BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHARON MURRAY as Conservator of WILLIAM MEYERS, Claimant, vs. LAZER SPOT, INC., Employer, and GREAT AMERICAN ALLIANCE INSURANCE CO., Insurance Carrier, Defendants.	File No. 21004833.01 ARBITRATION DECISION Headnotes: 1402.30

STATEMENT OF THE CASE

Claimant, Sharon L. Murray as conservator of William L. Meyers, filed a petition in arbitration seeking workers' compensation benefits from Lazer Spot, Inc. (Lazer), employer, and Great American Alliance Insurance Company, insurer, both as defendants. This matter was heard on April 22, 2022, with a final submission date of May 20, 2022.

The record in this case consists of Joint Exhibits 1 through 16, Claimant's Exhibits 1 through 21, Defendants' Exhibits A through P, and the testimony of William Meyers, Sharon Murray, and Toby Denning.

At hearing, claimant moved to exclude the reports and statements of Don Presley, Karen Baker, an OSHA report, and the report of Andrew Rentschler, Ph.D.

Mr. Presley was the safety manager for defendant employer at the time of the accident. Ms. Baker's statement was made as a part of the OSHA investigation. Ms. Baker was a first responder EMT who came to claimant's aid at the time of injury. The OSHA investigator report was created as a part of a government investigation following claimant's injury. Dr. Rentschler is an accident reconstruction specialist, and his expert opinion was requested by the defendants regarding causation of claimant's accident. All statements and reports were served timely. Claimant's objections to the statements and the reports were denied at hearing. (Hearing Transcript, pages 6-10)

In his brief, claimant again argues to exclude the report and statements of Mr. Presley, the statement of Ms. Baker, the statement of Owen Lamphier, the statement of Toby Denning, and statements made in the OSHA report.

Technical rules of evidence do not apply in administrative proceedings. IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 630 (Iowa 2000)

Exclusion of evidence is the most severe sanction under the rules of civil procedure concerning discovery and is justified only when prejudice would result. Schoenfeld v. FDL Foods, Inc., 560 N.W.2d 595, 598 (Iowa 1997).

As noted above, Mr. Presley was the safety manager for defendant employer at the time of injury. Statements made in his report were made a part of his investigation of the injury at issue. Any statements made by Mr. Presley are corroborated, in part, by statements made by Mr. Denning, Mr. Lamphier and Ms. Baker. Mr. Presley was at hearing, and claimant could have easily called him to testify at hearing but failed to do so. Defendants' motion to exclude Mr. Presley's statement and reports are again denied.

Mr. Lamphier's statement was made a part of the investigation done by Mr. Presley. Mr. Lamphier's statements, in part, are corroborated by the statements made by Mr. Denning, Mr. Presley, and Ms. Baker. Defendants' motion to exclude Mr. Lamphier's statement is denied.

Mr. Denning testified at hearing. Mr. Denning was the last person to be with claimant prior to his accident. His statement is corroborated, in part, by his testimony at hearing. Claimant's motion to exclude Mr. Denning's statement is denied.

The statements of Ms. Baker, Mr. Presley, Mr. Denning, and Mr. Lamphier corroborate each other. They are also corroborated by Mr. Denning's testimony. The OSHA report was apparently a document served by defendants in discovery. OSHA reports are routinely compiled and used to analyze workplace accidents. Claimant's motion to exclude the OSHA report, and the statements made in the report, are again denied.

STIPULATIONS

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

ISSUES

1. Whether claimant sustained an injury that arose out of and in the course of employment.

2. Whether the injury is a cause of permanent disability; and if so,

3. The extent of claimant's entitlement to permanent partial disability benefits.

4. Whether claimant's claim is barred by operation of Iowa Code section 85.16.

5. Whether there is a causal connection between the injury and the claimed medical expenses.

6. Whether claimant is entitled to alternate medical care.

7. Whether the defendants are liable for a penalty under Iowa Code section 86.13.

FINDINGS OF FACT

Claimant was 62 years old at the time of hearing. Claimant graduated from high school. Claimant has learning disability issues. (Tr., pp. 42, 66-67)

Claimant has worked as a busboy, dishwasher, stocker, forklift operator and security guard. (Tr., pp. 42-43; Defendants' Exhibit A)

At the time of injury, claimant had worked for Lazer for approximately 8 years. Claimant's job duties with Lazer required him to sweep out semi-trailers. Claimant worked full time and occasionally overtime. (Tr., pp. 43-44)

Claimant's prior medical history is relevant. Claimant was assessed as having mild speech retardation when he was 5 years old. In 1964 claimant was recommended to be placed in special education classes. (Joint Exhibit 1, p. 1) In the same year, claimant was evaluated at the University of Iowa Hospitals in Iowa City. He was assessed, at that time, as having encephalopathy due to a congenital defect, arrested hydrocephalus and mild retardation. (JE 1, pp. 4-5)

In December of 2015 claimant was evaluated at Mercy Medical Center for complaints of headaches and an abnormal CT scan. Claimant was found to have atrial fibrillation the night prior. He had tingling on the right side of his face and intermittent headaches for the past week. (JE 2, p. 10)

Claimant indicated nausea and speech difficulty. Claimant was assessed as having a headache and a right frontal arachnoid cyst. (JE 2, pp. 10-14)

On December 19, 2016, claimant was seen by David Glassman, M.D., for evaluation of atrial fibrillation with rapid ventricular response (RVR). Claimant was prescribed Relafen for his condition, but he was unsure if he was taking it. Claimant had right-sided facial numbness. A head CT scan, echo and stress test were recommended. A social worker was consulted for medical compliance. (JE 2, pp. 15-20) He was assessed as having chronic atrial fibrillation and hyperthyroid. (JE 2, p. 20)

A CT scan was done on December 19, 2016. It showed a hyperdense right middle cerebral artery. Claimant was recommended to have a CT angiogram and a brain MRI. (JE 2, p. 23)

On March 27, 2018, claimant was evaluated by Matthew Aucutt, D.O. Claimant felt his throat was closing off and his face was numb and hot. Claimant reported similar symptoms in the past. The reason for claimant's symptoms was unclear. (JE 2, pp. 26-28)

On June 29, 2018, claimant was seen at Mercy Medical Center for evaluation of stroke symptoms. Claimant indicated he had stopped taking medication a month prior to his condition as he could not afford it. (JE 2, p. 34)

Claimant worked for Lazer at the International Paper facility in Cedar Rapids. Toby Denning testified he worked at Lazer sweeping out trailers with claimant. He said brooms and blowers were used to clean out debris from the back of trailers. Debris was then moved into the Lazer facility. The material is blown or swept out on the concrete floor in the facility. The debris is then pushed past barriers referred to as "Jersey barriers." The Jersey barriers are concrete covered in hard orange plastic. Mr. Denning said the debris in the area is then picked up by a "clamp truck." (Tr., pp. 20-21)

Mr. Denning said he and claimant began the shift at 5:30 a.m. on March 2, 2019. Mr. Denning stated claimant did not act ill that morning. Mr. Denning said that after he and claimant finished cleaning a trailer, they went into the "sweep shack." Mr. Denning said he was sitting in a chair in the sweep shack before claimant came into the shack. He said claimant sat down in the chair and then immediately got up. Mr. Denning said claimant quickly left the shack. He said he heard a noise like claimant vomiting. He said that when the vomiting stopped, he stepped outside of the shed and found claimant on the ground. (Tr., pp. 22-23, 29-30)

Mr. Denning said claimant's left side of his body was against the barrier. Mr. Denning said that he did not observe bleeding. He did see some vomit on the opposite side of the barrier where claimant was found and on claimant's mouth. He said that when he could not get a response from claimant, he radioed for help. (Tr., p. 30)

Mr. Denning did not see claimant fall, pass out, or vomit. (Tr., p. 23)

Exhibit A is a handwritten statement from Mr. Denning dated March 2, 2019. Exhibit A is consistent with testimony given by Mr. Denning at hearing.

Claimant was transported from Lazer to Mercy Medical Center by ambulance. Records from Mercy indicated the cause of claimant's fall was unclear. Claimant could have had a fall and traumatic head injury or a medical event that led to the fall and skull fracture. (JE 7, p. 65) A CT scan of the skull showed extensive cranial fractures including a right basal skull fracture, a comminuted left occipital fracture, and a fracture of the left greater sphenoid wing. The CT scan also showed extensive bilateral subdural and subarachnoid hemorrhages. (JE 7, p. 88) Given his condition, claimant was transferred to the University of Iowa Hospitals & Clinics (UIHC). (JE 8, pp. 98-99)

Claimant was admitted to the UIHC on March 2, 2019. Claimant had multiple intracranial injuries. He was intubated in the emergency department at Mercy. (JE 9, pp. 101-102)

Sharon Murray is claimant's sister. She was eventually appointed as conservator and guardian for claimant along with her son, Dallas. (Tr., pp. 39, 68) Ms. Murray testified she first became aware of claimant's injury when her son, Dallas, called her to tell her that claimant was being taken to the hospital by ambulance. (Tr., p. 44) She said she went to the emergency room at Mercy, and at that time staff were trying to assess claimant's injuries. (Tr., p. 46) Staff asked Ms. Murray to get claimant's medication. Claimant had taken medication for his atrial fibrillation condition. Ms. Murray said that she went to the UIHC when claimant was being transported to Iowa City. (Tr., pp. 47-49)

Ms. Murray said that when she was en route to Iowa City, she spoke to claimant's supervisor "Bill" (no last name given). Bill told Ms. Murray that claimant had a "medical condition." Ms. Murray indicated she had difficulty believing that claimant's injuries were due to his heart condition. She said that claimant had situations in the past when his heart would beat too fast, but claimant would sit down and be fine. (Tr., pp. 50-51) Ms. Murray said that when she showed up at the UIHC, staff told her claimant's injuries were serious and that claimant might die. (Tr., pp. 48-49) She said that while claimant was in the hospital at the UIHC, she called Cedar Rapids Police as she was concerned that claimant could have been assaulted at work. (Tr., pp. 52-53)

Records indicate a social worker at the UIHC also contacted the Cedar Rapids Police as claimant's injuries were "inconsistent" with the reported cause of the injury (JE 15, p. 377)

Cedar Rapids police eventually performed an investigation of claimant's accident with Lazer at the International Paper facility. Video footage from an officer camera, and what appears to be a squad car camera, are found in Exhibit 16. The footage shows the officer investigating the accident, John Dunkelberger, driving to the International Paper facility, waiting in his car, and speaking with security staff (JE 16)

Video footage labeled qja01902_20190505174612e0 shows Officer Dunkelberger investigating the area where claimant fell. In the video Officer Dunkelberger talks with Owen Lamphier and two other unidentified workers. Mr. Lamphier indicates he was the second person at the accident shortly after it happened. Footage indicates claimant and Mr. Denning were sitting in the sweep shack when claimant rushed out of the sweep shack. Approximately 30 seconds later, Mr. Denning ran out of the shack and found claimant lying on the ground, face up, next to the barricade. Mr. Lamphier indicated claimant's head was pointing towards dock doors. Claimant was lying against the barricade on the side of the sweep shack. Vomit was found on the opposite side of the barricade. (See also JE15, pp. 378-379)

The investigation was later closed and found to be a non-criminal incident. (JE 15)

An incident report of the accident was made by Lazer. The report indicates Mr. Denning and claimant were in the sweep shack when claimant sat for a short time and then got up and acted like he was going to vomit. Claimant went to the door. Mr. Denning followed and found claimant lying beside a barricade. The report indicates it

was unknown what caused claimant to be ill and found that it was not caused by an accident, but was due to a "personal illness." (Ex. C)

In an investigation statement, Don Presley, the safety director for Lazer, indicated that Mr. Denning told him that claimant sat in the chair in the sweep shack for approximately 5 seconds, when claimant acted like he was going to throw up. Claimant quickly ran out of the sweep shack. Mr. Denning said he went out of the sweep shack shortly after the claimant left and found claimant lying next to a barricade. Claimant had vomited on the barricade. Mr. Presley opined that claimant fell after he got sick. (Ex. D)

In the OSHA investigation statement, Karen Baker indicated that she was an EMS person who was called to the docks at the time of the injury. She found claimant on his back on the floor and claimant was nonresponsive. Ms. Baker did not think claimant's accident was a workplace injury. (Ex. I, p. 55)

Ms. Murray testified claimant was in the ICU at the UIHC for approximately 17 days and was in a coma during that time. (Tr., p. 52) She testified that at one point, staff at the UIHC counseled the family to take claimant off life support and let claimant die. (Tr., p. 59) Ms. Murray testified that she was traumatized by this, and that it was a miracle that claimant was still alive. (Tr., pp. 36, 55)

Records indicate claimant began to open his eyes on March 14, 2019, and was able to follow single commands at about that time. (JE 9, p. 155) Claimant was extubated on March 15, 2019. (JE 9, p. 155) On March 18, 2019, claimant was able to move his upper and lower extremities, follow simple commands, and respond to questions by shaking his head. (JE 9, p. 168)

Claimant was discharged from the UIHC on March 25, 2019, and moved to On With Life in Ankeny, Iowa, for brain injury rehabilitation services. On With Life is a facility offering inpatient and outpatient resources and rehabilitation for patients with head injuries. (JE 9, pp. 182, 186; JE 10, p. 209; Tr., pp. 56-57)

Claimant was transferred to On With Life on March 25, 2019. (JE 10, p. 209; JE 9, p. 182) While at On With Life, claimant underwent physical, speech and occupational therapy and rehabilitation. (JE 10) Claimant was discharged from On With Life on July 18, 2019. (JE 10, p. 280) Claimant and his family were recommended to be involved with the Brain Injury Association of Iowa. (JE 10, p. 285)

On August 27, 2019, claimant was evaluated by Qadnana Anwar, M.D., with UnityPoint to establish care. Claimant was undergoing speech therapy, physical therapy, and occupational therapy. (JE 12, pp. 326-329)

Claimant returned to Dr. Anwar on September 16, 2019. Claimant indicated he wanted to return to work and wanted to be driving again. Claimant was told to return to driving slowly and to avoid driving at night or more than 50 miles per hour. (JE 12, p. 331)

After his release from On With Life, claimant continued to undergo speech and occupational therapy through UnityPoint at St. Luke's. Claimant was discharged from

occupational and physical therapy on October 21, 2019. Records from speech therapy noted claimant was close to baseline functioning on discharge. (JE 4; JE 5, p. 53)

On May 19, 2021, claimant underwent an independent neuropsychological exam performed by John Walker, III, Psy.D., ABPP-CN. Claimant was assessed as having an intellectual disability, a major neurocognitive disorder due to a history of an intellectual disability, and a traumatic brain injury. Claimant was found to be limited for all activities. He was limited from working around machinery. He was limited from attending to and recalling more than two-step commands or greater. Dr. Walker did not believe claimant could make further cognitive improvement and believed claimant's status was stable from a neurocognitive perspective. (Claimant's Exhibit 7, pp. 72-73)

In an August 3, 2021, report, Charles Mooney, M.D., gave his opinions of claimant's condition following a records review. Dr. Mooney assessed claimant as having an unwitnessed fall resulting in multiple cranial fractures and subarachnoid bleeds with a loss of consciousness. (Ex. G, p. 23) He opined that based upon his review of statements and investigation of all the injuries he did not believe this was an occupational or work-related injury. He opined that claimant's work activities were not associated with the injury. (Ex. G, p. 23)

In a March 7, 2021 report, David Segal, M.D., gave his opinions of claimant's condition following an independent medical evaluation (IME). Dr. Segal assessed claimant as having a traumatic brain injury, concussion and extensive bilateral subdural and subarachnoid hemorrhages, a diffuse axonal injury, and extensive cranial fractures, permanent brain damage and post-concussive syndrome with cognitive deficits. (Ex. 5, p. 24) Dr. Segal opined,

> "Meyers was alone in the work area. Because of the severe nature of the skull and brain injuries, the most likely mechanism of injury within Mr. Meyers' work environment is that he slipped and fell onto the back of his head on the concrete floor. There are other possibilities of how this injury occurred, and all are causally related to the work environment, and in all likely scenarios, the condition of Mr. Meyers' employment placed him at an increased risk of injury."

(Ex. 5, p. 18) Dr. Segal also opined that he found it unlikely that claimant suffered his injury from passing out and slumping to the floor. He opined that given the location and severity of claimant's skull fractures, it is unlikely claimant merely fell to the floor. (Ex. 5, p. 18)

Dr. Segal offered approximately seven possible scenarios for how claimant's accident could have happened. He opined that the most likely circumstance occurred when claimant could have slipped backwards and fell before he entered the sweep shack with Mr. Denning. (Ex. 5, p. 19)

Dr. Segal also opined that claimant might have fallen from a height, slipped on debris, was hit with a fork or forklift, fell from the jarring of a dock, or was assaulted. (Ex. 5, pp. 21-22) Dr. Segal opined it was not likely claimant sustained an injury while falling on a barricade or had a seizure. He opined that it was not likely claimant had an

illness that caused him to fall and slump and hit the back of his head on the floor. (Ex. 5, pp. 21-22)

Dr. Segal found claimant at maximum medical improvement (MMI) as of March 2, 2021. (Ex. 5, p. 35) He opined that claimant had a 32 percent permanent impairment to the body as a whole due to cognitive impairments, emotional and behavioral disorders, headaches, vestibular dysfunction, and sleep disorder. (Ex. 5, pp. 35-38)

Dr. Segal recommended claimant have further medical treatment including neurological consultation, neuropsychological therapy, vestibular evaluation and therapy, and hearing evaluations. (Ex. 5, p. 33) He restricted claimant to only 1-2 hours of activity for a 2-3 hour workday. He recommended claimant avoid use of ladders and only engage in rare driving. (Ex. 5, p. 40)

In a March 1, 2022 report, Andrew Rentschler, Ph.D., gave his opinions of claimant's accident. Dr. Rentschler has a Ph.D. in bioengineering. His resume indicates his research included investigation of biomechanics of gait and falls in order to mitigate injuries. He has also performed clinical studies to gauge injury potential. His area of specialties include, but are not limited to, injury causation biomechanics, gait and fall analysis, and injury mechanism analysis. (Ex. F)

Dr. Rentschler noted claimant's skull fracture and brain injury resulted from blunt force trauma to the head. (Ex. E, p. 15)

Dr. Rentschler noted that there was no evidence, either physical or testimonial, that claimant slipped or tripped and fell due to environmental or physical conditions in the work area. (Ex. E, p. 15) He noted the only evidence of what occurred prior to the fall are statements made by Mr. Denning. As noted in Mr. Presley's report,

> "Billy [*sic*] came in, sat down in the other chair for . . . maybe 5 seconds and then his eyes got big and he was acting like he was going to throw up. Toby said Billy [*sic*] got up quickly and went out of the sweep shack. Toby said . . . he got up and went out the door just seconds after Billy [*sic*] had left. When Toby exited the sweep shack, Billy [*sic*] was laying on the floor beside the barricade."

(Ex. D, p. 8; Ex. E, p. 15) Photos of this incident were taken three hours after the accident and do not show a tripping or slipping hazard. (Ex. E, p. 16)

Dr. Rentschler indicated, given the evidence, it appeared claimant left the sweep shack and vomited on the back of the concrete barrier. This was indicative that claimant did not slip and fall as he was able to vomit on the opposite side of the barrier. There was no evidence claimant tripped and fell in the area of the barricade. Dr. Rentschler indicated that evidence showed claimant reached the barricade and vomited on the barricade. He opined that claimant's fall was more consistent with a physiological event, such as a syncopal episode, as opposed to a physical disruption of his ambulatory process. (Ex. E, p. 16)

In a March 20, 2022 note, Dr. Mooney indicated he had reviewed Dr. Segal's report. Dr. Mooney noted that information provided did not identify an occupational

hazard related to claimant's injury and there is no work activity taking place at the time of injury. (Ex. G, p. 25)

On March 23, 2022, Dr. Segal issued a supplemental report. He disagreed with the opinions of Dr. Mooney and Dr. Rentschler. Dr. Segal again opined that although the accident was unwitnessed, he believed that because of the impact to the back of claimant's skull, this suggested that the workplace directly contributed to claimant's injuries. (Ex. 6, pp. 60-62)

Ms. Murray testified that she is not aware if claimant had passed out or had a seizure either before or after the accident. (Tr., p. 60) She said claimant has balance issues since the accident. She says occasionally claimant will "check out" mentally. Ms. Murray said that claimant can drive, but has to have someone in the car with him. (Tr., pp. 61-62)

Ms. Murray said that claimant had not returned to employment, and she did not believe claimant was capable of returning to work. (Tr., pp. 62-64) She said that claimant has difficulty following directions. (Tr., p. 64) She said that claimant has been awarded Social Security Disability benefits based on his injury. (Tr., p. 65)

Ms. Murray said that before the accident, claimant was self-sufficient and that he was able to work. Since the accident, claimant lives with Ms. Murray. Ms. Murray said that she had to take a job to accommodate claimant. She said that family members have moved into her house to help care for claimant. (Tr., p. 66)

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant's injury arose out of and in the course of employment.

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

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

The 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).

Idiopathic falls are those that originate from a claimant's personal condition or personal weakness. See Bluml v. Dee Jay's Inc., 920 N.W.2d 82, 84 (Iowa 2018) ("It is not disputed that this case involves an idiopathic fall. Bluml fell on February 15, 2012, because he had a seizure. The seizure was unrelated to Bluml's work."); see also Koehler Elec. v. Wills, 608 N.W.2d 1, 4 (Iowa 2000) (citing 1 Arthur Larson, *Workmen's Compensation Law* § 12.11, at 3–356 (1994) (referring to falls that originate from a cause personal to the claimant as "idiopathic")).

When a claimant slips or trips or falls for no specifically identifiable reason, the cause is "unexplained"—not idiopathic. See Bartle v. Sidney Care, Inc., No. 09-1371, slip op. at 2 (Iowa Court of Appeal)(October 15, 2003); see also Ottumwa Regional Health Center v. Mitchell, No. 07-1496, slip op. at 3 (Iowa Court of Appeals)(April 9, 2008) (noting claimant sustained an unexplained fall when her foot went out from under her with no apparent cause).

The Iowa Supreme Court indicated, in Bluml v. Dee Jay's Inc.,920 N.W.2d 82 (2018), that different standards apply depending on whether the fall at issue is idiopathic or unexplained. Because the claimant in Bluml sustained an idiopathic fall, the court determined he had the burden to meet the "increased-risk test"—which requires proof that "'a condition of his [or her] employment increased the risk of injury.'" Id. at 91 (citing Koehler Elec., 608 N.W.2d at 5). In a footnote, the court also provided that "[t]he actual-risk rule we relied upon in *Lakeside Casino v. Blue*, 743 N.W.2d 169 (Iowa 2007) remains appropriate for *unexplained* rather than *idiopathic* injuries . . ." Id. at 91. For unexplained falls, the "actual-risk test" applies. This requires proof that "'the employment subjected [the] claimant to the actual risk that caused the injury.'" Lakeside

Casino, 743 N.W.2d at 176 (quoting 1 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 3.04, at 3-5 (2007)).

More specifically, under the actual-risk doctrine, the injury must result from a condition, risk, or hazard of employment. See id. at 178; see also Hanson v. Reichelt, 452 N.W.2d 164, 168 (Iowa 1990) ("If the nature of the employment exposes the employee to the risk of such an injury, the employee suffers an accidental injury arising out of and during the course of the employment.").

Three experts have opined regarding causation in this case. Dr. Mooney performed a records review regarding claimant's fall. Based on the statements and investigative reports, Dr. Mooney opined that there was no occupational hazard and claimant's work activities were not directly associated with the injury. (Ex. G, p. 24)

Dr. Rentschler issued an opinion regarding causation in this case. Dr. Rentschler has a Ph.D. in bioengineering. His CV indicates his research includes investigating biomechanics of gait and falls in order to mitigate injuries. He has been involved in clinical studies to gauge injury potential. His areas of specialties include, but are not limited to, injury causation biomechanics, gait and fall analysis and injury mechanism analysis. (Ex. F) Dr. Rentschler indicated, given the evidence, claimant suddenly left the sweep shack and vomited on the back of a concrete barrier. He opined claimant's fall was more consistent with a physiological event as opposed to a trip and fall. (Ex. E, p. 16)

Dr. Segal's CV is not in evidence. Based on his letterhead, Dr. Segal is an M.D. and also has a J.D. Dr. Segal routinely acts as an expert witness in hearings before this division and performs IMEs. There is no evidence in the record that Dr. Segal has any education, training, or experience regarding accident reconstruction.

As noted above, no one knows how the accident happened as no one witnessed the accident. Dr. Segal offers approximately seven different scenarios of how claimant's accident occurred. He suggests the most probable scenario is one where claimant fell, hit his head, got up and then went to the sweep shack before suddenly appearing ill and leaving the shack. (Ex. 5, p. 19) There is no evidence in the record that claimant had a fall before he entered the sweep shack. Dr. Segal also offers scenarios that claimant was hit by a forklift, fell when a dock was suddenly jarred, or was assaulted. (Ex. 5, pp. 19-22) There is no evidence in the record to support any of these possible scenarios.

No one witnessed claimant's fall. No one can state for certain what caused claimant to sustain his injuries. Dr. Segal speculates that claimant ". . . had to have slipped on something." (Ex. 5, p. 18) This speculation is not supported by any witness statements, any medical records, or any other medical evidence. In brief, Dr. Segal's numerous scenarios are guesses how claimant could have potentially sustained his injury based upon the nature of his skull fractures.

Dr. Segals' opinions regarding causations are also problematic for another reason. As noted above, Dr. Rentschler has a Ph.D. in bioengineering. Dr. Rentschler has performed clinical studies to gauge injury potential and his specialties include injury causation biomechanics, gait and fall analysis, and injury mechanism analysis. (Ex. F) Dr. Segal's CV is not in evidence. There is no evidence in the record that Dr. Segal has any training, experience, or education regarding the area of accident reconstruction.

Dr. Segal's opinions regarding causation are based on a number of possible accident scenarios. Speculation regarding the various scenarios is not corroborated by any written statements or other medical evidence. Dr. Segal lacks the skill, knowledge, experience, training, or education to testify as to how an unwitnessed accident occurred. Based on this, it is found his opinions regarding causation of the injury in this case are not convincing.

As noted, the evidence in this case is clear that no one actually witnessed claimant's injury. No one knows what caused claimant to sustain his injury. Given this record, it is found that claimant's injury is an unexplained fall. As detailed above, for unexplained falls, the actual-risk test applies. This requires proof that the employment subjected claimant to actual risks that caused the injury. More specifically, the injury must result from a condition, risk, or hazard of employment. Lakeside Casino, 743 N.W. 2d at 176-178.

Dr. Segal's multiple scenarios on how claimant fell are found to be unconvincing. Dr. Mooney opined that claimant's work activities were not directly associated with the injury. Dr. Rentschler opines that claimant's fall is consistent with a physiological event as opposed to a slip and fall. There is little in the record indicating that the flooring where claimant fell placed claimant at a risk or hazard. Given this record, claimant has failed to carry his burden of proof he sustained an injury that arose out of and in the course of employment from an unexplained fall.

Assuming for argument's sake claimant's fall is characterized as an idiopathic fall, claimant would still fail to carry his burden of proof his injury arose out of and in the course of employment. As noted above, in an idiopathic fall, claimant has the burden of proof to meet the "increased risk test." That is, does a condition of claimant's employment increase his risk of injury. Bluml, 920 N.W. 2d, 82, 91.

As detailed, Dr. Segal's multiple scenarios of how claimant was injured are found not convincing. Dr. Mooney opined claimant's work activity was not directly associated with the injury. Dr. Rentschler opines claimant's fall is more consistent with a physiological event rather than a slip and fall. There is no evidence in the record that the hardness of the flooring where claimant was found increased the risk of injury sustained by claimant. Given this record, claimant has also failed to carry his burden of proof he sustained an injury that arose out of and in the course of employment due to an idiopathic fall.

The record indicates claimant had a mental disability before his injury. Despite this disability, he held a number of jobs, was apparently a good employee, and was

largely self-sustaining. After his injury, he has not been able to return to employment. In order to care for claimant, his sister has radically changed her life and job. Claimant's family has to monitor claimant due to his brain injury. These are all people to be admired.

However, because claimant sustained a horrendous injury, and because his family and claimant are remarkable people, does not change the burden of proof claimant must carry in order to prove the issue of causation. As claimant has failed to carry his burden of proof his injury arose out of and in the course of employment, all other issues are moot.

ORDER

THEREFORE IT IS ORDERED:

That claimant shall take nothing from these proceedings.

That both parties shall pay their own costs.

Signed and filed this 28th day of July, 2022.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Saffin Parrish-Sams (via WCES)

Paul Salabert, Jr. (via WCES)

Lindsey Mills (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.