

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICK ARENS,

Claimant,

vs.

SCHUMACHER ELEVATOR CO.,

Employer,

and

ZURICH AMERICAN INS. CO.,

Insurance Carrier,
Defendants.

File No. 22700136.01

ARBITRATION DECISION

Head Note: 1803

STATEMENT OF THE CASE

The claimant, Rick Arens, filed a petition for arbitration seeking workers' compensation benefits from employer Schumacher Elevator Co. ("Schumacher") and their insurer Zurich American Insurance Co. David King appeared on behalf of the claimant. Sarah Kleber appeared on behalf of the defendants.

The matter came on for hearing on December 8, 2022, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner, the hearing occurred electronically via Zoom. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-10, Claimant's Exhibits 1-6, and Defendants' Exhibits A-H. The claimant also attempted to submit Claimant's Exhibit 7. The defendants timely objected to this report as it was provided after the time provided for in the rules. The objection was sustained, and Claimant's Exhibit 7 was excluded from the record. The record was also held open for submission of certain exhibits by the defendants. The claimant did not object to the submission of these exhibits.

The claimant testified on his own behalf. Nichole Valverde was also present, but did not testify. Pat Beck was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted on February 10, 2023, after briefing by the parties.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

1. There was an employer-employee relationship at the time of the alleged injury.
2. The claimant sustained an injury, which arose out of, and in the course of, employment on December 17, 2020.
3. That the alleged injury is a cause of temporary disability during a period of recovery.
4. That the alleged injury is a cause of permanent disability.
5. That the disability is an industrial disability.
6. That, at the time of the alleged injury, the claimant's gross earnings were two thousand three hundred nineteen and 75/100 dollars (\$2,319.75) per week, that the claimant was married, and entitled to two exemptions at the time of the alleged injury. Based upon the foregoing, the parties believe that the weekly compensation rate is one thousand three hundred ninety-eight and 90/100 dollars (\$1,398.90) per week.
7. That the defendants are entitled to credit for 50.571 weeks of benefits at the rate of one thousand three hundred ninety-eight and 90/100 dollars (\$1,398.90) per week.
8. That the costs listed in Claimant's Exhibit 5 have been paid.

Entitlement to temporary disability and/or healing benefits is no longer in dispute. The defendants waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. The extent of permanent disability benefits, should any be awarded.
2. Whether the commencement date for permanent partial disability benefits, if any are awarded is December 7, 2021, or May 3, 2022.
3. Whether the claimant is entitled to a reimbursement of costs for an independent medical examination ("IME") pursuant to Iowa Code section 85.39.

4. Whether an assessment of costs is appropriate.

In their post-hearing briefs, the defendants indicated that they stipulated to a May 3, 2022, commencement date for permanent partial disability benefits; however, there is an entire section of their brief that makes an argument for December 7, 2021, as the commencement date for benefits. Therefore, I will still consider this a disputed issue.

FINDINGS OF FACT

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

Rick Arens, the claimant, was 59 years old at the time of the hearing. (Testimony). He was married and had two adult children. (Testimony). Since 2008, he resides on seven acres in Hartford, South Dakota. (Testimony).

Mr. Arens earned a four-year degree in business management from Dakota State Teachers' College in 1985. (Testimony). He worked through a work study program while in college, and also worked for a car dealer. (Testimony). During the summer, he worked jobs in construction and painting. (Testimony).

After college, the claimant worked for A.B. Dick Printing. (Testimony). This was a commission only sales position. (Testimony). He earned enough to survive. (Testimony).

Around 30 years old, Mr. Arens began working with elevators. (Testimony). He worked for Carter Elevator Co. on installation and repair jobs for about eight years. (Testimony). This was a union job and required a great deal of heavy lifting. (Testimony). After eight years at Carter Elevator Co., Mr. Arens obtained his apprenticeship. (Testimony). He moved to Otis Elevator after work at Carter Elevator Co. slowed. (Testimony). He worked in maintenance at Otis Elevator for two years. (Testimony). In 1994, Mr. Arens obtained his elevator mechanic certification. (Defendants' Exhibit C:4).

Mr. Arens moved to Minneapolis for a period of time to work as a modernization superintendent. (Testimony). He worked there for five years. (Testimony). He decided that he wanted to move home, so he returned to South Dakota and became a union tradesman for Kone Elevator from 2008 to 2010. (Testimony).

In 2010, he began working for Schumacher as an elevator technician. (Testimony). While working various customer routes maintaining elevators, Mr. Arens attempted to cultivate new customers while on the road. (Testimony). He progressed into a position as an installation mechanic. (Testimony). He then moved into a modernization role. (Testimony). This required heavy work, including regularly lifting and carrying over 100 pounds. (Testimony).

Mr. Arens sought chiropractic care from Alan Geffre, D.C. in 2010 and 2011. (Joint Exhibit 1:1). He complained of tightness in the left sacroiliac with radicular symptoms in the posterior thigh. (JE 1:1). He also complained of symptoms in his

cervical and upper thoracic area. (JE 1:1). He returned to Dr. Geffre's office in 2016 with continued complaints of tightness in his cervical and upper thoracic areas. (JE 1:1-2). He denied radicular symptoms into the upper extremities. (JE 1:1-2).

Mr. Arens saw Joshua Jorde, D.C., on December 9, 2016, with complaints of bilateral low back and pelvic pain which began in December of 2015. (JE 3:1-9). Mr. Arens described his pain as cramping and tightness. (JE 3:1). Mr. Arens reported that he had a previous issue 15 years prior which was the result of a "significant disc bulge" that resolved with chiropractic care and use of an inversion table. (JE 3:1). He had some more chiropractic care in May of 2017 when he complained of aggravation to his lower back and left SI joint. (JE 3:10). In September of 2018, Mr. Arens sought more chiropractic care for complaints of bilateral lower back and pelvic pain, which he noted was "cramping and tight." (JE 3:11). The chiropractor found Mr. Arens to have grade 2 hypertonicity in the right sacroiliac and sacral muscles during this visit. (JE 3:12). Mr. Arens had more chiropractic care in March of 2019, for pain which began on January 25, 2019. (JE 3:15-18). Mr. Arens had cramping and tightness in his back along with soreness in his thigh. (JE 3:15). Driving made his issues worse. (JE 3:15). He followed up for more chiropractic care in May of 2019 due to lower back pain. (JE 3:19). In July of 2019, Mr. Arens had additional care for right upper sacroiliac pain. (JE 3:21).

For a time, the claimant worked in administrative and sales work. (Testimony). Someone else took over sales for Schumacher, so he no longer was responsible for sales work. (Testimony). At that time, he started doing only installation and modernization. (Testimony). He became certified in his work. (Testimony).

Schumacher provided some job descriptions for an elevator mechanic and a service mechanic. (DE A:1-5). Part of these job duties involve assembling and installing electric and hydraulic freight and passenger elevators, and working on modernization. (DE A:1). In performing these duties, the employee would need to connect electrical wiring, install safety and control devices, cut framework rails, study blueprints and layout locations of frameworks, and drill holes in concrete or steel, among other duties. (DE A:1). These jobs required out of town overnight stays, and various physical capabilities. (DE A:1). In addition to the above examples, a service mechanic answers troubleshooting calls for elevator maintenance. (DE A:3).

Mr. Arens reported to Dr. Geffre's office again on December 16, 2020, complaining of "significant low back pain" on the right side after injuring himself while at work. (JE 1:2). Mr. Arens told the chiropractor that urgent care told him to report to the emergency room. (JE 1:2). It is unclear from this record whether Mr. Arens reported to the chiropractor instead of the emergency room, or if the claimant also reported to the emergency room. (JE 1:2). Dr. Geffre found the claimant to have limited and guarded range of motion in his lumbar spine due to his reported pain. (JE 1:2).

On December 17, 2020, the claimant was unloading beams from the floor of a storage container with an apprentice. (Testimony). He lifted some of the beams, and would then wheel the items into a school where they were installing an elevator. (Testimony). He worked in Sioux Center, Iowa, on the installation job for several weeks and commuted about 90 minutes every other night. (Testimony).

Mr. Arens returned to Dr. Geffre's office on December 23, 2020, for additional chiropractic care. (JE 1:2). Mr. Arens experienced some relief from his previously reported symptoms. (JE 1:2). Mr. Arens told the chiropractor that he wanted to have more subjective pain relief with conservative care. (JE 1:2).

Mr. Arens also visited Sanford OccMed in Sioux Falls, South Dakota, on December 23, 2020, where Rachel Thies, M.D., examined him. (JE 2:1-3). Mr. Arens complained of low back spasm and sharp pain which he rated 8 out of 10. (JE 2:1). Mr. Arens told the doctor that the pain began after lifting a 600-pound piece of steel on December 17, 2020. (JE 2:1). Mr. Arens indicated that he never felt a pop, nor did he have radicular symptoms such as weakness, numbness, or tingling. (JE 2:1). Dr. Thies diagnosed the claimant with low back pain. (JE 2:2). She prescribed orphenadrine and Naproxen. (JE 2:2). Dr. Thies recommended that the claimant see a spine specialist and pursue an MRI; however, Mr. Arens declined these recommendations. (JE 2:2-3). Dr. Thies reviewed the results of some x-rays, which showed no fractures, but did provide her some concern for disk narrowing at L5-S1. (JE 2:3-4). Dr. Thies placed the claimant on restricted duty through January 5, 2021, with no lifting, pushing, pulling, or carrying over 25 pounds. (JE 2:3). He also was to avoid ladders, limit stairs, and sit or stand as needed for his comfort. (JE 2:3). Finally, Dr. Thies recommended that the claimant follow up. (JE 2:3).

On December 24, 2020, Mr. Arens returned to visit Dr. Thies for his continued lower back pain. (JE 2:5-6). He rated his pain 7 out of 10 and told Dr. Thies that he had a "different" feeling in his groin and external genitalia. (JE 2:5). Mr. Arens noted that he took a muscle relaxer as prescribed and awoke feeling "great" and reported that his groin symptoms felt resolved. (JE 2:5). Dr. Thies prescribed the claimant a Medrol Dosepak. (JE 2:6). Due to Dr. Thies' concerns about continued sensory changes in the claimant's groin, she recommended that Mr. Arens report to the emergency room. (JE 2:6). He declined this recommendation. (JE 2:6). Dr. Thies recommended that the claimant avoid chiropractic adjustments and offered physical therapy instead. (JE 2:6). Mr. Arens declined the recommended physical therapy. (JE 2:6). Dr. Thies continued the claimant's work restrictions through January 5, 2021. (JE 2:6).

Mr. Arens had the lumbar MRI as ordered by Dr. Thies on January 15, 2021. (JE 7:1-2). David Krause, M.D., interpreted the findings of the MRI. (JE 7:2). Dr. Krause opined that the MRI showed two things:

1. Congenital narrowing of the spinal canal with superimposed multilevel degenerative spondylosis, most notable at L4-L5 where there is moderate thecal sac stenosis and moderate bilateral neural foraminal stenosis, and at T12-L1 where there is moderate thecal sac stenosis and mild left neural foraminal stenosis.
2. Left L4-L5 facet edema which may represent active facet arthropathy and act as a pain generator.

(JE 7:2).

Mr. Arens returned to see Dr. Thies again on January 18, 2021, with continued complaints of low back pain. (JE 2:7-9). He rated his pain 2 to 3 out of 10, which worsened when he was sitting. (JE 2:7). He described his pain as stiffness with occasional sharp pain up to 10 out of 10 on a daily basis. (JE 2:7). Mr. Arens denied any radicular symptoms, numbness, or weakness. (JE 2:7). Mr. Arens had been attending physical therapy, which provided some relief. (JE 2:7). Dr. Thies reviewed an MRI report, which she opined showed L5 facet arthropathy as the source of his pain along with congenital and incidental findings. (JE 2:7). Dr. Thies recommended that the claimant pursue a facet joint injection if he had no improvement in physical therapy over the next two weeks. (JE 2:8). Dr. Thies continued the prior work restrictions for Mr. Arens through February 5, 2021. (JE 2:8).

On February 5, 2021, Mr. Arens returned to Dr. Thies' office in Sioux Falls. (JE 2:10-11). Mr. Arens rated his low back pain 4 to 5 out of 10. (JE 2:10). Most of his pain was muscular in nature and was described as spasms. (JE 2:10). He continued to deny radiculopathy or weakness. (JE 2:10). Mr. Arens felt that physical therapy helped, but told Dr. Thies that his pain returned before he left the building. (JE 2:10). Dr. Thies found the claimant to have no pain to palpation over the SI joints. (JE 2:10). Dr. Thies referred the claimant to a spinal specialist for further evaluation and treatment. (JE 2:11). Dr. Thies continued placing the claimant on restricted duty with the same restrictions until his next medical visit. (JE 2:11).

Mr. Arens reported to Benjamin Meyerink, M.D. on February 10, 2021, complaining of low back pain "since Christmas." (JE 4:4-9). Mr. Arens also wished to establish care with Dr. Meyerink. (JE 4:4). Mr. Arens told Dr. Meyerink that he hurt his back while at work, and that he had an MRI showing "moderate stenosis" in his lower back. (JE 4:7). Mr. Arens told the doctor that he periodically felt depressed, and no longer enjoyed his job. (JE 4:7). Dr. Meyerink recommended that the claimant continue following-up with occupational health providers at Sanford, and opined that the claimant "likely needs a spinal injection at this point." (JE 4:9). Dr. Meyerink recommended a colonoscopy and a sleep study, but the claimant declined both of these recommendations. (JE 4:9).

Mr. Arens returned to Reinecke Chiropractic Clinic on February 26, 2021, for chiropractic care and adjustments. (JE 3:23). Mr. Arens complained of lower back pain. (JE 3:23). An examination showed areas of spasm, hypomobility and end point tenderness. (JE 3:23). Mr. Arens indicated that his pain was in the left sacroiliac area. (JE 3:23). He rated his pain 8 out of 10. (JE 3:23).

On a referral from Dr. Thies, Mr. Arens saw Thomas Boetel, D.O., on March 1, 2021. (JE 8:1-2). Mr. Arens complained of ongoing back pain, especially in the buttocks. (JE 8:1). Mr. Arens recounted the incident in December of 2020 when he was doing heavy lifting at work and his back seized up. (JE 8:1). He had no pain or issues with his legs. (JE 8:1). He told Dr. Boetel that his pain improved when he sat or drove. (JE 8:1). Mr. Arens recounted his history of back issues, which he treated with chiropractic care and an inversion table. (JE 8:1). Mr. Arens told Dr. Boetel that he had no relief from physical therapy. (JE 8:1). Dr. Boetel reviewed the prior imaging studies,

including the MRI from January of 2021. (JE 8:2). Based upon his examination and review of the imaging studies, Dr. Boetel provided the following diagnoses:

1. Low back pain associated with a reported work injury 12/17/2020.
2. L4-5 herniated disk.
3. L4-5 central stenosis – moderate.
4. Buttock pain, possible neurogenic claudication versus lumbar radiculitis.
5. Lumbar degenerative disk disease.

(JE 8:2).

Dr. Boetel reviewed treatment options with the claimant, including surgery. (JE 8:2). Mr. Arens indicated that pursuing surgery would be something he viewed as a “last resort.” (JE 8:2). Mr. Arens wanted to proceed with an epidural steroid injection. (JE 8:2). Dr. Boetel allowed the claimant to continue his home exercise program and return to work on a modified duty basis with restrictions of lifting 20 pounds at the most, and sitting or standing as tolerated. (JE 8:2).

Dr. Boetel examined Mr. Arens again on April 1, 2021, following his bilateral L5 transforaminal epidural injection by Dr. Boetel on March 10, 2021. (JE 8:3-4). Mr. Arens indicated that he had a 10 percent to 20 percent improvement, though his pain was still greatest on the left side of his lower back. (JE 8:3). Mr. Arens’ pain radiated into his left thigh and at times caused him to have an achy left testicle. (JE 8:3). Dr. Boetel opined that the claimant’s neurologic exam showed no focal weakness, and that the claimant’s symptoms may have a discogenic component. (JE 8:4). Dr. Boetel offered the claimant another injection at the L4 level, to which the claimant consented. (JE 8:4). Dr. Boetel did not provide any changes to the restrictions promulgated on March 1, 2021. (JE 8:4).

On April 30, 2021, Mr. Arens had another visit with Dr. Geffre for chiropractic care. (JE 1:2). Mr. Arens continued to complain of low back symptoms in the lumbosacral SI region. (JE 1:2). Mr. Arens told the chiropractor that he had some relief from injections, but that he wanted subjective symptom relief “to get rid of ‘[c]atch’ in low back with range of motion and movement.” (JE 1:2). Mr. Arens denied having any radicular symptoms into the lower extremity. (JE 1:2).

Mr. Arens returned to Dr. Boetel’s office on May 10, 2021, for continued evaluation of his lower back issues following an April 21, 2021, bilateral L4 transforaminal epidural injection. (JE 8:5-6). Mr. Arens indicated that the injection provided him with 75 percent relief from his symptoms. (JE 8:5). Getting into and out of his car aggravated his pain. (JE 8:5). Dr. Boetel noted that the previous injection to the bilateral L4 transforaminal provided “dramatic improvement,” which allowed the claimant to increase his activity and return to performing his home exercise program. (JE 8:6). Dr. Boetel opined that since the claimant had no focal weakness, this would be a reasonable route to take. (JE 8:6). Dr. Boetel encouraged the claimant to continue his home exercise program and allowed the claimant to begin lifting up to 50 pounds. (JE 8:6). The claimant felt that he could lift up to this amount. (JE 8:6).

The claimant wrote a letter to Schumacher resigning from his employment effective June 1, 2021. (DE B:1). In his letter, Mr. Arens indicated that he was sad, angry, and thankful that his employment with Schumacher was coming to an end. (DE B:1). He then goes on to imply that the leadership at Schumacher wanted to take his skills and “toss them aside.” (DE B:1). He also noted he witnessed a “long series of bad business decisions” at the Sioux Falls office that he could not “in good conscience watch all of my previous hard work and efforts be thrown away like it is.” (DE B:1). He concluded his letter noting that the company had “changed” under new leadership and he disagreed with the direction in which that leadership was taking Schumacher. (DE B:1). His letter makes no mention of his injury, capabilities, how he was treated following his injury, or his objection to any specific duties expected of him. (DE B:1).

On June 10, 2021, Dr. Boetel saw Mr. Arens again for his ongoing low back pain. (JE 8:7-8). Mr. Arens continued to have a dull ache, stiffness, and occasional stinging or sharp pain across his lumbosacral junction. (JE 8:7). The pain worsened with “transitions and bending.” (JE 8:7). However, he was doing about 80 percent better despite his frustrations. (JE 8:7). Mr. Arens told Dr. Boetel that he retired effective June 1, 2021, and that he was not working. (JE 8:7). He did note that he would “probably” look for another job in the future. (JE 8:7). Dr. Boetel reassured the claimant that it was a positive development that his neurologic examination was “nonfocal weakness.” (JE 8:8). Dr. Boetel discussed proceeding with a repeat bilateral L4 transforaminal injection, to which Mr. Arens agreed. (JE 8:8). Dr. Boetel continued to allow Mr. Arens to lift up to 50 pounds. (JE 8:8).

Mr. Arens reported to Sanford Medical Center Radiology Spine Center on June 23, 2021, for an injection by Dr. Boetel. (JE 7:3-4). Dr. Boetel provided the claimant with a bilateral L4 transforaminal epidural steroid injection to treat his lumbar radiculitis and herniated disc. (JE 7:3). Mr. Arens tolerated the procedure well. (JE 7:4).

Mr. Arens called Dr. Boetel’s office on July 2, 2021, and noted that he worked on a farm over the weekend and subsequently experienced a sharp increase in pain. (JE 8:9). He could not sit, walk, or stand due to pain in his left hip and left leg along with increased numbness and tingling. (JE 8:9). It was recommended that Mr. Arens present himself to the emergency room. (JE 8:9).

Dr. Boetel examined Mr. Arens again on July 8, 2021, for his continued low back pain issues. (JE 8:10-11). Mr. Arens claimed that the repeat injection performed on June 23, 2021, provided him with no additional improvement. (JE 8:10). In fact, Mr. Arens told Dr. Boetel that his pain flared up on July 1, 2021, after he drove out to visit a friend in Pine Ridge, South Dakota. (JE 8:10). Dr. Boetel continued to opine that, from a neurologic perspective, the claimant was without focal weakness. (JE 8:11). He also had no clear radicular symptoms. (JE 8:11). Dr. Boetel recommended that Mr. Arens proceed with a neurosurgical consultation, but in the meantime to continue his home exercise program and swimming program. (JE 8:11). Dr. Boetel also allowed the claimant to continue lifting up to 50 pounds. (JE 8:11).

On July 21, 2021, Mr. Arens visited Sanford Clinic Neurosurgery and Spine, where he was examined by Adam Walker, APRN-CNP. (JE 9:2-4). Mr. Arens

complained of lower back pain that radiated into his hips, left leg, and left buttock. (JE 9:2). The claimant described his pain as worse when he gets out of bed in the morning. (JE 9:2). Mr. Arens told Mr. Walker that the first two injections provided him with relief, while the third did not. (JE 9:2). Mr. Arens told Mr. Walker that he was looking for a surgical recommendation. (JE 9:2). Mr. Walker opined that Mr. Arens had multiple levels of degenerative changes throughout his lumbar spine and it was difficult to ascertain which level of the spine was responsible for the pain. (JE 9:2). Mr. Walker told the claimant that he would review the findings with Dr. Gust and potentially consider a new MRI and a new EMG. (JE 9:2).

Mr. Arens reported to the office of Benjamin Meyerink, M.D. on July 21, 2021, indicating he had a work injury, and previously saw a doctor at Sanford. (JE 4:2). He told the office staff that he was in “a lot of pain” and demanded relief “tonight” for back pain including prescriptions for baclofen and gabapentin. (JE 4:2). Dr. Meyerink noted that he had not seen Mr. Arens for some time and that a spine or pain doctor should be prescribing the requested medication. (JE 4:2).

Mr. Arens called Dr. Meyerink’s office on July 22, 2021, expressing frustration that no one followed up with him from his previous visit. (JE 4:2). Mr. Arens complained that he was “in so much pain” and needed Dr. Meyerink to “do something to help him.” (JE 4:2). Mr. Arens then showed up to Dr. Meyerink’s office on July 22, 2021, without an appointment, “yelling at staff that he needed medication” from his primary care provider and generally making the staff “very uncomfortable.” (JE 4:1). The record noted that the clinic previously called the claimant and left a message that he would need to follow up with the provider who prescribed the medication managing his pain. (JE 4:1). A nurse indicated that Mr. Arens was “very irrate [sic].” (JE 4:1). After the staff informed Mr. Arens that they could not see him that day, nor would they prescribe him with the requested medication, he called a Sanford clinic from their office and demanded that he be seen that day. (JE 4:1).

Subsequent to his outburst at Dr. Meyerink’s office, Avera Medical Group sent Mr. Arens a letter indicating that he was no longer welcome as a patient at any of their facilities due to his “rude, threatening behavior.” (JE 4:10).

Mr. Arens called Dr. Boetel’s office on July 22, 2021, requesting pain relievers as he needed “to get something so I [Mr. Arens] can survive.” (JE 8:13). Mr. Arens also expressed frustration with “the process,” as he felt he was not getting attention. (JE 8:13). Dr. Boetel prescribed the claimant with gabapentin and Flexeril. (JE 8:12). On July 23, 2021, Dr. Boetel’s office indicated that Mr. Arens had some issues with lab test results and that he should seek guidance from a primary care physician. (JE 8:14). Mr. Arens told Dr. Boetel that he recently “fired” Dr. Meyerink as his primary care physician and was seeking an independent primary care physician who was not affiliated with a hospital network. (JE 8:14).

Dr. Geffre saw Mr. Arens again on August 2, 2021, for what Mr. Arens described as “severe pain” in the lower back in the L5-S1 region. (JE 1:3). Mr. Arens indicated that the pain traveled into his left buttock and posterior thigh. (JE 1:3). Dr. Geffre

observed that the claimant had limited and guarded range of motion due to his subjective reports of discomfort. (JE 1:3).

Kwang Chang, M.D., saw the claimant on August 5, 2021, for an EMG examination. (JE 5:1-2). Dr. Chang noted that Mr. Arens had an MRI in March of 2021, which had “some indication of moderate foraminal narrowing,” and evidence of degenerative changes at L5-S1 with mild bilateral neuroforaminal stenosis. (JE 5:1). Dr. Chang performed the EMG and found electrical evidence of left L5 and/or S1 radiculopathy with denervation. (JE 5:2).

Dr. Gust discussed the matter with Mr. Walker on August 16, 2021. (JE 9:5). Dr. Gust recommended a left L4-5 microdiscectomy, left L5-S1 far lateral microdiscectomy, and lateral recess decompression. (JE 9:5). Should Mr. Arens decline the surgery, Dr. Gust recommended that the claimant follow up with a pain clinic for conservative care. (JE 9:5).

On September 1, 2021, Mr. Arens had another lumbar MRI at Sanford Medical Center. (JE 7:5-6). Keith McCollister, M.D. interpreted the results of the MRI and compared them to the January 15, 2021, MRI results. (JE 7:6). Dr. McCollister opined as to the following findings on the MRI:

1. Multilevel degenerative changes . . .
2. A broad central extrusion with inferior migration at L4-5 has enlarged compared to 1/15/2021 and contributes to a moderate to severe canal stenosis.

(JE 7:6).

Mr. Arens was sent to CNOS in Dakota Dunes, South Dakota, for an IME with Michael Espiritu, M.D., on September 8, 2021. (JE 10:1-5). Dr. Espiritu reviewed Mr. Arens' medical history and met with him. (JE 10:1-3). Mr. Arens continued to have back pain and displayed tenderness to palpation. (JE 10:4). Mr. Arens indicated that he had back pain with left-sided leg pain and numbness which worsened when he bent forward. (JE 10:1). Swimming and a home exercise program helped alleviate his pain. (JE 10:1). Mr. Arens noted that he had no weakness. (JE 10:1). Mr. Arens also told Dr. Espiritu that he was currently retired. (JE 10:1). Based upon his review of the medical records, his examination of the claimant, and his interview with the claimant, Dr. Espiritu opined that, as the result of the December 17, 2020, work injury, Mr. Arens had an L4-5 disc extrusion, L4-5 stenosis with possible neurogenic claudication, and intermittent left lower extremity radiculitis at L5. (JE 10:4-5). Dr. Espiritu also indicated that the December 17, 2020, work injury remained a contributing cause for Mr. Arens' symptoms at the time of his examination. (JE 10:5). Dr. Espiritu did not feel that Mr. Arens had yet achieved maximum medical improvement (“MMI”), as the recent MRI results showed the disc herniation to have increased without any re-injury. (JE 10:5). Since the claimant had yet to achieve MMI, Dr. Espiritu could not provide any impairment rating. (JE 10:5).

Dr. Espiritu opined that the claimant's treatment to date had been appropriate and necessary. (JE 10:5). He noted that possible treatment could include an interlaminar injection at L4-5 rather than a bilateral transforaminal injection. (JE 10:5). Dr. Espiritu agreed with Dr. Gust's surgical recommendations. (JE 10:5). Dr. Espiritu noted that Mr. Arens would likely require temporary restrictions after the surgery, but deferred to Dr. Gust as to what those may be. (JE 10:5). Dr. Espiritu opined that the claimant should achieve MMI between six weeks and three months after any surgery. (JE 10:5). Finally, Dr. Espiritu opined that the claimant had a congenital narrowing of his lumbosacral spinal canal. (JE 10:5). This meant that Mr. Arens had "less space than normal" in his spinal canal. (JE 10:5). Dr. Espiritu concluded that Mr. Arens' soft disc extrusion combined with the December 17, 2020, injury and pre-existing congenital stenosis, combined to cause his symptoms and continued issues. (JE 10:5).

Mr. Walker saw Mr. Arens again on September 29, 2021, for continued complaints of left buttock pain. (JE 9:8). Mr. Walker deferred in his notes to the recommendations of Dr. Gust. (JE 9:8). Troy Gust, M.D. opined that he reviewed the matter with Mr. Walker and also reviewed the MRI results. (JE 9:11). The MRI showed "disk herniation at L4-5 with compression of the left L5 nerve root," along with underlying recess stenosis at L5-S1 on the left. (JE 9:11). Dr. Gust opined that the claimant had attempted all of the conservative care available to him, and that surgery would be the next step. (JE 9:11). Dr. Gust recommended a left-sided L5-S1 microdisectomy to alleviate the compression of the left L5 nerve root along with a decompression with hemilaminectomy and partial facetectomy on the left at L5-S1 to alleviate radicular complaints. (JE 9:11).

On October 29, 2021, Dr. Gust welcomed Mr. Arens to Sanford Medical Center for surgical treatment of Mr. Arens' back issues. (JE 7:7-8). Dr. Gust noted pre- and post-operative diagnoses of left L4-5 herniated disk with radiculopathy and left L5-S1 lateral recess stenosis with radiculopathy. (JE 7:7). Dr. Gust performed a left L5-S1 lateral recess decompression with partial facetectomy and hemilaminectomy, a left L4-5 microdisectomy, and a microscopic dissection. (JE 7:7). Mr. Arens tolerated the surgery without any issues. (JE 7:8).

Patricia Callaghan, R.N., who appears to be a nurse case manager, attended an appointment with the claimant at Dr. Gust's office on December 6, 2021. (JE 6:1-2). She noted that the claimant ambulated with a normal gait and no longer had pain in his left lower back. (JE 6:1). He also told the nurse that the numbness and pain in his left leg resolved since having surgery. (JE 6:1). Mr. Arens indicated that he could bend over to pick things up off the floor, that he continued to swim and exercise, and that he was apprehensive about seeking another job. (JE 6:1). Dr. Gust advised the claimant to work on his core strength in order to alleviate some claimed right-sided muscle tightness. (JE 6:1). Dr. Gust provided no restrictions and allowed Mr. Arens to resume all activities. (JE 6:1).

Mr. Arens returned to see Mr. Walker on December 6, 2021, as a follow-up to his prior surgery. (JE 9:13-15). Mr. Arens felt 75 percent improvement following the surgery. (JE 9:13). He now complained of "some right hip pain and pain just to the right of midline in his lumbar spine." (JE 9:13). Mr. Arens could not remember if this was

present prior to the surgery or not. (JE 9:13). Mr. Arens took ibuprofen occasionally and noted he wished to proceed with home exercises and a “Fit Back workout book” rather than formal physical therapy. (JE 9:13). Dr. Gust allowed the claimant to return to work the next day with no restrictions. (JE 9:13). However, Dr. Gust noted that a job with heavy duty lifting and manual labor “may not be the most optimal for him.” (JE 9:13).

On April 11 and 12, 2022, Mr. Arens underwent an “FCA” at Sanford Health OccMed in Sioux Falls. (CE 3:1-2). It is unclear from the examination and report provided what, precisely, FCA stands for. The undersigned is familiar with Functional Capacity Evaluations (also known as FCEs), but not an FCA. Nevertheless, the results of the FCA appear to be similar to those reported in an FCE report. The report indicates that Mr. Arens provided full effort on 13 out of 13 tests, and provided consistent performance on 27 tests. (CE 3:2). The following findings were noted in the FCA:

- Limit carrying to conveniently placed weights and level surfaces.
- Limit from floor lifting
- Limit to shoulder lifting
- Avoid uneven surfaces or jerking motions, although pushing and pulling forces were not significantly limited
- No limitations to hand grip, pinch grip, hand coordination, sitting, low level activity, or elevated activity
- Greater than normal ergonomic breaks while capable of frequent standing and walking
- Limit bending and reaching activities due to increased strain placed on the low back muscles
- Recommended limiting carrying of any significant weight on steps

(CE 3:1). The claimant displayed the ability to occasionally lift and carry up to 60 pounds, frequently lift and carry 30 pounds, and constantly lift and carry 15 pounds.

(CE 3:1). The “FCA” also found that Mr. Arens could occasionally lift 50 pounds from the floor and to the shoulder, frequently lift 25 pounds from the floor and to the shoulder, and constantly lift 12.5 pounds from the floor and to the shoulder. (CE 3:1). There is no indication that these are restrictions or merely measurements of his capabilities. (CE 3:1). The examiner opined that the above limitations were due to increased left-sided lumbar and gluteal pain with activity. (CE 3:2). The examiner noted that they did not have a job description for Mr. Arens’ work with Schumacher, but still opined that Mr. Arens’ capabilities would not be a good fit with them based upon Mr. Arens’ description of his job. (CE 3:2).

Thomas Ripperda, M.D., examined the claimant on May 3, 2022, for complaints of left lumbar radiculopathy. (Claimant’s Exhibit 2:1-7). Mr. Arens told Dr. Ripperda that his pain was 1 out of 10, but it worsened with regular household activities such as vacuuming or doing dishes. (CE 2:2). Mr. Arens denied having any numbness or tingling at the time of the examination. (CE 2:2). Dr. Ripperda then reviewed medical records from Mr. Arens’ treatment. (CE 2:2-3).

Dr. Ripperda opined that the claimant achieved MMI. (CE 2:1). Dr. Ripperda then issued an impairment rating pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (CE 2:1). Dr. Ripperda indicated that Mr. Arens fit the DRE lumbar category 3 on page 384 and Table 15-3. (CE 2:1). Dr. Ripperda continued, “[t]his is consistent with page 383 which states category 3 is for individuals who have a history of previous radiculopathy cause by disc herniation or lateral spinal stenosis but have improved or become asymptomatic following surgery.” (CE 2:1). Since Mr. Arens had improvement of his symptoms following his surgery, while also having positive EMG findings, Dr. Ripperda felt that this more adequately evaluated him. (CE 2:1). Using Table 15-3 on page 384 of the Guides, Dr. Ripperda provided a 13 percent whole person impairment rating. (CE 2:1).

On June 10, 2022, the claimant returned to Dr. Geffre’s chiropractic clinic with complaints of tingling in the second and third fingers of his hands. (JE 1:3). The tingling complaints were more prominent on the right. (JE 1:3).

Douglas Martin, M.D., F.A.A.D.E.P., F.A.C.O.E.M., F.A.A.F.P., C.I.M.E., C.E.D.I.R., examined the claimant for purposes of completing an IME on August 10, 2022. (DE F:1-8). Dr. Martin is board certified in family medicine. (DE E:1). He also is a certified independent medical evaluator, and a certified medico-legal evaluator. (DE E:1). Dr. Martin is the medical director for UnityPoint Health Occupational Medicine in Sioux City, Iowa. (DE E:2). He also serves as the co-chair of the American Medical Association’s editorial panel for the Guides to the Evaluation of Permanent Impairment. (DE E:6).

On August 15, 2022, Dr. Martin issued a report of his findings based upon his evaluation of Mr. Arens and his review of the medical records. (DE F:1-8). Mr. Arens told Dr. Martin that he tweaked his back while lifting some materials in a storage container onto a cart. (DE F:1). Mr. Arens indicated that he initially thought “a couple of days of self-care would make this go away, but unfortunately it did not.” (DE F:1). Mr. Arens reviewed his medical care with Dr. Martin. (DE F:1-2). Mr. Arens told Dr. Martin that following his surgery, his left lower extremity symptoms were eliminated; however, he had some “intermittent difficulties” with stiffness and soreness. (DE F:2). Dr. Martin opined that these appeared to be “fear-avoidance” concerns regarding his activity levels moving forward. (DE F:2). Mr. Arens told Dr. Martin that his main concerns revolved around stiffness in the morning. (DE F:3). Dr. Martin also opined that Dr. Ripperda’s ratings were not done properly. (DE D:2-3). Dr. Martin criticized the “FCA” results, as all that he was provided with was a “very cursory summary sheet” which did not indicate “whether there are validity criteria” incorporated. (DE F:3).

Upon examining Mr. Arens, Dr. Martin found that he could move around the examination room, sit and stand from a chair, and sit and stand from the examination table with no difficulties. (DE F:3). Mr. Arens had no observed gait issues. (DE F:4). Dr. Martin found the claimant to have negative straight leg and crossed straight leg raise tests, which indicated a lack of radiculopathy. (DE F:3). Mr. Arens exhibited no pain over the sciatic notches or sacroiliac joints. (DE F:4). Dr. Martin also did not find muscle tone loss or spasm in the claimant’s lower back. (DE F:4). Dr. Martin measured the range of motion in the claimant’s lumbar spine and found that Mr. Arens had 60

degrees of lumbar flexion, and 25 degrees of lumbar extension and right and left lateral flexion. (DE F:4).

Dr. Martin diagnosed Mr. Arens as follows:

1. Multilevel lumbar degenerative disk disease.
2. Left L4-5 herniated nucleus pulposus.
3. History of left lower extremity L5 plus or minus S1 radiculopathy.
4. Status post leftward L5-S1 decompression operation and leftward L3-L5 mini discectomy.

(DE F:4). Based upon these diagnoses, Dr. Martin recommended no additional care for Mr. Arens. (DE F:4). He also opined that Mr. Arens had an excellent prognosis. (DE F:4). With regard to causation, Dr. Martin felt that Mr. Arens had an underlying degenerative condition that was aggravated by his December of 2020 work incident. (DE F:4-5).

Dr. Martin continues his report by discussing the extent of the claimant's permanent impairment based upon the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (DE F:5). Dr. Martin noted that Mr. Arens achieved MMI, however he only indicated that this was "the date that he was released by his surgeon." (DE F:5-6). Dr. Martin noted that the first thing that should be consulted is Section 15.2 and Figure 15-4 of the Guides. (DE F:5). Dr. Martin noted that, since this is a more than single level issue in Mr. Arens' back, the evaluation must use the range of motion method. (DE F:5). Dr. Martin provides a thorough explanation of this method. (DE F:5). He noted that the claimant had no residual neurological deficits in his physical examination, and thus there would be no residual impairment. (DE F:5). In using the range of motion tables in the Guides, including Table 15-8 and 15-9, Dr. Martin opined that the claimant's range(s) of motion were "within normal limits," which would equate to a 0 percent permanent impairment. (DE F:5). Therefore, Mr. Arens' impairment would be based upon the diagnosis valued in Table 15-7 on page 404. (DE F:5). Dr. Martin opined that, based upon his review of the Guides, and experience, Mr. Arens has a 9 percent whole person impairment. (DE F:5).

Like the neurosurgery recommendation, Dr. Martin allowed Mr. Arens to return to normal work activities without restrictions. (DE F:5). Dr. Martin questioned the validity of the "FCA," as he noted that the report did not contain "true validity criteria," and appeared to contain tolerance issues and symptom-based limitations. (DE F:5-6). Dr. Martin opined that these did not have anything to do with "a true functional analysis." (DE F:6).

The claimant provided a vocational evaluation conducted by Rick Ostrander, L.P.C., C.R.C., which was completed on November 3, 2022. (CE 4:1-10). Mr. Ostrander interviewed Mr. Arens on October 13, 2022 regarding "the nature of his injury and subsequent treatment, his current level of function, as well as information regarding his education, work history, background, etc." (CE 4:1). Mr. Ostrander then reviewed Mr. Arens' medical records, treatment history, the results of the "FCA," and Mr. Arens' job history. (CE 4:1-5). Mr. Ostrander cited to the U.S. Department of Labor

Classifications and the Dictionary of Occupational Titles to categorize Mr. Arens' past employment under the following job titles: elevator constructor, elevator repairer, elevator-constructor supervisor, elevator service representative, job superintendent, office machine sales representative, automobile body repairer, construction worker, and painter. (CE 4:5). Mr. Ostrander used the OASYS software program to help complete his analysis, and determined that the claimant had "11 occupational classifications for which Mr. Arens has highly transferable skills to nearly 5400 [sic] positions within his labor market." (CE 4:7). When considering the limitations provided in the "FCA," there were only three classifications with under 3,000 positions identified. (CE 4:7). Based upon this, Mr. Ostrander opined that Mr. Arens had an approximate 70 percent "reduction in employability," and a "reduction in labor market access" of about 50 percent. (CE 4:7). When Mr. Ostrander expanded the labor market to all occupations for which Mr. Arens "is reasonably qualified," to include unskilled and entry-level type occupations, he found that Mr. Arens had a less than 10 percent loss of employability and labor market. (CE 4:7). Mr. Ostrander then cited to a number of factors and opined that Mr. Arens had a 77 percent loss of earning capacity. (CE 4:8-9). Mr. Ostrander's analysis is not detailed enough to determine how he reached that conclusion. Specifically, Mr. Ostrander does not cite to what positions Mr. Arens could work that would result in this kind of loss of earning capacity, their average rates of pay, and their prevalence in the market.

On November 7, 2022, Amanda Ruhland, M.S., C.R.C., issued an "Industrial Disability/Employability Assessment" for Mr. Arens. (DE H:1-9). Ms. Ruhland is a vocational rehabilitation counselor and job placement specialist for Stricklett & Associates, Inc., in Omaha, Nebraska. (DE G:1-2). Her educational background includes a Master of Arts degree in rehabilitation counseling from the University of Iowa. (DE G:1). Ms. Ruhland is certified as a rehabilitation counselor. (DE G:2). In completing her report, Ms. Ruhland referenced the claimant's educational transcripts, Mr. Ostrander's evaluation, a number of medical reports, the "FCA" report, and the claimant's deposition. (DE H:1-2). Ms. Ruhland also interviewed Mr. Arens. (DE H:1).

Mr. Arens noted his union membership and completion of an apprenticeship program in his interview with Ms. Ruhland. (DE H:3). He also noted that he held an electrical license in order to work in Minnesota and Nebraska. (DE H:3). As a condition of holding this license, Mr. Arens completed certain continuing education courses. (DE H:3). Mr. Arens told Ms. Ruhland that he had experience using computers and software such as Microsoft Office, however he had not used computer software "in a while." (DE H:3). Ms. Ruhland noted that Mr. Arens' work history involved the following titles from the Dictionary of Occupational Titles, Fourth Edition, as published by the United States Department of Labor: elevator constructor, elevator repairer, elevator-constructor supervisor, elevator service representative, elevator sales representative, office machine sales representative, automobile body repair helper, construction worker, and painter. (DE H:4-5). Based upon these titles, Ms. Ruhland opined that the claimant worked some light duty jobs, some medium duty jobs, and some heavy duty jobs. (DE H:5).

Ms. Ruhland then endeavored to assess Mr. Arens' employability based upon two potential scenarios. (DE H:6). The first scenario involves the restrictions and results of the report of Dr. Martin. (DE H:6). Based upon Dr. Martin's opinions, Ms. Ruhland opined that Mr. Arens had no loss of earning capacity. (DE H:6). Ms. Ruhland moved on to considering Mr. Arens' employability in light of the results of the "FCA." (DE H:6-7). Ms. Ruhland used the OASYS software in order to consider transferable skills which Mr. Arens may possess. (DE H:6). Based upon this analysis, she concluded that Mr. Arens had an approximate 30 percent loss of access to jobs in the Hartford, South Dakota, area. (DE H:6-7). Ms. Ruhland then undertook a labor market analysis based upon the results of the "FCA," and other relevant factors. (DE H:7). She included additional types of positions in the open labor market, such as sales representative, retail management trainee, inside sales associate, and route sales representative, for which Mr. Arens may also qualify. (DE H:7). Based upon this, Ms. Ruhland concluded that Mr. Arens would have a 44 percent to 71 percent loss of wage in the Hartford, South Dakota, area, considering his pre-injury reported wage of two thousand three hundred nineteen and 75/100 dollars (\$2,319.75) per week. (DE H:7). Ms. Ruhland noted that Mr. Arens could return to "many" of his prior positions and "would also be a qualified job candidate for other positions that are available in his labor market area." (DE H:7). Ms. Ruhland's report assumed that Mr. Arens could tolerate a full-time work schedule. (DE H:7). Ms. Ruhland concluded, "[i]f consideration is given to the restrictions recommended in 4/12/22 [sic] FCA and to his access to jobs in the open labor market, it is my opinion that Mr. Arens' loss of earning capacity would be approximately 45% [sic]." (DE H:7).

Ms. Ruhland proceeded to comment on Mr. Ostrander's vocational assessment report. (DE H:8). She notes that Mr. Ostrander's report only considers three figures for loss of access, and then adopts the highest loss of access figure in order to reach a final loss of earning capacity opinion. (DE H:8). Ms. Ruhland helpfully points out that Mr. Ostrander also did not appear to complete a labor market research analysis when he completed his report. (DE H:8). She opines, "... it is imperative that a Vocational Counselor complete labor market research in order to assess one's ability to earn wages in their labor market." (DE H:8). She continues by noting that Mr. Ostrander failed to indicate what types of positions that Mr. Arens' was capable of working. (DE H:8). Had Mr. Ostrander completed labor market research, Ms. Ruhland felt that he would have found more skilled positions in the open labor market for which Mr. Arens may have qualified. (DE H:8). Finally, Ms. Ruhland is critical of Mr. Ostrander only providing one opinion, which only takes into account the restrictions promulgated by the "FCA," rather than also considering Dr. Martin's opinions. (DE H:8).

After his injury, the claimant continued working his job because it did not require heavy labor. (Testimony). Schumacher then sent him to adjust other elevators and allowed him to work a few weeks of light duty. (Testimony). The claimant testified that, eventually, Schumacher told him that work was getting slow and that he would need to work part time and collect workers' compensation for the other half of his pay. (Testimony). He did not want to do this. (Testimony). Mr. Arens was then sent to train a new tech in Fort Dodge, Iowa, while he worked full time. (Testimony). This was a 200-mile commute one way. (Testimony). He stayed in a hotel during these trips,

received a per diem for meals, and drove a company vehicle each way. (Testimony). He did this for several months, as it was the only full-time light duty work offered to him by Schumacher. (Testimony).

Eventually, Mr. Arens resigned his employment with Schumacher, as noted above. (Testimony). He testified that he felt forced out because of the claim that they "ran out of work" for him. (Testimony). He felt that the branch manager did not want him around. (Testimony). After ending his employment with Schumacher, Mr. Arens testified that he saw his not working as "retirement," as he felt that other elevator companies would not hire someone who was injured. (Testimony). While Mr. Arens testified that he "retired" from Schumacher, he had no retirement party when he left. (Testimony). He testified that he wished to work until he was 62 years old, at which time, he planned on retiring. (Testimony).

At the time of the work incident, Mr. Arens earned fifty-nine and 64/100 dollars (\$59.64) per hour. (Testimony).

Mr. Arens agreed that he had some cervical and upper thoracic muscle tightness and sought care with Alan Geffre, D.C. dating back to 2004. (JE 1:1). Mr. Arens testified that having surgery relieved his back pain. (Testimony). He no longer described his pain as excruciating. (Testimony).

At the time of the hearing, Mr. Arens testified that he woke in the morning with stiffness. (Testimony). To alleviate that, he took ibuprofen on an as-needed basis. (Testimony). He attempted swimming as an exercise to limit his pain, and also bought a back belt to promote good posture. (Testimony). Mr. Arens purchased an inversion bed to stretch his back, which he continued to use in an effort to stretch his back and alleviate some of his pain. (Testimony).

Mr. Arens testified that he looked for work since leaving Schumacher. (Testimony). He testified that he reached out to other elevator companies, however, he did not provide proof of this beyond his testimony. (Testimony). He indicated that he would like to find full-time work. (Testimony). He applied for a job with the Volunteers of America as a maintenance generalist, but did not receive an offer of employment. (Testimony). He also contacted the South Dakota Department of Labor and applied for a position with the State of South Dakota. (Testimony). Mr. Arens also attempted vocational rehabilitation through the State of South Dakota. (Testimony). He worked for a short time as a part-time file clerk at a car dealership, where he earned about ten and 00/100 dollars (\$10.00) per hour. (Testimony). He left that position because the commute was too long when compared to what he was paid. (Testimony). He applied for a paper shredding job, but that employer hired someone else. (Testimony). Mr. Arens testified that he worked part-time building train cars for children to ride in behind tractors at fairs. (Testimony). He does this for about three days per week for about twenty-five and 00/100 dollars (\$25.00) per hour. (Testimony).

Mr. Arens felt that he could not perform any of his former elevator jobs due to the physical demand. (Testimony). He earned about two thousand six hundred and 00/100 dollars (\$2,600.00) per month from his union pension at the time of the hearing, which did not include deductions for health insurance. (Testimony). Mr. Arens testified that he

was no longer a union member and would have some limitations on his pension payments if he began working in the elevator industry again. (Testimony). However, he later admitted under cross-examination that he could stop his pension and be reinstated to the union in order to begin working again in the elevator industry. (Testimony).

CONCLUSIONS OF LAW

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

Industrial Disability

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss of use of a scheduled member under Iowa Code 85.34(2)(a)-(u) or for loss of earning capacity under Iowa Code 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

An injury to a scheduled member may, because of aftereffects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in Iowa Code 85.34(a) – (u) are applied. Lauhoff Grain v. MacIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.1d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

Iowa Code 85.34(2)(v) provides:

In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs 'a' through 'u' hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred. A determination of the reduction in the employee's earning capacity caused by the disability shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury. If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity.

In this matter, the parties have stipulated that the claimant's permanent partial disability is an industrial disability. Additionally, the claimant's injuries are to his lower back. This is not a scheduled member, but is evaluated as an injury to the body as a whole.

Since the 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 Ry. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "[i]t 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 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).

A loss of earning capacity due to voluntary choice or lack of motivation to return to work is not compensable. Malget v. John Deere Waterloo Works, File No. 5048441 (Remand Dec. May 23, 2018); Rus v. Bradley Puhmann, File No. 5037928 (App. December 16, 2014); Gaffney v. Nordstrom, File No. 5026533 (App. September 1, 2011); Snow v. Chevron Phillips Chemical Co., File No. 5016619 (App. October 25, 2007); Copeland v. Boone's Book and Bible Store, File No. 1059319 (App. November 6, 1997); See also Brown v. Nissen Corp., 89-90 IAWC 56, 62 (App. 1989) (no prima facie showing that claimant is unemployable when claimant did not make an attempt for vocational rehabilitation). However, proximity to retirement is not considered in reducing the extent of industrial disability. See Second Injury Fund v. Nelson, 544 N.W.2d 258 (Iowa 1995).

Mr. Arens was 59 years old at the time of the hearing. He testified that he earned a four-year degree in business management from Dakota State Teachers' College in 1985. After college, he worked in sales for a printing company. He then began a lengthy career in the elevator business. He initially started in installation and repair, and worked in a union apprenticeship. As a union member who obtained his elevator mechanic certification in 1994, he continued working in maintenance roles with various companies. He described moving from one job to another after business would slow. Mr. Arens moved to Minneapolis, Minnesota, for about five years to work in management for an elevator company. Eventually, he returned to work as a union tradesman in 2008. This was due to a desire to be closer to his family.

In 2010, Mr. Arens began work for Schumacher as an elevator technician. He provided service to customers and attempted to gain new customers for the company. He eventually moved to a position as an installation mechanic and a modernization role. This required heavy lifting, time on the road, and installing specific portions of new

elevators. By the time he ended his career with Schumacher, he earned fifty-nine and 64/100 dollars (\$59.64) per hour.

In mid-December of 2020, Mr. Arens was working on a job site installing a new elevator in Sioux Center, Iowa. He was unloading beams from the floor of a storage container with an apprentice. As he lifted some beams, he felt "significant low back pain." He reported to his chiropractor and did not go to the emergency room. He had another visit with the chiropractor before finally seeing an occupational medicine doctor. Eventually, Mr. Arens had an MRI in January of 2021. This showed congenital narrowing of the spinal canal with degenerative spondylosis, especially at L4-5 in his lumbar spine. The MRI also showed edema at the left L4-5, which the radiologist opined represented facet arthropathy that acted as a pain generator. After a few more treatments, Mr. Arens was referred to a spinal specialist, Dr. Boetel. Dr. Boetel diagnosed Mr. Arens with low back pain, an L4-5 herniated disk, moderate L4-5 central stenosis, buttock pain, and lumbar degenerative disk disease. Mr. Arens eventually had several injections in an attempt to alleviate his pain. These provided him with some relief.

Before Mr. Arens saw a neurosurgeon, he saw Dr. Boetel on July 8, 2021. Dr. Boetel noted that the claimant had no focal weakness, and that Mr. Arens showed no clear radicular symptoms. By late July of 2021, Mr. Arens was referred to a neurosurgeon for evaluation. At that time, Mr. Arens complained of continued lower back pain that radiated into his hips, left leg, and left buttock. Mr. Arens told the neurosurgeon that he had three injections, two of which provided him with relief. Mr. Arens told the neurosurgeon's office that he wanted to proceed with surgery.

Dr. Gust, the neurosurgeon, ordered an EMG and a repeat MRI. The EMG showed electrical evidence of left L5 and/or S1 radiculopathy with denervation. The repeat MRI showed a broad central extrusion with inferior migration at L4-5 that had enlarged compared to the January of 2021 MRI, which contributed to "moderate to severe canal stenosis." Dr. Gust recommended that the claimant have a left L4-5 microdiscectomy, a left L5-S1 far lateral microdiscectomy, and a lateral recess decompression. Dr. Espiritu, in an IME report, confirmed that the claimant had an L4-5 disc extrusion, L4-5 stenosis with possible neurogenic claudication, and intermittent left lower extremity radiculitis at L5, and that it was caused by his December of 2020, work injury.

Dr. Gust performed a left L5-S1 lateral recess decompression with partial facetectomy and hemilaminectomy, a left L4-5 microdiscectomy, and a microscopic dissection surgery. Dr. Gust diagnosed Mr. Arens with a left L4-5 herniated disk with radiculopathy and left L5-S1 lateral recess stenosis with radiculopathy. By December 6, 2021, Mr. Arens told Dr. Gust's office that he felt 75 percent improved following his surgery. Mr. Arens took ibuprofen on occasion to relieve his pain, and also desired to perform a home exercise program. At that time, Dr. Gust, the treating surgeon, released Mr. Arens to return to work the next day with no restrictions, while noting that a job with heavy lifting and manual labor "may not be the most optimal for him."

At the time of the hearing, Mr. Arens testified that he awoke in the morning with stiffness, for which he took ibuprofen. He did not testify to many limitations, such as being unable to care for his yard or his home.

For a time after his injury, Mr. Arens returned to work with Schumacher. He worked for a short time in his former position because, as he testified, he did not have to perform any heavy lifting. Mr. Arens testified that Schumacher told him that work was slowing, and he would need to move to a part-time position while collecting workers' compensation benefits to make up for the difference in his pay. He expressed displeasure with this solution. He eventually was placed in a full-time, light-duty position with Schumacher. This involved driving from South Dakota to Fort Dodge, Iowa, and training a new employee. Mr. Arens was provided with a truck, lodging, and payments for meals, while he was at the Fort Dodge location.

Mr. Arens sent a letter to Schumacher indicating that he resigned his employment effective June 1, 2021. In the letter, Mr. Arens described his anger and sadness over what he felt was a change in attitude and "bad business decisions" by the leadership of the Sioux Falls office that caused him to voluntarily resign his position. He further noted that he could not "in good conscience watch all of my previous hard work and efforts be thrown away like it is." Of note, his letter makes no mention of his injury or his subsequent pain or issues. For a letter of resignation, the letter is fairly long and descriptive as to Mr. Arens' grievances with Schumacher as a company. To have the letter not include information regarding the claimant's injury is illustrative of the claimant's view of his injury at the time. Also of note, medical records subsequent to this letter discuss the claimant's voluntary retirement. The claimant contradicted this to some extent with his testimony, as he indicated he did not plan to retire at age 57, and planned to work until 62. He also testified that he felt forced out due to the claim that Schumacher "ran out of work" for him. The difference between the explanation in his letter and his testimony is concerning.

Since leaving employment with Schumacher, Mr. Arens testified that he has had difficulty finding full-time employment. He indicated that he would like to work on a full-time basis. He testified that he reached out to other elevator companies, but felt that no one would want to hire him due to his pain and/or injury issues. Mr. Arens provided no proof that he ever applied with these companies. Also, his testimony on this issue is rather unclear. Based upon the evidence in the record, it does not appear that he ever applied to any other elevator companies.

Mr. Arens worked for a short time at a car dealership as a file clerk. He testified that he earned ten and 00/100 dollars (\$10.00) per hour. Mr. Arens quit this job because the cost to commute was not worth the length of the commute from his home to the car dealership. He testified that he applied for a job with a paper shredder, with Volunteers of America, and with the State of South Dakota. However, he was not hired for any of these positions. Mr. Arens has since reached out to the South Dakota Department of Labor in order to begin some sort of vocational counseling or job search, but this was done in close proximity to the hearing, so he had no results from his search.

At the time of the hearing, Mr. Arens worked for a novelty train manufacturer. He prepared parts for painting that were later assembled into small-scale train cars that are pulled behind tractors at various fairs and community events. He did not have any problems performing the functions of this job. He earned twenty-five and 00/100 dollars (\$25.00) per hour at this job on a part-time basis.

Mr. Arens also earns money by collecting his union pension. His monthly pension of two thousand six hundred and 00/100 dollars (\$2,600.00) is reduced by a certain amount as it also pays for his health insurance. Mr. Arens' pension collection would cease if he returned to work in the elevator business. He also could not work in the business without returning to union membership. He testified that he could reactivate or rejoin the union by paying a fee.

Based upon the foregoing, I have some concerns with the claimant's motivation to return to work. While he has sought employment more recently, the idea that he resigned from work with Schumacher due to the aftereffects from his injury is disproven by the contents of his resignation letter. In that letter, he makes no mention at all of his injury. He takes the time to criticize the leadership of his branch and discuss the pride that he had in his work, but does not mention that they were treating him any differently due to his injury. In fact, Mr. Arens worked for some time in a full-time, light-duty position following his return to work. There is no indication that this was ending prior to his resignation. The claimant also provided no proof that he reached out to work with other elevator companies beyond his testimony, which, on this particular issue, was not convincing. Also, during an appointment with Dr. Gust, nurse case manager Ms. Callaghan documented that Mr. Arens expressed apprehension on seeking additional employment. Taken in concert with Mr. Arens lashing out at a doctor's office demanding treatment, to the extent that the doctor's office and health system indicated he was no longer welcome, there is an indication that Mr. Arens is not afraid to speak his mind or express his opinion. Yet his letter of resignation is silent as to his injury and subsequent claimed symptoms being a reason for his resignation.

Mr. Arens asserts that he was provided restrictions in a valid "FCA" performed at Sanford Health OccMed in Sioux Falls. The report in the evidentiary record appears to be a summary. I also am unfamiliar with an "FCA" and how it compares to an FCE. The results of the FCA are considered valid, according to the report itself. It is unclear who conducted the FCA, or their qualifications, as the signature at the bottom is illegible. The following findings were reported in the FCA:

- Limit carrying to conveniently placed weights and level surfaces.
- Limit from floor lifting
- Limit to shoulder lifting
- Avoid uneven surfaces or jerking motions, although pushing and pulling forces were not significantly limited
- No limitations to hand grip, pinch grip, hand coordination, sitting, low level activity, or elevated activity
- Greater than normal ergonomic breaks while capable of frequent standing and walking

- Limit bending and reaching activities due to increased strain placed on the low back muscles
- Recommended limiting carrying of any significant weight on steps

The claimant also displayed the ability to lift up to certain amounts. There is no indication that any of the weight amounts listed or the listed limitations above were adopted as formal restrictions. The examiner simply agreed that Mr. Arens was "limited" on these issues. Additionally, the portion discussing Mr. Arens' limitations makes no formal adoption as to the weight amounts listed in the report. The examiner noted that the limitations were due to the claimant's left-sided lumbar issues. The examiner opined, "... given his description of job duties at that time do not feel his current physical capabilities would be a good match." The examiner prefaces this by noting that they did not have a job description for the claimant's employment with Schumacher and thus based their opinion solely on the claimant's description of his duties. This calls into question the reliability of the results of the report. The examiner was basing their opinions on potential limitations, not on an objective job description from the employer, but on the subjective memory of the claimant. The examiner also opined, "[i]f client does find a position he is interested in the above listed physical findings could be used to determine if the position would be a good match." Again, this is not an adoption of restrictions, and is phrased more as though it was a recommendation.

Treating physician Dr. Gust opined that the claimant could return to work with no restrictions. Dr. Gust did, however, note that a job with heavy duty lifting and manual labor "may not be the most optimal for him." According to the report of the nurse case manager, Ms. Callaghan, Dr. Gust clarified that Mr. Arens required no restrictions and could resume all activities. Ms. Callaghan noted that Mr. Arens was able to bend over and pick things up off the floor, and expressed apprehension about seeking another job. Dr. Ripperda, who provided an impairment rating, makes no mention of work restrictions. Dr. Martin allowed the claimant to return to normal work activities without restrictions and also questioned the validity of the FCA results. Dr. Gust and Dr. Martin's opinions as to this issue are more persuasive.

At the time of the claimant's work injury, he earned fifty-nine and 64/100 dollars (\$59.64) per hour. He worked on a full-time basis. At the time of the hearing, he was working part-time and making about twenty-five and 00/100 dollars (\$25.00) per hour. Simply based on this, it would appear that the claimant had a loss of earnings. However, my analysis goes deeper than that due to the presence of two, competing, vocational evaluations.

Based upon the above findings, the claimant sought a vocational evaluation from Risk Ostrander. Mr. Ostrander reviewed the treatment records, Mr. Arens' background information, and the results of the FCA. Mr. Ostrander only considered the results of the FCA in completing his analysis. As noted above, it is unclear whether the results of the FCA are truly restrictions or simply documentations of Mr. Arens' limitations at the time of the evaluation. Based upon the FCA results alone, Mr. Ostrander opined that Mr. Arens had a 77 percent loss of earning capacity. He also opined that Mr. Arens had

a less than 10 percent loss of employability and labor market. It is unclear exactly how Mr. Ostrander came to this conclusion, and/or what positions Mr. Arens may be able to obtain based upon Mr. Ostrander's review.

The defendants obtained an "Industrial Disability/Employability Assessment" for Mr. Arens performed by Amanda Ruhland. Ms. Ruhland is highly qualified according to her curriculum vitae. She has a Master of Arts in rehabilitation counseling, and is certified as a rehabilitation counselor. Ms. Ruhland reviewed Mr. Ostrander's evaluation, the claimant's educational background, a number of medical reports, the results of the FCA, and the claimant's deposition. Ms. Ruhland also interviewed Mr. Arens. Ms. Ruhland evaluated Mr. Arens employability and performed a labor market survey two different ways. The first was based upon the results of Dr. Martin's IME and opinion that the claimant requires no restrictions. Based upon Dr. Martin's opinions, Ms. Ruhland opined that Mr. Arens had no loss of earning capacity. Using a computer program, Ms. Ruhland found that Mr. Arens had an approximately 30 percent loss of access to jobs in the Hartford, South Dakota, area. Based upon the results of the FCA, Ms. Ruhland opined that the claimant had a 44 percent to 71 percent wage loss in the Hartford, South Dakota, area. She also opined that Mr. Arens could return to "many" of his prior positions and "would also be a qualified job candidate for other positions that are available in his labor market area." She concluded that Mr. Arens would have an approximately 45 percent loss of earning capacity based upon the results of the FCA. Ms. Ruhland also helpfully pointed out some of the limitations in Mr. Ostrander's report. Among her criticisms are at least one that the undersigned noted above; namely, that Mr. Ostrander made no mention of the positions which may be available to Mr. Arens.

I find the opinions of Ms. Ruhland to be more persuasive. As noted, Ms. Ruhland provided a more thorough report, and considered two potential scenarios, while Mr. Ostrander only considered one report. Ms. Ruhland also discussed positions which may be available to Mr. Arens in his labor market. Considering this, Mr. Arens still has a loss of earnings.

Finally, we turn to the functional impairment ratings. While these are not determinative, they do play a role in the industrial disability analysis. The claimant points to the IME of Dr. Ripperda. Dr. Ripperda opined that the claimant achieved MMI and qualified under the DRE lumbar category 3 of the AMA Guides. Dr. Ripperda opined that the claimant had a 13 percent whole person impairment. The defendants point to the claimant's IME with Dr. Martin. Dr. Martin is a certified independent medical evaluator and serves as co-chair of the AMA's editorial panel for the Guides to the Evaluation of Permanent Impairment. Based upon his examination and using the Guides, Dr. Martin opined that the claimant had a 9 percent whole person impairment.

When considering all of the relevant factors as discussed above, I find that the claimant has a 20 percent industrial disability. As noted, I am concerned by a lack of motivation in returning to the workforce. Mr. Arens provided no proof of applying to companies or jobs that are similar to the one he worked at Schumacher. It appears that he has limited himself to certain jobs. Additionally, it is uncertain whether the FCA results are truly restrictions or are simply a snapshot in time of his capabilities during the FCA evaluation. No doctor adopted these restrictions. Mr. Arens worked for a time at

his job before resigning for what appears to be a reason unrelated to his injury. However, the claimant does have a documented loss of earnings based upon the results of his injury. He also has between a 9 percent and 13 percent whole person impairment based upon the examinations of Dr. Martin and Dr. Ripperda.

Iowa Code 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 first of the three items to occur ends a healing period. See Waldinger Corp. v. Mettler, 817 N.W.2d 1 (Iowa 2012); Evenson v. Winnebago Indus., 881 N.W.2d 360 (Iowa 2016); Crabtree v. Tri-City Elec. Co., File No. 5059572 (App. Mar. 20, 2020). 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, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986). Compensation for permanent partial disability shall begin at the termination of the healing period. Id.

Dr. Gust opined that the claimant could return to work effective December 7, 2021. Based upon my review of the evidence in the record, this is when the healing period ends. Accordingly, industrial disability benefits should begin as of that date.

Compensation for an industrial disability shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Iowa Code section 85.34. Therefore, the claimant is entitled to 100 weeks of compensation at the stipulated rate of compensation commencing on December 7, 2021. (20 percent x 500 weeks = 100 weeks).

Reimbursement for IME pursuant to Iowa Code section 85.39

Iowa Code 85.39(2) states:

If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination.

...

An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection shall be based on the typical fee charged by a medical provider

to perform an impairment rating in the local area where the examination is conducted.

Iowa Code section 85.39(2).

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See *Schintgen v. Economy Fire & Casualty Co.*, File No. 855298 (App. April 26, 1991). An opinion finding a lack of causation is tantamount to a zero percent impairment rating. *Kern v. Fenchel, Doster & Buck, P.L.C.*, 2021 WL 3890603 (Iowa App. 2021).

The claimant requests reimbursement for the IME expenses of Dr. Ripperda. Dr. Ripperda's examination was completed before the examination of Dr. Martin. Additionally, no doctor opined that there was a lack of causal connection between Mr. Arens' injury and his impairment. The only potential justification for awarding the IME expenses of Dr. Ripperda is the IME of Dr. Espiritu; however, Dr. Espiritu noted that he could not provide an impairment rating as the claimant had yet to achieve MMI. This is not an opinion finding a lack of causation. Based upon the foregoing, I decline to order the defendants to reimburse the costs of Dr. Ripperda's IME pursuant to Iowa Code section 85.39.

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 5. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code section 86.40. 876 Iowa Administrative Code 4.33(6) provides:

[c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

Pursuant to the holding in *Des Moines Area Regional Transit Authority v. Young*, 867 N.W.2d 839 (Iowa 2015), only the report of an IME physician, and not the examination itself, can be taxed as a cost according to 876 IAC 4.33(6). The Iowa Supreme Court reasoned, "a physician's report becomes a cost incurred in a hearing because it is used as evidence in lieu of the doctor's testimony," while "[t]he underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition."

Id. (Noting additionally that “[i]n the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition.”) The commissioner has found this rationale applicable to expenses incurred by vocational experts. See Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App. December 17, 2018); Voshell v. Compass Group, USA, Inc., File No. 5056857 (App. September 27, 2019).

The claimant requests reimbursement for the impairment rating provided by Dr. Ripperda, the FCA with Sanford Occupational Medicine, and a deposition transcript. I decline to award the claimant costs for the deposition transcript, as the claimant did not present this evidence into the record. Additionally, the rule does not allow for an assessment of costs for a deposition transcript of a party. I also decline to award the costs of the claimant’s IME with Dr. Ripperda. The invoice provided in Claimant’s Exhibit 5:1 only indicates that six hundred fifty and 00/100 dollars (\$650.00) was paid by the claimant’s firm, and does not present an invoice for the IME. Based upon Young, only the report of a physician, and not the examination itself, can be assessed as a cost. There is no breakdown of the costs of Dr. Ripperda’s report. The same logic applies to the one thousand seven hundred and 00/100 dollars (\$1,700.00) FCA. There is no breakdown as to the cost of the report versus the cost of the examination itself. Therefore, I decline to award the costs of the FCA report.

ORDER

THEREFORE, IT IS ORDERED:

That the defendants shall pay the claimant one hundred (100) weeks of permanent partial disability benefits at the agreed upon rate of one thousand three hundred ninety-eight and 90/100 dollars (\$1,398.90) per week commencing on December 7, 2021.

That, as stipulated, the defendants are entitled to credit for 50.571 weeks of benefits at the rate of one thousand three hundred ninety-eight and 90/100 dollars (\$1,398.90) per week.

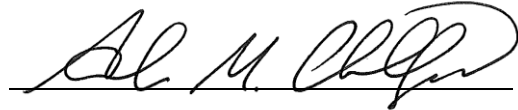
That the claimant’s request for reimbursement of expenses for an IME pursuant to Iowa Code section 85.39 is denied.

That the claimant’s request for an assessment of costs is denied.

That the defendants shall pay accrued weekly benefits in a lump sum together with interest. All interest on past due weekly compensation benefits shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

That the defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to 876 Iowa Administrative Code 3.1(2) and 876 Iowa Administrative Code 11.7.

Signed and filed this 29th day of March, 2023.

A handwritten signature in black ink, appearing to read "Al M. Phillips", written over a horizontal line.

ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

David King (via WCES)

Sarah Kuehl Kieber (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.