrictions. He was ultimately terminated by the employer and now carries permanent work restrictions that I find are causally related to the work injury of July 5, 2011. Specifically, I accept the functional estimates provided by Farid Manshadi, M.D. (Ex. 33, p. 26) Mr. Tahirovic remains capable of occasional lifting up to 20 pounds. The employer clearly believed there was a change in claimant's functional status after the

July 5, 2011 injury and I find that the change was related to that work injury. Therefore, I also find that claimant sustained a permanent injury to his left shoulder as a result of the work accident on July 5, 2011.

I accept Dr. Manshadi's estimate and find that claimant achieved maximum medical improvement on May 20, 2014. (Ex. 33, p. 24) Mr. Tahirovic did not return to work between February 14, 2012 and May 19, 2014. He was not capable of substantially similar employment during this time period.

Mr. Tahirovic asserts that he is permanently and totally disabled, either under a traditional industrial disability analysis or under the odd-lot doctrine. I find that Mr. Tahirovic did not produce a prima facie case to establish that he is unemployable in the competitive labor market. In fact, while opining that claimant sustained a significant reduction in his available employment opportunities, claimant's vocational expert notes that claimant has only lost 89.6 percent of generally transferrable occupations and only 77.3 percent of his access to unskilled occupations. (Ex. 23, p. 8) Presumably, this means that there remain some realistic employment opportunities for claimant in the competitive labor market. I find that claimant has not produced a prima facie case to establish that he is unemployable in the competitive labor market.

However, even if claimant has produced a prima facie case, defendants came forward with a vocational opinion of their own. Defendants' vocational expert identified multiple job openings available within the competitive labor market for which claimant remains qualified or potentially qualified to perform even using claimant's medical expert's physical restrictions. (Ex. M, pp. 4-5) Defendants' vocational expert identified specific employers and opportunities that would fit within claimant's language barrier and physical limitations. (Ex. M, pp. 6-8)

I find that claimant failed to prove by a preponderance of the evidence that there remain no viable employment opportunities for him within the competitive labor market. I find that claimant remains capable of performing gainful employment within the competitive labor market. Nevertheless, I find that Mr. Tahirovic sustained a significant reduction in the opportunities available to him within the competitive labor market and a significant reduction in his future earning capacity.

Considering his age, employment history, educational background, language barrier, ability to retrain, motivation, the situs and severity of his injury, as well as the permanent work restrictions and job opportunities identified by the vocational experts, as well as all other industrial disability factors outlined by the Iowa Supreme Court, I find that Mr. Tahirovic has proven he sustained a 60 percent loss of future earning capacity as a result of the July 5, 2011 work injury.

Mr. Tahirovic requests an award of past medical expenses, including a claim for medical mileage. Review of Exhibits 27 through 31 demonstrate that the medical expenses sought appear to be incurred with physicians for whom medical records are in evidence, the treatment appears to be causally related to the alleged July 5, 2011 work

injury, and the treatment for which charges are sought appears to be medically reasonable and appropriate. I find that the charges submitted, at least as claimed via liens or actually paid by a third-party payor are reasonable. The mileage claimed at Exhibit 32 appears to be related to treatment for the July 5, 2011 work injury.

Mr. Tahirovic requests an order requiring defendants to provide alternate medical care. Specifically, claimant requested that defendants provide the additional medical care recommended by Dr. Manshadi. At the commencement of hearing, claimant's counsel specifically requested the care recommended by Dr. Manshadi at Exhibit 33, page 24. Review of Dr. Manshadi's report reveals that Dr. Manshadi recommends no additional invasive or extensive medical diagnostic testing or treatment. However, Dr. Manshadi recommends the use of pain medications as a reasonable and appropriate medical avenue of treatment. I find this recommendation to be reasonable given claimant's ongoing symptoms. Defendants offer no alternate medical care.

CONCLUSIONS OF LAW AND REASONING

The initial dispute between the parties is whether the July 5, 2011 left shoulder work injury caused either temporary or permanent disability. 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).

The parties, obviously, produced competing evidence on this issue. However, having found that claimant proved by a preponderance of the evidence that his current and ongoing symptoms are causally related to the July 5, 2011 work injury, I conclude that claimant has established entitlement to both temporary and permanent disability benefits in some amount.

Mr. Tahirovic asserts that he is permanently and totally disabled as a result of the July 5, 2011 work injury to his left shoulder. Mr. Tahirovic asserts this claim under both the traditional industrial disability analysis and claims that he is an odd-lot employee. The odd-lot doctrine includes a burden shifting analysis, which could be advantageous to the claimant. Therefore, the odd-lot claim will be evaluated first.

In Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985), the Iowa court formally adopted the "odd-lot doctrine." Under that doctrine a worker becomes an odd-lot employee when an injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Id., at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not employable in the competitive labor market, the burden to produce evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of facts finds the worker does fall in the odd-lot category, the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106. Factors to be considered in determining whether a worker is an odd-lot employee include the worker's reasonable but unsuccessful effort to find steady employment, vocational or other expert evidence demonstrating suitable work is not available for the worker, the extent of the worker's physical impairment, intelligence, education, age, training, and potential for retraining. No factor is necessarily dispositive on the issue. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). Even under the odd-lot doctrine, the trier of fact is free to determine the weight and credibility of evidence in determining whether the worker's burden of persuasion has been carried, and only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

In this case, having considered the relevant factors outlined by the Iowa Supreme Court, I conclude that claimant has not proven he is an odd-lot employee. Claimant produced evidence of a substantial loss of earning capacity but did not produce evidence that he is unemployable within the competitive labor market. Claimant did not produce evidence sufficient to establish even a prima facie case that he is an odd-lot employee.

However, even if claimant is determined by a reviewing authority to have met his prima facie burden, defendants came forward with a vocational expert opinion to identify relevant employment opportunities that claimant could pursue. Defendants carried their burden of production and it was incumbent upon claimant to carry the burden of persuasion to establish an odd-lot status.

Claimant's medical records demonstrate symptom magnification and I found that Mr. Tahirovic exaggerated his residual symptoms and underestimated his own residual functional abilities. Claimant's own evaluating physician, Dr. Manshadi, imposed restrictions that should permit Mr. Tahirovic to seek alternate employment. Claimant's vocational expert did not opine that claimant was incapable of returning to alternate competitive employment, though she outlined significant limitations or reductions in available positions. Ultimately, I conclude that Mr. Tahirovic failed to carry the burden of persuasion in his odd-lot claim. Mr. Tahirovic has not established that he is an odd-lot employee.

Having concluded that Mr. Tahirovic did not establish a claim as an odd-lot employee, I must also evaluate his claim under the more traditional industrial disability analysis. Mr. Tahirovic sustained a left shoulder injury. When disability is found in the shoulder, a body as a whole situation may exist. Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949). In Nazarenus v. Oscar Mayer & Co., II Iowa Industrial Commissioner Report 281 (App. February 24, 1982), a torn rotator cuff was found to cause disability to the body as a whole.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

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 begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

There are no weighting guidelines that indicate how each of the factors is to be considered. Neither does a rating of functional impairment directly correlate to a degree of industrial disability to the body as a whole. In other words, there are no formulae which can be applied and then added up to determine the degree of industrial disability. It therefore becomes necessary for the deputy or commissioner to draw upon prior experience as well as general and specialized knowledge to make the finding with regard to degree of industrial disability. See Christensen v. Hagen, Inc., Vol. 1 No. 3

Industrial Commissioner Decisions, 529 (App. March 26, 1985); Peterson v. Truck Haven Cafe, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 654 (App. February 28, 1985).

Assessments of industrial disability involve a viewing of loss of earning capacity in terms of the injured workers' present ability to earn in the competitive labor market without regard to any accommodation furnished by one's present employer. Quaker Oats Co. v. Ciha 552 N.W.2d 143, 158 (Iowa 1996); Thilges v. Snap-On Tools Corp., 528 N.W. 2d 614, 617 (Iowa 1995).

Again, Mr. Tahirovic asserts that he is permanently and totally disabled. Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

In this case, however, I found that Mr. Tahirovic did not prove he is permanently and totally disabled as a result of the July 5, 2011 work injury. However, I found that Mr. Tahirovic proved by a preponderance of the evidence that he sustained a 60 percent loss of future earning capacity as a result of the July 5, 2011 work injury. Therefore, I conclude that Mr. Tahirovic is entitled to an award of 300 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(u).

The next disputed issue is claimant's entitlement to healing period benefits. Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Having found that claimant did not return to work, was not medically capable of substantially similar employment, and that he did not achieve maximum medical improvement until May 20, 2014, I conclude that claimant has proven entitlement to healing period benefits from February 14, 2012 through May 19, 2014.

Permanent partial disability benefits commence at the conclusion of the healing period. Iowa Code section 85.34(2). Having determined that claimant's healing period terminated on May 19, 2014, I conclude that permanent partial disability benefits should commence on May 20, 2014.

Mr. Tahirovic seeks an award of past medical expenses. He has documented the medical expenses, including payments and liens asserted by third-party payors. Having found the treatment and charges to be medically reasonable, necessary, and causally related to the July 5, 2011 work injury, I conclude that defendants are obligated to reimburse claimant for any out-of-pocket expenses and to satisfy and hold claimant harmless for any charges paid by a third-party payor. Iowa Code section 85.27; Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

Similarly, I found that the medical mileage summarized at Exhibit 32 was related to the medical care claimant required for his July 5, 2011 work injury. Defendants are obligated to reimburse claimant in the amount of $1,580.64 for medical mileage. Iowa Code section 85.27; 876 IAC 8.1(2).

Claimant seeks an award of alternate medical care. Specifically, claimant seeks an order awarding the treatment recommendations made by Dr. Manshadi in Exhibit 37, pages 4 and 5. In his report, Dr. Manshadi recommends no further invasive testing or treatment but noted that pain medications would be a reasonable and appropriate medical management avenue. (Ex. 33, p. 24)

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P 14(f)(5); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

Dr. Manshadi recommends additional medical care in the form of pain medications for claimant's symptoms. Defendants take the position that no further medical care is causally related to the July 5, 2011 work injury. Yet, Dr. McMains concurred that additional medical treatment was reasonable for claimant's condition. He simply did not believe the ongoing condition was causally related to the 2011 work injury.

Having found that the current condition is causally related to the July 5, 2011 work injury, I conclude that claimant has proven additional medical care is reasonable and necessary. Defendants offer no additional care, while Dr. Manshadi recommends additional care. I conclude that claimant has proven defendants are not offering medical care but that additional medical care is necessary. Therefore, I conclude that claimant has proven that defendants are not offering medical care reasonably suited to treat his work injury.

Claimant's proposed and requested medical care is supported by medical opinion and is reasonable under the circumstances. Therefore, I conclude that claimant's request for an order of alternate medical care is appropriate. Defendants will be ordered to provide the medical care recommended by Dr. Manshadi, including the specific recommendations for pain medications. Claimant did not specifically request transfer of care to a specific physician to offer the pain medication management recommended by Dr. Manshadi. Therefore, defendants shall remain entitled to select the authorized medical provider to render such care.

Mr. Tahirovic seeks assessment of his costs. Assessment of costs is a discretionary function of the agency. Iowa Code section 86.40. Claimant has prevailed and received an award of benefits. Therefore, I conclude it is reasonable and appropriate to assess costs against defendants.

Claimant seeks reimbursement of his filing fee ($100.00) and service of the original notice and petition upon the employer ($6.11). Exercising the agency's discretion, I find that both of these requests are reasonable and assess them as costs pursuant to 876 IAC 4.33(3) and (7).

Claimant seeks an award reimbursing him for the cost of service upon Gallagher Basset. However, Gallagher Basset is a third-party administrator and is not the proper insurance carrier in this case. I conclude that it is not appropriate to assess this cost against the defendants.

Mr. Tahirovic seeks the cost of his deposition transcript ($56.60). Defendants introduced claimant's deposition as Exhibit O. Therefore, I conclude it is reasonable to assess this expense as a cost pursuant to 876 IAC 4.33(2).

Claimant also seeks assessment of his cost for obtaining a vocational assessment and report from Barbara Laughlin. Although I did not entirely rely upon Ms. Laughlin's report, it was an appropriate piece of information for claimant to obtain and submit in this case. I conclude that Ms. Laughlin's fee totaling $971.16 should be assessed as a cost pursuant to 876 IAC 4.33(6).

Finally, Mr. Tahirovic seeks assessment of the cost of Dr. Manshadi's supplemental evaluation performed on August 1, 2014 and resulting report. Dr. Manshadi had already performed an independent medical evaluation pursuant to Iowa Code section 85.39. Exercising the agency's discretion, I do not perceive

Dr. Manshadi's report to be reasonably or appropriate assessed as a cost under 876 IAC 4.33(6). Therefore, I deny this request for cost. In total, I conclude it is appropriate to assess costs against defendants totaling $1,133.87.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant healing period benefits from February 14, 2012 through May 19, 2014.

Defendants shall pay claimant three hundred (300) weeks of permanent partial disability benefits commencing on May 20, 2014.

All healing period and permanent partial disability benefits shall be paid at the weekly rate of three hundred fifty-six and 58/100 dollars ($356.58).

Defendants shall pay all accrued weekly benefits in lump sum with applicable interest pursuant to Iowa Code section 85.30.

Defendants shall pay directly, reimburse claimant for any out-of-pocket expenses, or otherwise satisfy and hold claimant harmless for the past medical expenses contained at Exhibits 27 through 31.

Defendants shall reimburse claimant's medical mileage expenses as summarized in Exhibit 32.

Defendants shall provide the medical care recommended (pain medication management) by Dr. Manshadi in his report contained at Exhibit 33, page 24.

Defendants shall reimburse claimant's costs totaling one thousand one hundred thirty-three and 87/100 dollars ($1,133.87).

Defendants 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 1st day of April, 2015.

WILLIAM H. GRELL
DEPUTY WORKERS'
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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.