

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSEPH GARVEY,

Claimant,

vs.

XPO LOGISTICS FREIGHT, INC.,

Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,Insurance Carrier,
Defendants.

File Nos. 5063689, 5063690, 5067904

ARBITRATION DECISION

Head Note Nos.: 1400, 1402.20, 1800,
1803, 1804, 3002, 4100**STATEMENT OF THE CASE**

The claimant, Joseph Garvey, filed several petitions for arbitration seeking workers' compensation benefits from XPO Logistics Freight, Inc., as the employer, and Indemnity Insurance Company of North America, as the insurance carrier. Jacob Peters appeared on behalf of the claimant. Cory Abbas appeared on behalf of the defendants.

The matter came on for hearing on July 1, 2020, before deputy workers' compensation commissioner Andrew M. Phillips in Des Moines, Iowa. An order issued on March 13, 2020, and updated June 1, 2020, by the Iowa Workers' Compensation Commissioner, In the Matter of Coronavirus/COVID-19 Impact on Hearings (Available online at: <https://www.iowaworkcomp.gov/order-coronavirus-covid-19> (last viewed July 29, 2020)) amended the hearing assignment order in each case before the Commissioner scheduled for an in-person regular proceeding hearing between March 18, 2020, and September 14, 2020. The amendment makes it so that such hearings will be held by Internet-based video, using CourtCall. The parties appeared electronically, and the hearing proceeded without significant difficulties. The matter was fully submitted on July 31, 2020, after briefing by the parties.

File Number 5063689

The record in this case consists of Joint Exhibits 1-8, Claimant's Exhibit 1, and Defendants' Exhibits A and D. Defendants' Exhibits B and C were removed based upon an agreement of the parties.

File Number 5063690

The record in this case consists of Joint Exhibits 9-13, Claimant's Exhibits 2-4, and Defendants' Exhibits E-H.

File Number 5067904

The record in this case consists of Joint Exhibits 14-18, Claimant's Exhibits 5-7, and Defendants' Exhibits I-K.

Testimony under oath was also taken from the claimant, John Garvey, and defendants' representative Michael Nullmeyer. Amy Pedersen was appointed the official reporter and custodian of the notes of the proceeding. The exhibits were accepted without objection.

STIPULATIONS

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

File Number 5063689

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 scope of employment, on November 6, 2013.
3. The alleged injury is a cause of temporary disability during a period of recovery.
4. The alleged injury is a cause of permanent disability.
5. The permanent disability is an industrial disability, and the commencement date of permanent disability benefits, if any are awarded, is March 3, 2014.
6. The claimant was married, entitled to 2 exemptions and had gross earnings of \$938.20 per week, resulting in a weekly compensation rate of \$597.39.
7. The claimant was paid 78.357 weeks of permanent partial disability compensation at \$651.62 per week. The defendants also have an Iowa Code 85.34(4) credit of \$1,428.28 and an Iowa Code 85.34(5) credit of \$4,249.30.

Additionally, there is no dispute as to the entitlement for temporary disability and/or healing period benefits. There is no dispute as to medical benefits. Defendants waived their affirmative defenses.

File Number 5063690

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 scope of employment, on January 22, 2016.
3. The alleged injury is a cause of temporary disability during a period of recovery.
4. The permanent disability is an industrial disability, and the commencement date of permanent disability benefits, if any are awarded, is February 8, 2016.
5. The claimant was married, and entitled to 2 exemptions.

Additionally, there is no dispute as to the entitlement for temporary disability and/or healing period benefits. There is no dispute as to medical benefits. Defendants waived their affirmative defenses.

File Number 5067904

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 scope of employment, on February 15, 2018.
3. The alleged injury is a cause of temporary disability during a period of recovery.
4. The alleged injury is a cause of permanent disability.
5. The permanent disability is an industrial disability, and the commencement date of permanent disability benefits, if any are awarded, is February 19, 2019.
6. The claimant was married, entitled to 2 exemptions and had gross earnings of \$1,097.72 per week, resulting in a weekly compensation rate of \$689.67.
7. The claimant was paid 50 weeks of permanent partial disability compensation at \$707.91 per week, and 20 weeks of permanent partial disability compensation at \$689.67 per week, continuing through the date of the hearing. The defendants also have an Iowa Code 85.34(4) credit of \$956.93, and an Iowa Code 85.34(5) credit of \$912.00.
8. Costs listed in Claimant's Exhibit 7 have been paid.

Additionally, there is no dispute as to the entitlement for temporary disability and/or healing period benefits. There is no dispute as to medical benefits. Defendants waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

File Number 5063689

1. The extent of claimant's permanent disability.

File Number 5063690

1. Whether the alleged injury is a cause of permanent disability.
2. The extent of permanent disability, if any is awarded.
3. The appropriate rate of compensation.

Upon reviewing the post-hearing briefs, the claimant noted that subsequent to the arbitration hearing in this matter, they agreed to drop any arguments as to causation or extent of permanent disability related to the January 22, 2016, work injury. Therefore, the only issue to be considered for this file/date of injury is the appropriate rate of compensation.

File Number 5067904

1. The extent of permanent disability.
2. Assessment of costs.

FINDINGS OF FACT

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

This case involves three different dates of injury. The file numbers and corresponding dates of injury are as follows:

File Number 5063689 – November 6, 2013

File Number 5063690 – January 22, 2016

File Number 5067904 – February 15, 2018

For ease of reading, the undersigned will review Mr. Garvey's medical treatment in chronological order. Each date of injury and the issues related to that date of injury will be addressed individually in the Conclusions of Law portion of this decision.

Joseph Garvey, the claimant, was 56 years old at the time of the hearing. He is currently a resident of Atlantic, Iowa. He married in September of 2013. Mr. Garvey graduated from high school and then attended the University of Nebraska-Omaha for approximately two to three years, where he studied business. (Defendants' Exhibit A:2; Def. Ex. K:51). He did not earn a college degree. (Def. Ex. A:2). After departing from the University of Nebraska-Omaha, Mr. Garvey worked for Commonwealth Electric as a warehouse manager. (Testimony). Mr. Garvey worked with Commonwealth Electric for 2 years, at which time, he began employment with his father at a family owned bar in Omaha, Nebraska. (Testimony). Mr. Garvey bartended there for about three years. (Testimony). Mr. Garvey moved on to a position with Sky Harbor Air Service in Omaha, Nebraska. (Testimony). Mr. Garvey worked for Sky Harbor for about 6 years, fueling airliners and corporate jets. (Testimony). On December 12, 2005, Mr. Garvey was hired as a driver sales representative for Con-Way, which later became XPO Logistics Freight, Inc. Mr. Garvey worked at Con-Way until March of 2007. (Testimony). Upon leaving Con-Way the first time, Mr. Garvey spent six months with UPS Freight. (Testimony). Mr. Garvey then sold employee benefit insurance with Garvey Associates in Omaha, Nebraska, for about four years. (Testimony). Mr. Garvey rejoined Con-Way in April of 2012. (Testimony).

Mr. Garvey was a driver sales representative for Con-Way. (Def. Ex. K:52; Testimony). XPO is an "LTL" carrier, which stands for "less-than-truckload." (Testimony). As an LTL carrier, XPO delivered freight loads for multiple customers and to multiple customers. (Testimony). Mr. Garvey worked with customers in Iowa and Nebraska. (Testimony). Mr. Garvey delivered pallets of freight to customers. (Testimony). Some customers had loading docks, but many did not, which required manually pallet-jacking freight. (Testimony). Some of the loads were quite heavy. (Testimony). Mr. Garvey worked 45 to 48 hours per week, which included overtime. (Testimony).

On June 6, 2019, XPO Logistics forwarded a letter to Mr. Garvey indicating that his employment was terminated effective June 6, 2019. (Cl. Ex. 6:1). Mr. Garvey attempted to engage in the job reassignment process on May 28, 2019, and June 5, 2019, but due to his permanent restrictions, he was unable to return to a position with XPO. (Cl. Ex. 6:1).

On November 3, 2013, while working, Mr. Garvey was bending over and picking up a trailer door. (Def. Ex. A:3). When the door was part way up, the door became stuck. (Def. Ex. A:3). Mr. Garvey reported feeling a pop in his neck and pain in his shoulders and hands. (Def. Ex. A:3). Due to this injury, Mr. Garvey claims that his ability to lift, climb, and do overhead work is severely curtailed. (Def. Ex. A:4).

On January 22, 2014, Mr. Garvey reported to Myrtue Medical Center in Harlan, Iowa. (Joint Exhibit E 1:1). Upon arrival he was examined by Donald Klitgaard, M.D. (JE 1:1). Mr. Garvey reported that in December, he was lifting a door and injured his left shoulder. (JE 1:1). The injury caused some left shoulder pain, numbness, and

tingling. (JE 1:1). Within the last day, Mr. Garvey noted his left hand becoming numb with right-handed numbness and tingling, as well. (JE 1:1). Numbness and tingling were worse in the right hand than the left. (JE 1:1). Upon examination by Dr. Klitgaard, slight tenderness of the shoulder was noted with full abduction and external rotation of the left shoulder. (JE 1:1). The impression/diagnosis by Dr. Klitgaard was bilateral upper extremity paresthesias. (JE 1:1). Due to his history of a shoulder injury with some intermittent mild neck discomfort with bilateral symptoms, he was placed on meloxicam. (JE 1:1). Dr. Klitgaard recommended an EMG/NCV to further evaluate the cause of Mr. Garvey's symptoms. (JE 1:1).

Mr. Garvey had an EMG/NCV on January 24, 2014, at Neurology, LLP, in Omaha, Nebraska. (JE 2:3-4). The impression of Joel Cotton, M.D., the electromyographer who conducted the study, was that there was evidence of bilateral distal median neuropathies seen clinically in moderate to severe bilateral carpal tunnel syndrome. (JE 2:4). Additionally, Dr. Cotton noted mild prolongation of both ulnar motor conduction velocities across the elbow that was compatible with mild bilateral ulnar neuropathies at the elbows. (JE 2:4). There was no evidence found of cervical radiculopathy or peripheral neuropathy. (JE 2:4).

On February 10, 2014, Mr. Garvey commenced care with John A. McCarthy, M.D. of GIKK Ortho Specialists in Omaha, Nebraska. (JE 3:5). Mr. Garvey continued to complain of significant paresthesias and had an EMG showing moderate to severe carpal tunnel syndrome bilaterally. (JE 3:5). Dr. McCarthy indicated to Mr. Garvey that the next step would be surgical intervention, as conservative measures would not make a significant difference to his condition. (JE 3:5).

One week later, on February 17, 2014, Dr. McCarthy performed a bilateral endoscopic carpal tunnel release on Mr. Garvey. (JE 3:6). There were no complications with the surgery. (JE 3:6).

Mr. Garvey followed-up with Dr. McCarthy at GIKK Ortho Specialists on May 21, 2014. (JE 3:7-8). Mr. Garvey reported that his recovery from the surgery was going well, but that he had a recurrence of shoulder pain. (JE 3:7). His pain was worse on the right than the left, and he noted the pain began while lifting the door on the end of a trailer. (JE 3:7). Dr. McCarthy noted no acute changes over the cervical spine, and that his symptoms were symmetrical despite being more severe on the right. (JE 3:7). Dr. McCarthy assessed Mr. Garvey with the following diagnoses: 1. bilateral shoulder pain with bursitis tendinitis; 2. possible SLAP injury right greater than left; and, 3. Status post bilateral carpal tunnel release doing well. (JE 3:7). An ultrasound was done of Mr. Garvey's shoulders, which showed no acute tendinosis or additional pathology. (JE 3:7). Nonetheless, Dr. McCarthy still performed an injection into the posterior aspect of the glenohumeral joint and subacromial space. (JE 3:7). Dr. McCarthy recommended exercises, anti-inflammatories, and icing. (JE 3:8). Dr. McCarthy noted that Mr. Garvey could continue his regular job duties, and if there were significant flare-ups, an MRI would be indicated. (JE 3:8).

Dr. McCarthy examined Mr. Garvey again on June 13, 2014. (JE 3:9). Mr. Garvey's paresthesias and his functional range of motion were improved. (JE 3:9). While his left shoulder was significantly improved, his right shoulder continued to present issues. (JE 3:9). There were no acute issues with his cervical spine. (JE 3:9). Dr. McCarthy's recommendation continued to be "common sense and time," but he also noted that Mr. Garvey needed an MRI arthrogram. (JE 3:9). Dr. McCarthy speculated that Mr. Garvey may have a SLAP tear that an MRI would show. (JE 3:9).

The MRI ordered by Dr. McCarthy occurred on June 25, 2014, at Bergan Mercy Medical Center. (JE 4:17). The MRI to the right shoulder was compromised to some extent by patient motion. (JE 4:17). The impression from the interpreting physician was that there was no evidence of a SLAP lesion. (JE 4:17).

On July 9, 2014, Mr. Garvey returned to Dr. McCarthy's office. (JE 3:10). Functionally, Mr. Garvey was doing well; however, he reported soreness and restrictions in reaching due to his right shoulder issues. (JE 3:10). Relative to his carpal tunnel syndrome, Dr. McCarthy placed Mr. Garvey at maximum medical improvement (MMI) with no restrictions on his activity. (JE 3:10). Dr. McCarthy also assessed a four percent permanent partial impairment to Mr. Garvey's right wrist and hand and a three percent permanent partial impairment to Mr. Garvey's left wrist and hand. (JE 3:10). Dr. McCarthy noted that there were no plans for additional evaluation and/or intervention to the right shoulder, as the results of the MRI indicated some mild changes with no significant pathology. (JE 3:10). No impairment was assessed to his right shoulder because Dr. McCarthy felt that there was none. (JE 3:10).

Mr. Garvey returned to Myrtue Medical Center on August 13, 2014. (JE 1:2). During this visit, Sarah Devine, M.D. examined Mr. Garvey. (JE 1:2). He complained of neck pain from a November 6, 2013, work injury wherein he was bending over to pick up a door that was stuck. (JE 1:2). His neck continued to hurt and now included a popping sound from his ear towards the shoulder and caused instant headache, nausea and pain. (JE 1:2). A previous x-ray showed mild degenerative changes, per Mr. Garvey's report to Dr. Devine. (JE 1:2). He attempted to lift a trailer door the day prior to this visit which caused him to have intense pain. (JE 1:2). Mr. Garvey presented to the medical center in order to determine his working limitations while awaiting a formal neck evaluation. (JE 1:2). Dr. Devine examined Mr. Garvey and noted that whenever Mr. Garvey would look upward, his pain would significantly increase. (JE 1:2). Dr. Devine's impression was that Mr. Garvey had neck pain. (JE 1:2). She noted the need for an MRI and physical therapy, and that he should not be driving or loading trucks until he had an MRI. (JE 1:2). She also prescribed him with oxycodone for his pain. (JE 1:2).

On August 20, 2014, Mr. Garvey had an MRI of his cervical spine at Cass County Memorial Hospital, in Atlantic, Iowa. (JE 5:18). The study was noted to be technically limited. (JE 5:18). The results were: moderate diffuse disc degenerative change, moderate spondylosis C5-6, and C7-T1 level moderate broad-based posterior

protrusion of disc osteophyte complex on the right side with narrowing of the lateral recess and neural foramen. (JE 5:18).

Mr. Garvey presented to Nebraska Spine Center, LLP, Spine and Pain Centers of Nebraska, where Timothy A. Burd, M.D., examined him, on August 21, 2014. (JE 6:19-23). Mr. Garvey complained of neck pain and headaches. (JE 6:19). He also complained of a headache in the posterior occiput. (JE 6:19). Mr. Garvey noted worsening pain when bending his head to the left or the right, which causes cracking, severe headaches, and nausea. (JE 6:19). Dr. Burd reviewed the imaging previously performed. (JE 6:22). Mr. Garvey reported no extremity symptoms despite the significant disc herniation at C7-T1. (JE 6:23). His headaches were noted to be "severe and debilitating." (JE 6:23). Dr. Burd prescribed physical therapy, Ultram, and allowed Mr. Garvey to return to work with light duty restrictions including no driving. (JE 6:23).

On September 18, 2014, Mr. Garvey visited John R. Massey, M.D., at Nebraska Spine Center, LLP, for a cervical interlaminar epidural steroid injection at C6-7. (JE 6:24). He followed-up this visit with another trip to see Dr. Burd on September 23, 2014. (JE 6:25-27). Mr. Garvey felt that physical therapy was helpful, but noted that the injection provided minimal relief of his symptoms. (JE 6:25). However, the injection did resolve his headaches in the short-term. (JE 6:25). After the short-term relief, the injection only provided 40 percent relief. (JE 6:25). During his visit, Mr. Garvey continued to complain of neck pain and headaches. (JE 6:25). Dr. Burd's plan remained conservative care and returning Mr. Garvey to work without restrictions on September 24, 2014. (JE 6:27). If Mr. Garvey successfully returned to work for two weeks, then Dr. Burd would place him at MMI. (JE 6:27). If he could not work full duty, then Dr. Burd would recommend a functional capacity evaluation (FCE). (JE 6:27).

Mr. Garvey had a facet joint injection at right C7-T1 on October 30, 2014. (JE 6:28-29). This was due to continued back pain that failed to respond to conservative management. (JE 6:28). Immediately after the injection, Mr. Garvey noted no relief of his typical discomfort. (JE 6:29).

Mr. Garvey visited Dr. McCarthy again on November 19, 2014. (JE 3:11-12). He continued to complain of pain in his bilateral shoulders, with his left being worse recently. (JE 3:11). He was doing well with regards to his hands, and his right shoulder was "doing reasonably well" with some mild achy pain. (JE 3:11). X-rays of the left shoulder showed minimal degenerative changes of the left AC joint with no subacromial calcification. (JE 3:11). Dr. McCarthy assessed Mr. Garvey with acute bursitis of the left shoulder. (JE 3:11). The plan was to proceed with observation. (JE 3:11). Dr. McCarthy indicated that acute intervention was unnecessary; however, Dr. McCarthy noted the potential for an MRI of the left shoulder. (JE 3:11). He was given restrictions of no lifting over 15 pounds on the left side elbow to side and no lifting over 1 pound overhead on the left side. (JE 3:11).

On December 15, 2014, Mr. Garvey reported to Nebraska Health Imaging for an MRI of the left shoulder, as ordered by Dr. McCarthy. (JE 3:13). The MRI showed moderate acromioclavicular degenerative joint disease, and probable mild glenohumeral degenerative joint disease. (JE 3:13). The interpreting physician noted that they suspected a possible anterior-inferior labral tear. (JE 3:13).

Mr. Garvey returned to Dr. McCarthy's office on December 18, 2014, for a follow-up after his MRI. (JE 3:14). He continued to have significant pain over his left shoulder. (JE 3:14). The MRI results were noted, and Dr. McCarthy added that there was "no sign of real rotator cuff pathology. (JE 3:14). Light duty was noted to be unavailable, so Dr. McCarthy recommended a course of physical therapy to return Mr. Garvey to work activities. (JE 3:14). He continued to have restrictions including no lifting over ten pounds with the left arm, no lifting over five pounds overhead, and a return to regular duty by January 5, 2015. (JE 3:14).

Excel Physical Therapy issued a letter to Dr. McCarthy on January 7, 2015. (JE 7:41-42). Mr. Garvey attended 8 physical therapy visits in the work hardening program since December 22, 2014. (JE 7:41). Mr. Garvey reported improved range of motion and strength in his shoulder, but that he had issues with the cervical injection. (JE 7:41). No issues were seen with shoulder range of motion, cervical range of motion, or lumbar range of motion. (JE 7:41). The therapist drafting the letter placed Mr. Garvey in the medium-heavy to heavy physical demand level based upon his dynamic lifting. (JE 7:41). Mr. Garvey planned to return to work on January 12, 2015, and Excel planned on one more work hardening visit prior to discharging him with a return to work plan in place. (JE 7:41).

On February 11, 2015, Mr. Garvey returned to GIKK Ortho Specialists and Dr. McCarthy with continued complaints of left shoulder pain. (JE 3:15-16). His left shoulder pain was significantly improved with conservative measures and time. (JE 3:15). He had no acute mechanical changes upon examination of his shoulder. (JE 3:15). Dr. McCarthy assessed him with improved left shoulder pain. (JE 3:15). Dr. McCarthy recommended he return to regular job duties with no additional restrictions and/or limitations. (JE 3:15). Dr. McCarthy placed him at MMI and assessed him with a two percent permanent partial impairment to his left upper extremity. (JE 3:15-16). The shoulder "is not normal," but Mr. Garvey was "overall very happy with what he" could and could not do. (JE 3:16).

On September 15, 2015, Jan J. Golnick, M.D., F.A.H.S., of the Neurological and Headache Center, examined Mr. Garvey for purposes of an independent medical evaluation (IME), arranged by the defendant/employer. (JE 8:43-51). Dr. Golnick is a fellow of the American Academy of Disability Evaluating Physicians, a Certified Independent Medical Examiner, and a fellow of the American Headache Society. (JE 8:51). During the examination, Mr. Garvey recounted the incident of November 6, 2013. (JE 8:44). He then recounted the breadth of his medical care to date. (JE 8:44-45). Dr. Golnick also reviewed the medical records related to Mr. Garvey's care. (JE 8:44-45).

At the time of the IME, Mr. Garvey continued working for Conway as a driver despite constant neck pain and frequent headaches. (JE 8:45). By the end of the day, Mr. Garvey reported headaches. (JE 8:45-46). Mr. Garvey indicated that he had stabbing pain in the neck area, on the left trapezius shoulder area, corresponding to the left C4-5 nerve root distribution. (JE 8:47). Dr. Golnick noted that Mr. Garvey was pleasant, cooperative, and attentive. (JE 8:48). During the examination, Mr. Garvey sat comfortably for 30 to 45 minutes with no significant pain behavior. (JE 8:48). Upon physical examination, Dr. Golnick found tenderness over the posterior cervical spine at C5-6. (JE 8:48). Dr. Golnick also found tenderness over the cervical paraspinal muscles. (JE 8:48). Dr. Golnick indicated the following impressions or diagnoses of Mr. Garvey:

1. Chronic neck pain due to aggravation previously asymptomatic cervical spondylosis with C5-C6 disk osteophyte complex and C7-T1 right disk protrusion with foraminal stenosis.
2. Persistent left shoulder pain secondary to bursitis, tendinitis (question of referred pain from the cervical spine).
3. Status post bilateral carpal tunnel release.
4. Chronic headache related to cervical spine injury.

(JE 8:49). Dr. Golnick opined that Mr. Garvey suffered a work-related injury on November 6, 2013, resulting in persistent neck pain, pain in both shoulders (predominantly the left), and numbness and tingling in both hands. (JE 8:49). The hand issues were resolved by surgical decompression. (JE 8:49). Mr. Garvey reached MMI from his carpal tunnel issues on July 9, 2014. (JE 8:50). However, the neck pain, caused by the work incident, was "probably" an aggravation of previously asymptomatic cervical spondylosis. (JE 8:49). Based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Golnick considered Mr. Garvey's declination of surgery, lack of relief from cervical epidural nerve blocks and physical therapy in applying an eight percent permanent impairment rating to the body as a whole based on the work-related cervical spine injury. (JE 8:50). Dr. Golnick cited the impairment ratings given by Dr. McCarthy, and also opined that Mr. Garvey should be referred for an FCE due to the length of time since the impairment ratings were issued. (JE 8:50). Dr. Golnick noted that Mr. Garvey reached MMI for the cervical spine issue sometime in November of 2014. (JE 8:50). Since Mr. Garvey's headaches were related to his neck injury, Dr. Golnick declined to issue an impairment rating for the same. (JE 8:50).

Dr. Burd issued a letter on November 24, 2015. (JE 6:30). In this letter, Dr. Woods noted that he reviewed an October 8, 2015, letter from a claims examiner, and an IME conducted by Dr. Golnick on September 15, 2015. (JE 6:30). Dr. Burd agreed with Dr. Golnick that based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Mr. Garvey suffered an eight percent impairment to his whole

person. (JE 6:30). The original zero percent rating given by Dr. Burd on November 11, 2014, was based upon the subsequent edition of the Guides. (JE 6:30).

On January 22, 2016, Mr. Garvey reported to Myrtue Medical Center. (JE 9:52). Mr. Garvey slipped and fell two feet, hitting his head and neck. (JE 9:52). Mr. Garvey did not lose consciousness, nor did he have any headaches. (JE 9:52). He felt "spacey." (JE 9:52). When he fell, he hit his right shin, which bled. (JE 9:52). A dressing was applied. (JE 9:52). The physician at the emergency department diagnosed Mr. Garvey with a right leg abrasion and a cervical strain. (JE 9:52). He was to return to work on Tuesday of the next week. (JE 9:52).

Mr. Garvey returned to Myrtue Medical Center on January 25, 2016, as a follow-up to his previous emergency room visit. (JE 9:54). He complained of "not feeling with it." (JE 9:54). While driving in Omaha, Nebraska, the day prior to his follow-up visit, he could not figure out where he was located, and it took him much longer than normal to make his return trip to Atlantic, Iowa. (JE 9:54). He reported taking no pain medication, as he had no pain or headaches. (JE 9:54). The examining physician assessed him with post-concussion syndrome and an abrasion of his leg. (JE 9:54). Mr. Garvey was to remain off work for the remainder of the week, and referred for IMPACT testing. (JE 9:54).

On January 29, 2016, Mr. Garvey returned to Myrtue Medical Center for IMPACT testing. (JE 9:56). The claimant complained of blurred vision and a shooting pain behind his right ear. (JE 9:56). Since his initial visit, he experienced photophobia, phonophobia, and headaches. (JE 9:56). Mr. Garvey's wife informed the provider that at times, he spoke slowly and was slow to respond to questions. (JE 9:56). His pain and swelling around the abrasion on his right shin worsened, as well. (JE 9:56). Mr. Garvey had a CT scan of his brain with no acute findings. (JE 9:57-58). The provider assessed him with post-concussion syndrome, and an abrasion and/or friction burn of the lower leg with infection. (JE 9:57). He was prescribed Keflex for 10-days, instructed to stay home from work and rest with no television or computer work along with limited stimulation. (JE 9:57).

Mr. Garvey followed-up with Myrtue Medical Center again on February 1, 2016, with continued complaints related to his concussion. (JE 9:59). Mr. Garvey's wife described him as not being himself. (JE 9:59). Mr. Garvey indicated he felt best if he stayed in a dark room, avoiding watching the television, phone, or reading anything. (JE 9:59). The cut on his right leg continued to be an issue with tenderness, redness and swelling. (JE 9:59). He felt depressed, sad and down, that he could not be active. (JE 9:59). He also complained of dizziness almost causing him to fall while shopping at Nebraska Furniture Mart. (JE 9:59). He felt ten percent improved from his previous visit. (JE 9:59). The provider concluded that Mr. Garvey should continue with his antibiotics for his leg, continue to rest, and continue to avoid work. (JE 9:60). A repeat of IMPACT testing was recommended for the coming Friday. (JE 9:60).

On February 8, 2016, Mr. Garvey returned to Myrtue Medical Center for a follow-up related to his concussion symptoms. (JE 9:61-62). Mr. Garvey complained of his vision being "way off" and an inability to read things at a distance of four to ten feet away. (JE 9:61). He also complained of a headache after only watching a few minutes of the Super Bowl the night prior to the examination. (JE 9:61). His vision was checked and found to be 20/30 and 20/40 in each eye. (JE 9:61). The record does not specify which eye has which vision strength. He indicated to the provider a concern about driving, although he drove himself to the clinic that day despite snowy weather. (JE 9:61). His right leg continued to be a cause of concern; however, his infection resolved. (JE 9:61). The provider encouraged Mr. Garvey to increase his activity, drink plenty of fluids, and prepare for a return to work in the near future. (JE 9:62). Mr. Garvey was also instructed to return for a follow-up and DOT physical examination on the following Friday. (JE 9:62).

Mr. Garvey again presented at Myrtue Medical Center on February 12, 2016, for follow-up of his work incident. (JE 9:63-64). Mr. Garvey felt much better, but complained of occasional headaches. (JE 9:63). These headaches responded well to Advil. (JE 9:63). Mr. Garvey went to work, and did well. (JE 9:63). He requested a release to full duty, which the doctor granted. (JE 9:63).

On July 12, 2017, Mr. Garvey had a brain MRI at Village Pointe Imaging. (JE 11:78-79). J.P. Haas, M.D. reviewed the MRI results. (JE 11:78-79). Dr. Haas's impression was:

1. Several small rounded and punctate foci of white matter T2 hyperintensity in the periventricular and subcortical white matter, as described. No associated enhancement or abnormal T1-weighted signal. Findings nonspecific, likely related to chronic microvascular change. This is not a specific appearance for demyelinating disease, though this cannot be definitively excluded.
2. Mild paranasal sinus disease, as described.
3. No other acute intracranial process.

(JE 11:78-79).

Almost 14 months later, on June 13, 2017, Mr. Garvey visited Dr. Burd at the Nebraska Spine + Pain Center. (JE 10:65-70). He complained of neck pain, bilateral shoulder pain, pain on top of his head, and vision loss in his right eye when lifting. (JE 10:65). The pain began after a January of 2016 work injury. (JE 10:65). His neck pain radiated into his left trapezial muscle. (JE 10:65). He also reported headaches and a "floater" in his right eye upon lifting. (JE 10:65). An MRI taken on May 11, 2017, showed a broad-based disc bulge at C5-6 causing mild stenosis and a large right-sided disc herniation at C7-T1. (JE 10:69). X-rays were also completed showing decreased

disc height at C5-6, and trace retrolisthesis of C5 on C6 in extension. (JE 10:69). Dr. Burd assessed Mr. Garvey with the following issues: cervical disc degeneration at C5-C6, bulging disc at C5-C6, a large herniated disc at C7-T1 on the right, cervical spondylolisthesis at C7-T1, cervical spine stenosis, and connective tissue disc stenosis and disc stenosis of intervertebral foramina of the cervical region. (JE 10:69). Dr. Burd indicated that his greatest concern was headaches and vision changes. (JE 10:70). Dr. Burd referred Mr. Garvey for a vascular consult, an MRI of his brain, and performed an ultrasound of his carotid artery. (JE 10:70). The ultrasound showed a faint left carotid bruit. (JE 10:70).

On July 18, 2017, Mr. Garvey returned to Nebraska Spine + Pain Center, where he was examined by Corrine Giggee, PA-C. (JE 10:71-72). Ms. Giggee reviewed the brain MRI results and Dr. Burd's opinion of those results. (JE 10:71). The MRI showed mild chronic changes with nothing acute or severe noted. (JE 10:71). Dr. Burd continued to recommend a vascular visit. (JE 10:71). His disc herniation at C7-T1 was unchanged from his 2014 MRI, and is asymptomatic. (JE 10:71). Dr. Burd followed up the examination with a letter to Stephen H. Williams, M.D., concluding that Mr. Garvey's current symptoms are not derived from his cervical spine. (JE 10:73).

Dr. Williams issued a letter on December 1, 2017, indicating that Mr. Garvey suffered a concussion after falling at a customer's business. (JE 12:80). Since suffering the concussion, Dr. Williams noted that Mr. Garvey suffered headaches, vision problems and a loss of vision, caused by head trauma. (JE 12:80). Dr. Williams recommended that Mr. Garvey be evaluated by a neurologist and ophthalmologist. (JE 12:80).

On February 16, 2018, Mr. Garvey reported to Concentra in Omaha, Nebraska. (JE 14:85-86). Mr. Garvey suffered an injury on February 15, while working. (JE 14:85). Concentra diagnosed the claimant with a sprain of ligaments of his lumbar spine. (JE 14:85). His pain radiated to the right buttock along with back stiffness and decreased spine range of motion. (JE 14:85). Arthur West, M.D., prescribed cyclobenzaprine, Norco, and methylprednisone. (JE 14:85).

Mr. Garvey returned for a follow-up with Dr. West at Concentra on February 19, 2018. (JE 14:87-88). Mr. Garvey's back pain was slightly better. (JE 14:87). He reported significant difficulties with the physical requirements of his job. (JE 14:87). Dr. West referred Mr. Garvey to physical therapy and established work restrictions as follows: modified duty, may lift up to 10 pounds frequently, may push/pull up to 10 pounds frequently, no bending more than 3 times per hour, no squatting, no kneeling, and he should be sitting for 90 percent of the time. (JE 14:88).

Dr. West saw Mr. Garvey again on February 26, 2018, for continued lower back pain. (JE 14:89-90). His back pain improved, but he noted shooting pain continuing. (JE 14:89). Mr. Garvey worked transitional duty, and his restrictions remained unchanged from the February 19, 2018, visit. (JE 14:89-90). Dr. West opined that Mr.

Garvey was 25 percent of the way toward meeting the physical requirements of his job. (JE 14:90). The plan was to medicate Mr. Garvey for the pain, and then follow-up in 7 days. (JE 15:90).

On March 5, 2018, Mr. Garvey visited Dr. West at Concentra for continued monitoring of his low back conditions. (JE 14:91-92). Mr. Garvey claimed to be 75 percent improved. (JE 14:91). He attended two physical therapy visits since his last examination by Dr. West. (JE 14:91). Dr. West ordered an MRI and prescribed alprazolam. (JE 14:91-92). Mr. Garvey's restrictions were modified to the following: may lift up to 10 pounds constantly, may push/pull up to 10 pounds constantly, no bending more than 4 times per hour, may squat/kneel occasionally, and he should be sitting 75 percent of the time. (JE 14:92).

Mr. Garvey returned to Concentra for a follow up with Dr. West on March 12, 2018. (JE 14:93-94). He presented for a recheck of his lower back pain, which was unchanged and caused intermittent pain. (JE 14:93). The pain was severe and sharp. (JE 14:93). Mr. Garvey attended two visits of physical therapy since his last visit to Concentra, and worked transitional duty. (JE 14:93). Mr. Garvey reported significant difficulties with the physical requirements of his job. (JE 14:93). Dr. West told Mr. Garvey to continue physical therapy. (JE 14:93). His work restrictions remained unchanged from his March 5, 2018, visit. (JE 14:94).

On March 13, 2018, Mr. Garvey reported to FirstScan MRI for an MRI of his lumbar spine. (JE 15:97). Dr. West ordered the MRI. (JE 15:97). The reviewing provider from FirstScan indicated their impression of the MRI was: mild degenerative changes, mild left lateral disc bulge at L3-4 possibly encroaching upon the exiting nerve root, mild L4-5 disc bulge, and moderate central/left paracentral broad-based disc protrusion at L5-S1 with encroachment upon the left S1 nerve root and left foraminal narrowing. (JE 15:97).

Dr. West reviewed MRI results with Mr. Garvey during a March 15, 2018, visit to Concentra. (JE 14:95-96). His symptoms improved since his last visit. (JE 14:95). His pain was worse on the left than the right, and radiated to his left thigh. (JE 14:95). Dr. West referred Mr. Garvey to an orthopedic spine doctor. (JE 14:96).

In response to a letter from defendants' attorney, Dr. Burd wrote an opinion letter, dated March 15, 2018. (JE 10:76-77). Dr. Burd noted that the last note he had of care for Mr. Garvey was in July of 2017. (JE 10:76). Dr. Burd agreed that none of Mr. Garvey's symptoms were related to his neck. (JE 10:76). He also noted that none of the vascular issues related to Mr. Garvey's brain were related to the work incident. (JE 10:76). Dr. Burd noted, "it is more likely than not the patient did not suffer any permanent injury in 2016 to his cervical spine." (JE 10:77). Dr. Burd concluded his letter by indicating that it was unlikely that Mr. Garvey suffered any permanent injury as a result of his 2016 fall. (JE 10:77).

On April 3, 2018, Mr. Garvey returned to visit Dr. Burd at Nebraska Spine + Pain Center. (JE 16:100-105). Dr. Burd recounted the injury of February 15, 2018, wherein Mr. Garvey pulled a pallet jack that became stuck. (JE 16:100). At that time, Mr. Garvey noted low back pain, which has progressively worsened since that time. (JE 16:100). Mr. Garvey complained of pain in the low back that radiated down his left posterior thigh and calf. (JE 16:100). He also periodically limped, and had balance issues. (JE 16:100). Dr. Burd noted that Mr. Garvey attended nine sessions of physical therapy. (JE 16:100). Since his last visit, he had a carotid ultrasound, which was normal. (JE 16:100). Dr. Burd reviewed the MRI of the lumbar spine performed on April 3, 2018, and indicated that it showed decreased disc hydration throughout Mr. Garvey's lumbar spine, as well as broad-based disc bulge and facet hypertrophy causing moderate to severe left foraminal stenosis. (JE 16:104). Dr. Burd ordered x-rays of the lumbosacral spine, which showed minimal decreased disc height at L5-S1, and no other acute issues. (JE 16:104). Dr. Burd's impressions were: cervical disc degeneration C5-6; lumbosacral disc degeneration; bulging disc C5-C6; large herniated disc C7-T1; cervical spondylolisthesis C7-T1; cervical spine stenosis; connective tissue and disc stenosis of intervertebral foramina of the cervical region; and, osseous and subluxation stenosis of intervertebral foramina of the lumbar region. (JE 16:104). Dr. Burd held Mr. Garvey out of work until after a scheduled injection. (JE 16:104). Dr. Burd's plan included pain care, a transforaminal epidural steroid injection at L5-S1, continued physical therapy, and a return in four weeks. (JE 16:104).

Mr. Garvey returned to Nebraska Spine + Pain Center on April 23, 2018. (JE 16:106-107). Jeremiah Ladd, M.D. completed a left L5-S1 transforaminal epidural steroid injection without issue. (JE 16:106). The immediate results of the procedure were inconclusive. (JE 16:107).

Dr. Burd re-examined Mr. Garvey on May 3, 2018, as a follow-up to his epidural steroid injection and for his continued low back complaints. (JE 16:108-112). Mr. Garvey reported feeling worse than the previous visit, and his pain continued from his low back down his posterior thigh and calf into his plantar foot. (JE 16:108). He complained of numbness and tingling in his left plantar foot including a hot sensation when he sits. (JE 16:108). Mr. Garvey attended four sessions of physical therapy since his last examination by Dr. Burd. (JE 16:108). Dr. Burd's diagnoses remained unchanged. (JE 16:110-111). Dr. Burd ordered a CT scan to assess the L5-S1 foramen and whether his issues were caused by bony stenosis or a disc material. (JE 16:111). The CT showed a questionable large left far lateral protrusion at the L3-4 disc. (16:113). Dr. Burd indicated that surgery would be recommended regardless of the CT results. (JE 16:111). Thus, Dr. Burd ordered a decompression/discectomy surgery on the left at L5-S1, and further ordered Mr. Garvey to be off work until after the completion of the surgery. (JE 16:111).

On May 17, 2018, Mr. Garvey returned to Nebraska Spine + Pain Center, to discuss surgery with Dr. Burd. (JE 16:114-118). His pain increased since starting physical therapy. (JE 16:114). His previous epidural steroid injection provided a 40

percent pain relief to his left leg. (JE 16:114). Mr. Garvey indicated to Dr. Burd that he was ready to proceed with a lumbar discectomy with decompression of left L5-S1. (JE 16:118). Mr. Garvey continued to be kept off work until after the surgery. (JE 16:118).

Dr. Burd performed a hemilaminotomy with decompression of left L5-S1, a discectomy of left L5-S1, and an epidural steroid injection of left L5-S1, on May 23, 2018. (JE 16:119-121). Dr. Burd's pre-operative diagnoses were a herniated nucleus pulposus with lateral recess stenosis at left L5-S1 and intractable leg pain. (JE 16:119). The surgery was completed without incident.

On June 6, 2018, Mr. Garvey attended physical therapy at Nebraska Spine Center, LLP. (JE 16:122-125). Mr. Garvey's back discomfort reduced to 5/10. (JE 16:122). He continued to report intermittent pain down his left leg along with numbness and tingling in his left foot. (JE 16:122). Mr. Garvey desired to resume performing yard work, restoring cars, and other things. (JE 16:122). Physical therapy was performed including a home exercise program. (JE 16:123-124).

Dr. Burd re-examined Mr. Garvey for a post-surgical follow-up on July 12, 2018. (JE 16:126-130). His left leg pain improved since the surgery. (JE 16:126). Mr. Garvey remained off of work, and noted that driving was "particularly agonizing to his lower back." (JE 16:126). Dr. Burd diagnosed Mr. Garvey with lumbago and a history of lumbar spinal discectomy. (JE 16:129). Dr. Burd's plan included physical therapy, a follow-up in six weeks, and a weight management program. (JE 16:130).

ATI Physical Therapy discharged Mr. Garvey on August 27, 2018, after 12 physical therapy sessions. (JE 17:170-171). ATI listed his prognosis as "good." (JE 17:170). He had issues with carrying, driving, lifting, and operating heavy machinery. (JE 17:170).

On August 28, 2018, Mr. Garvey returned to Nebraska Spine + Pain Center to visit Dr. Burd as a post-surgical follow-up. (JE 16:131-135). Mr. Garvey did well until four to six weeks prior when he rode in a truck training an employee, causing his symptoms to return. (JE 16:131). He continued using gabapentin for his pain. (JE 16:131). Mr. Garvey was going to therapy at ATI Physical Therapy. (JE 16:131). Dr. Burd prescribed him a Medrol Dosepak and noted that an authorization for a lumbar MRI would be submitted. (JE 16:135).

Mr. Garvey returned to FirstScan MRI for a follow-up MRI of his lumbar spine on September 11, 2018. (JE 15:98-99). Dr. Burd ordered this MRI, and it was compared to the MRI performed in March of 2018. (JE 15:98). Shannon Calhoun, D.O. reviewed the MRI results. (JE 15:99). Dr. Calhoun noted impressions as follows: slightly progressive degenerative disc disease at L5-S1 effacing the left descending S1 nerve, status post laminotomy at L5, shallow disc protrusion without neural effacement at L4-L5, and a disc protrusion at L3-L4 with left foraminal and extra foraminal eccentricity

abutting the exiting and exited left L3 nerve which appeared relatively unchanged. (JE 15:99).

Physician Assistant Giggee reviewed the results of the MRI with Mr. Garvey on September 14, 2018. (JE 16:136). She also reported the opinions of Dr. Burd. (JE 16:136). Dr. Burd opined that the MRI showed a small broad-based recurrent disc bulge at L5-S1 on the left. (JE 16:136). Dr. Burd recommended an epidural steroid injection, but Mr. Garvey did not desire another injection. (JE 16:136). Mr. Garvey could not stand due to the pain, so he agreed to the injection. (JE 16:136).

On October 3, 2018, Mr. Garvey reported to Nebraska Spine + Pain Center. (JE 16:137-138). Jeremiah P.L. Add, M.D. examined Mr. Garvey for purposes of a left L5-S1 transforaminal epidural steroid injection. (JE 16:137). The diagnoses noted included: bulging disc at L5-S1, intervertebral disc stenosis of neural canal of the lumbar region, connective tissue and disc stenosis of the intervertebral foramina of the lumbar region, and pain in the left leg. (JE 16:137). The injection was performed with an immediate 20 percent relief of discomfort. (JE 16:137).

Daniel J. Larose, M.D. completed an IME of Mr. Garvey on November 8, 2018. (JE 18:172-173). Dr. Larose, an orthopedic surgeon, noted Mr. Garvey's history, and Dr. Burd's recommendation of a repeat surgery. (JE 18:172). Dr. Larose agreed with Dr. Burd's recommendation. (JE 18:173). Upon examination, Dr. Larose noted no evidence of exaggeration of symptomatology. (JE 18:172). Dr. Larose indicated that Mr. Garvey should perform clerical work, with no commercial driving and no lifting of more than ten pounds. (JE 18:173). Since Mr. Garvey remained in treatment, Dr. Larose opined that he had not reached MMI. (JE 18:173).

Mr. Garvey followed-up with Dr. Cotton at Neurology, LLP on November 14, 2018. (JE 13:81-83). Dr. Cotton recounted the incident, and subsequent treatment. (JE 13:81). Dr. Cotton noted an incident in February of 2018, wherein Mr. Garvey was pulling hard when he suddenly developed pain in his low back radiating into the left leg causing numbness and tingling. (JE 13:81). Mr. Garvey's neurological examination was normal, but for a slight limp, which Mr. Garvey blamed on the work injury of February of 2018. (JE 13:82). Dr. Cotton noted that Mr. Garvey described a classical migraine with visual scintillations and nausea followed by headaches. (JE 13:82). These migraines were not caused by any injury to the brain. (JE 13:82). The MRI and subsequent neurological examinations revealed no vascular changes accounting for the migraine. (JE 13:82). Mr. Garvey could return to work at any time with no restrictions as it related to the work incident in 2016. (JE 13:82). No permanent impairment is attributable to the headaches and visual complaints complained of by Mr. Garvey that is related to the 2016 work incident. (JE 13:82). If the migraines became more frequent, Dr. Cotton recommended medication for treatment; however, no causal relationship would exist between the injury and the work incident of 2016. (JE 13:83).

Mr. Garvey returned to Nebraska Spine + Pain Center on December 4, 2018, to visit Dr. Burd as a follow-up. (JE 16:139-143). Mr. Garvey complained of constant pain which had not improved since his last visit. (JE 16:139). The claimant described his pain as numbness, burning, and aching. (JE 16:139). The pain was worse with bending, lifting, or turning. (JE 16:139). The epidural steroid injection performed in October provided no pain relief. (JE 16:139). Dr. Burd discussed a revision discectomy dependent on the previously noted response to the injection. (JE 16:139). Dr. Burd's examination showed intact motor and sensory functions. (JE 16:143). Dr. Burd provided Mr. Garvey with another prescription for Medrol Dosepak and ordered aquatic physical therapy. (JE 16:143).

Dr. Burd examined Mr. Garvey for a follow-up to his lower back pain on January 17, 2019, at Nebraska Spine + Pain Center. (JE 16:144-148). Mr. Garvey reported 15 percent improvement since beginning aquatic physical therapy. (JE 16:144). He continued to report lower back and left leg pain, along with numbness and tingling into his left heel. (JE 16:144). Mr. Garvey was working within his restrictions at the time of the examination. (JE 16:144). Dr. Burd recommended an FCE, to be reviewed with Dr. Burd after its completion. (JE 16:148). After completion of the FCE, Dr. Burd anticipated placing Mr. Garvey at MMI.

According to the recommendation of Dr. Burd, an FCE was conducted at Nebraska Spine + Pain Center by Kyle Meyer, P.T., D.P.T., O.C.S., C.S.C.S., on February 19, 2019. (JE 16:152-154). Mr. Meyer opined that the claimant could work at a sedentary-light level. (JE 16:152). Mr. Meyer further noted that the testing was "borderline valid," which meant that a sedentary-light level was a conservative demonstration. (JE 16:152). Mr. Meyer indicated that based upon the job description found in the medical records, Mr. Garvey could not return to his job without accommodations. (JE 16:152). Mr. Garvey completed the Quadruple Visual Analog Scale, the Visual Analog Scale, the Oswestry Disability Questionnaire, and the Dallas Pain Index prior to the FCE. (JE 16:153). Based upon those results, Mr. Garvey scored a moderate-severe disability, which Mr. Meyer opined "appears out of context with the objective medical, clinical, functional and behavioral findings." (JE 16:153). Mr. Meyer dispensed some fairly stringent restrictions based upon lifting levels found during the examination. (JE 16:152-153). Mr. Garvey's restrictions included allowance for frequent bending, standing, sitting, walking, squatting, kneeling, crawling, and trunk rotation. (JE 16:154). Mr. Garvey could only balance infrequently. (JE 16:154).

On February 19, 2019, Dr. Burd reviewed the results of the FCE with Mr. Garvey. (JE 16:149-151). The claimant continued to complain of pain in his lower back and left lower leg. (JE 16:149). Mr. Garvey reported losing 8 pounds since the surgery. (JE 16:149). Dr. Burd noted at the conclusion of a lengthy discussion with Mr. Garvey, that Mr. Garvey was allowed to return to work within the noted restrictions. (JE 16:149). While Mr. Garvey continued to have pain, Dr. Burd noted his hope that Mr. Garvey could return to gainful employment with manageable pain. (JE 16:149). Mr. Garvey was to return on an as-needed basis. (JE 16:149).

In a check-box type of letter dated March 14, 2019, Dr. Burd replied to Michelle Terry, a claims examiner from Sedgwick. (JE 16:155). Dr. Burd indicated that Mr. Garvey reached MMI on February 19, 2019. (JE 16:155). Dr. Burd also noted that Mr. Garvey sustained a ten percent whole person impairment. (JE 16:155).

Dr. Burd responded to a letter from claimant's attorney, with a letter dated May 13, 2019. (JE 159-160). Dr. Burd indicated that his final diagnosis related to the February 15, 2018, work injury was herniated nucleus pulposus at L5-S1 with persistent pain. (JE 16:159). Dr. Burd connected the May 23, 2018, surgery to the February 15, 2018, work incident. (JE 16:159). Dr. Burd further indicated that Mr. Garvey reached MMI on February 19, 2019, and assigned him a whole person impairment rating of 13 percent with restrictions as noted in the FCE. (JE 16:159).

On August 15, 2019, Mr. Garvey returned to Nebraska Spine + Pain Center to visit Dr. Burd. (JE 6:31-35). Mr. Garvey again noted neck pain, but it was also noted that Mr. Garvey was being followed for lower back pain. (JE 6:31). Mr. Garvey indicated that previous injections worsened his condition, and that he was not interested in surgical intervention for his complaints. (JE 6:31). Dr. Burd ordered x-rays of the cervical spine, and noted a slight list to the right, decreased disc height at C5-6, and no listhesis. (JE 6:34). Dr. Burd's impressions included lumbago, cervicgia, and history of a lumbar discectomy in May of 2018. (JE 6:34). Dr. Burd prescribed Flexeril and a Medrol Dosepak. (JE 6:35). If Mr. Garvey did not improve, Dr. Burd planned on ordering an MRI. (JE 6:35). If Mr. Garvey were still employed, Dr. Burd opined that he could return to work within his FCE restrictions. (JE 6:35).

Mr. Garvey followed-up with Dr. Burd at Nebraska Spine + Pain Center on March 31, 2020 in a telemedicine visit. (JE 16:161-163). Mr. Garvey complained of aching pain 100 percent of the time. (JE 16:161). He also complained of neck pain and lower leg pain. (JE 16:161). Mr. Garvey rated his pain 3 out of 10, but noted it was not radicular in nature. (JE 16:163). He also had a neck pain flare-up, but that slowly subsided. (JE 16:163). Mr. Garvey reported losing 15 pounds. (JE 16:163). Dr. Burd told Mr. Garvey that he was doing the right things regarding his health and the health of his low back. (JE 16:163).

Dr. Burd followed-up this visit with a response to a letter from defendants' attorney wherein he indicated that Mr. Garvey's March of 2020 visit was simply maintenance care of his previous condition. (JE 16:166). Further, Dr. Burd agreed that Mr. Garvey reached MMI on September 24, 2014, for his 2013 work injury, and on February 19, 2019, for his 2018 work injury. (JE 16:167). For the 2013 injury, Dr. Burd continued to assess an eight percent whole person impairment rating. (JE 16:168). For the 2016 work injury, Dr. Burd agreed that there was no applicable functional impairment. (JE 16:168). Finally, for Mr. Garvey's 2018 work injury, Dr. Burd assessed Mr. Garvey with functional impairment of ten percent. (JE 16:168).

Michelle Holtz, a vocational counselor from Stricklett & Associates, Inc., provided an employability assessment and loss of earning capacity analysis, dated May 28, 2020. (Def. Ex. I:27-40). Ms. Holtz reviewed a variety of medical records from Mr. Garvey's treatment. (Def. Ex. I:27-28). Regarding the November 6, 2013, work injury, Ms. Holtz opined that, based upon her review of the available records, Mr. Garvey remained able to perform all prior positions of employment. (Def. Ex. I:30). Ms. Holtz indicated that Mr. Garvey suffered a 0 percent loss of earning capacity caused by the November 6, 2013, incident. (Def. Ex. I:30). This was corroborated by the fact that Mr. Garvey returned to full duty work activities with no restrictions. (Def. Ex. I:30). Regarding the January 22, 2016, work injury, Ms. Holtz maintained the same opinion as to the November 6, 2013, work injury. (Def. Ex. I:32). Based on the restrictions outlined in the FCE, and endorsed by Dr. Burd, Ms. Holtz opined that Mr. Garvey is employable, but sustained a 50 percent loss of earning capacity as a result of the February 15, 2018, work injury. (Def. Ex. I:38). Ms. Holtz noted that Mr. Garvey's work history is comprised of jobs that are classified as light and medium jobs. (Def. Ex. I:36). Ms. Holtz conducted a job search and found several open positions which would allow Mr. Garvey to work within his restrictions. (Def. Ex. I:38). Mr. Garvey possessed the following transferable skills based upon Ms. Holtz's review of his background and previous occupations: organizational skills for multi-tasking with attention to detail; the ability to work with and meet deadlines; the ability to work at a quick pace and prioritize tasks; the ability to work independently or with a team; the ability to meet deadlines; and, the ability to set and achieve goals. (Def. Ex. I:38). Mr. Garvey also worked with diverse populations, handled conflict resolutions, provided customer service, possessed basic computer skills, and has performed management functions. (Def. Ex. I:38). Ms. Holtz concluded that Mr. Garvey remained an attractive candidate for jobs, despite his restrictions. (Def. Ex. I).

Based upon his FCE, Mr. Garvey is restricted to working a light-sedentary occupation due to his lower back and left leg pain. (JE 16:152). Mr. Garvey's permanent lifting restrictions at an "occasional" level as adopted by Dr. Burd and noted in his FCE are as follows:

- Leg Lift: 5 lbs.
- Shoulder Lift: 15 lbs.
- Overhead Lift: 15 lbs.
- Two Hand Carry: 25 lbs.
- Pushing Force (50 lbs.): 29.1 lbs.
- Pulling Force (50 lbs.): 24.7 lbs.
- Clutch Depression Force: 57.8 lbs.

(JE 16:152). Additionally, Mr. Garvey's permanent restrictions include allowing for frequent walking, sitting, standing, overhead reaching, squatting, forward bending, trunk rotation, kneeling, crawling, gripping and fine motor activities as a moderate pace. (JE 16:152). Mr. Garvey could infrequently balance. (JE 16:152).

At the time of the hearing, Mr. Garvey continued to complain of pain related to his 2013 work incident. (Testimony). Mr. Garvey specifically noted sharp pain in his right shoulder, pain in his neck, and slight headaches, which he related to the 2013 work incident. (Testimony). Regarding the 2016 work injury, Mr. Garvey noted ongoing vision issues, but that he returned to baseline for any other pain. (Testimony). Finally, regarding his 2018 work injury, Mr. Garvey continued complaining of difficulty bending over, back pain, and an inability to stand for more than 20 minutes without pain. (Testimony). Sometimes, Mr. Garvey limps, and for pain relief he takes Advil and wears an ice pack on his back. (Testimony). Mr. Garvey also noted issues with prolonged sitting. (Testimony). Beyond the work restrictions, Mr. Garvey testified during his deposition that there were no other issues presented with his activities of daily living. (Def. Ex. K:63). For example, he noted that he continued to mow his lawn, do the laundry, and walked several miles on a weekly basis when it was not raining. (Def. Ex. K:63). The undersigned would note that he observed Mr. Garvey's demeanor during the hearing. I found Mr. Garvey to be honest and truthful in his answers, but am concerned by some of the discrepancies in testimony between his deposition testimony and testimony at hearing. Additionally, I am concerned that Mr. Garvey sat for almost two hours with only a several minute break, taken at my prompting.

Mr. Garvey was improving while on light duty before XPO required him to train another driver. (Testimony). XPO then attempted to engage Mr. Garvey in a process to bring him back to employment within his restrictions. (Testimony). Mr. Garvey identified two positions at the XPO terminal that he felt may be a good fit within his restrictions. (Testimony). Mr. Garvey spoke to an employee of XPO regarding these positions, but was told that he could not apply as he was not a good fit for the positions. (Testimony). Interestingly, this differed from Mr. Garvey's deposition testimony, wherein he indicated that the only jobs that he could find were in Alabama. (Def. Ex. K:54). There was no explanation offered as to the change in testimony.

Since his termination, Mr. Garvey has been looking and applying for employment online. (Testimony). He indicated that within the last few months prior to the hearing, he applied for 15 to 18 jobs. (Testimony). Mr. Garvey received no invitations to interview for any of the jobs that he applied for, nor any job offers. (Testimony).

Mr. Garvey opined that, due to his physical pain and restrictions, he could no longer work his prior position with XPO. (Testimony). He also could not perform drop and hook type of truck driving based upon his restrictions. (Testimony). Mr. Garvey also indicated that he could not return to Commonwealth due to the lifting required at that position, nor could he return to Sky Harbor due to lifting required. (Testimony). He conceded that he could return to a supervisory position at Sky Harbor because it

involved more sedentary work, but also noted that he could not be counted on to assist other employees with their tasks like fueling airplanes. (Testimony). Some of this testimony differed from his deposition testimony wherein he indicated that he could still perform the supervisory position with Sky Harbor. (Def. Ex. K:55). Additionally, during his deposition, Mr. Garvey indicated that his position with Commonwealth was not one requiring a great deal of physical labor. (Def. Ex. K:55). On the one hand, Mr. Garvey indicated during his deposition that he wished to return to the same line of work as when he was with XPO, but on the other, he indicated his back pain and restrictions would not allow him to drive a truck again. (Def. Ex. K:56).

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6)(e).

Permanency

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 medical causation is “essentially within the domain of expert testimony.” Cedar Rapids Community School Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must “weigh the evidence and measure the credibility of witnesses.” Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert’s education, experience, training, and practice, and “all other factors which bear upon the weight and value” of the opinion. Rockwell Graphic Systems, Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

In this case, for the November 6, 2013 (File Number 5063689), and February 15, 2018 (File Number 5067904), dates of injury, the parties stipulated that the injuries were a cause of permanent disability. The question in these two cases is the extent of permanent disability.

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. of Iowa, 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; however, 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).

In assessing an unscheduled, whole-body injury case, the claimant’s loss of earning capacity is determined as of the time of the hearing based upon industrial disability factors then existing. The commissioner does not determine permanent disability, or industrial disability, based upon anticipated future developments. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009).

Benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under Iowa Code 85.34(2)(s); the degree of disability must be computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. DeLong’s Sportswear, 332 N.W.2d 886 (Iowa 1983).

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

Regarding the November 6, 2013, work injury, Dr. McCarthy issued permanent impairment ratings of 4 percent to the right wrist/hand, 3 percent to the left wrist/hand, no impairment to the right shoulder, and 2 percent to the left upper extremity. Using the combined values chart of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, p. 604, Dr. McCarthy’s ratings equate to an 8 percent body as a whole impairment rating. Dr. Golnick provided an 8 percent body as a whole impairment rating based on Mr. Garvey’s cervical spine complaints. Dr. Golnick provided no impairment rating for Mr. Garvey’s headaches, as Dr. Golnick did not connect them to the work injury. Dr. Burd concurred with this impairment rating. Utilizing the combined values chart of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, p. 604, the ratings provided by Dr. McCarthy, equate to an 8 percent body as a whole impairment rating. When combined with the 8 percent body as a whole impairment rating provided by Dr. Golnick the final result is a 15 percent body as a whole impairment rating.

Based on Dr. Burd's review, Mr. Garvey had no ongoing issues from the November 6, 2013, work injury. Mr. Garvey was given no permanent restrictions related to the November 6, 2013, work injury. Ms. Holtz noted that Mr. Garvey had no loss of earning capacity related to the November 6, 2013, work injury, as he returned to full duty employment with XPO. Ms. Holtz's opinion is uncontroverted. The defendants argue that Mr. Garvey should be awarded a 13 percent industrial disability, while the claimant argues that Mr. Garvey should be awarded a 30 percent industrial disability. Based on the evidence provided, I see no reason to award 30 percent industrial disability.

Following consideration of the above, and all other relevant factors of industrial disability, it is determined that the claimant has suffered a 17 percent industrial disability as a result of the work injury of November 6, 2013. This award entitles claimant to 85 weeks of permanent partial disability benefits (17 percent x 500 weeks = 85 weeks), commencing on the stipulated date of March 3, 2014.

In their post-hearing brief, the claimant noted an agreement with the defendants subsequent to the arbitration hearing in this matter, in which they agreed to drop any arguments as to causation or the extent of permanent disability related to the January 22, 2016, work injury. Therefore, no analysis of any permanent impairment related to the January 22, 2016, work injury is required.

In their post-hearing brief, the claimant alleges that he is permanently and totally disabled as a result of the February 16, 2018, work injury under either Iowa law or the common law odd-lot doctrine. The defendants argue that Mr. Garvey sustained no more than a 30 percent to 50 percent industrial disability.

In Iowa, a claimant may establish permanent total disability under the statute, or through the common law odd-lot doctrine. Michael Eberhart Constr. v. Curtin, 674 N.W.2d 123, 126 (Iowa 2004) (discussing both theories of permanent total disability under Idaho law and concluding the deputy's ruling was not based on both theories rather, it was only based on the odd-lot doctrine). Under the statute, the claimant may establish that they are totally and permanently disabled if the claimant's medical impairment, taken together with nonmedical factors totals 100 percent. Id. The odd-lot doctrine applies when the claimant has established the claimant has sustained something less than 100 percent disability, but is so injured that the claimant is "unable to perform services other than 'those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist.'" Id. (quoting Boley v. Indus. Special Indem. Fund, 130 Idaho 278, 281, 939 P.2d 854, 857 (1997)).

"Total disability does not mean a state of absolute helplessness." Walmart Stores, Inc. v. Caselman, 657 N.W.2d 493, 501 (Iowa 2003) (quoting IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 633 (Iowa 2000)). Total disability occurs when the injury wholly disables the employee "from performing work that [the employee's] experience, training, intelligence, and physical capacities would otherwise permit [the employee] to

perform.” IBP, Inc., 604 N.W.2d at 633. However, finding that the claimant could perform some work despite claimant’s physical and educational limitations does not foreclose a finding of permanent total disability. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., Ill Iowa Industrial Commissioner Report 134 (App. May 1982).

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

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

The claimant argues that he has conducted a good faith, but unsuccessful employment search, thus shifting the burden of proof to the defendants to show that Mr. Garvey is employable. Mr. Garvey testified that he searches online for employment, and has applied for 15 to 20 jobs. He has received no interviews or offers of employment. No physician or expert has opined that Mr. Garvey is permanently and totally disabled.

While a reasonable, but unsuccessful effort to find steady employment is one factor to consider for the trier of fact in determining whether or not the claimant is permanently and totally disabled, it is not the only factor. Other factors to be considered include vocational or other expert evidence, the extent of the worker’s physical impairment, the worker’s intelligence, the worker’s training and the worker’s potential for retraining.

Ms. Holtz, a vocational expert opined that Mr. Garvey had a number of transferable skills that would make him an attractive candidate for jobs, in spite of his restrictions. Some of these transferable skills include Mr. Garvey's organizational skills for multi-tasking with an attention to detail; the ability to work with and meet deadlines; the ability to work at a quick pace and prioritize tasks; the ability to work independently or with a team; the ability to meet deadlines; and, the ability to set and achieve goals. Mr. Garvey also worked with diverse populations, handled conflict resolutions, provided customer service, possessed basic computer skills, and has performed management functions. Additionally, Mr. Garvey attended several years of college, and held several positions in the insurance industry and in supervisory positions prior to his employment with the defendant. His career background was not exclusively in a medium to heavy industry. While Ms. Holtz opines that Mr. Garvey suffered a loss of earning capacity, she found that he was still an attractive candidate for several jobs across different industries. Finally, Mr. Garvey has some restrictions, most of which are related to lifting. Based on the foregoing, I find that Mr. Garvey is not permanently and totally disabled under either the statutory or common law odd-lot doctrine.

While I find that Mr. Garvey is not permanently and totally disabled, I do find that he suffered permanent disability. The claimant argues that Dr. Burd assessed a 13 percent permanent partial disability rating. Dr. Burd clarified this rating to a 10 percent rating. During his FCE, Mr. Garvey was assessed with fairly stringent lifting restrictions; however, he did not have many other restrictions but for avoiding activities requiring balancing. Additionally, Ms. Holtz assessed Mr. Garvey with a 50 percent loss of earning capacity. Based on these facts, I assess Mr. Garvey with a 60 percent industrial disability related to the February 15, 2018, work injury. This award entitles claimant to 300 weeks of permanent partial disability benefits (60 percent x 500 weeks = 300 weeks), commencing on the stipulated date of February 19, 2019.

Rate of Compensation

Iowa Code 85.36 states that the base of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured as the employer regularly scheduled for the work or employment. The various subsections of 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

If the employee is paid on a daily or hourly basis, or by output, the weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Any week that does not fairly reflect the employee's customary earnings is excluded.

The dispute regarding the rate only applies to the January 22, 2016, work injury. The parties stipulated to the claimant being married and entitled to two exemptions at

the outset of the hearing. The claimant argues that they sent requests for admission indicating that the claimant was a full time employee, and that these requests for admission were never responded to by the defendants, thus causing the items to be admitted pursuant to Iowa R. Civ. P. 1.510(2). The defendants argue that the requests were improperly served pursuant to 876 IAC 4.13. While 876 IAC 4.13 does not explicitly pertain to discovery documents, since they are not filed, the rule references 876 IAC 4.17. 876 IAC 4.17 refers to the Iowa R. Civ. P., which allows for service of discovery requests via facsimile in Iowa R. Civ. P. 1.442(2).

The claimant argues that several of the weeks in question, including those covering checks dated December 23, 2015, and December 31, 2015, should be excluded because these represent short weeks, in which the claimant only worked 35.82 and 34.5 hours. The claimant also contends that a check dated October 22, 2015, should be excluded, as it represents another short week. The claimant contends that the proper weekly wage is \$1,010.00 per week, and that the correct rate calculation is \$639.48 per week.

The defendants contend that the proper rate calculation is \$624.23. Further, the defendants contend that overtime premiums should not be included in the calculation of the rate. If the overtime premiums are disregarded, along with the three paychecks discussed by the claimant, then the defendants argue the proper rate would be \$632.14 per week, rather than \$639.48 per week.

Considering that rate calculations are made based upon the salary or hourly wage paid to the employee had the employee worked customary hours for the full pay period in which the employee was injured, including the weeks disputed by the claimant is appropriate in the wage calculation. Both the claimant and employer's representative testified that the time periods in issue were slow time periods for the industry, which makes the hours worked during these time periods customary for the claimant. As such, I find the proper rate related to the January 22, 2016, work injury to be \$624.23.

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 7. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code 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.

The administrative rule expressly allows taxation of costs for transcriptions, the reasonable cost of obtaining no more than two doctors' or practitioners' reports, and the costs of filing fees.

The undersigned held that the claimant suffered some permanent disability. Therefore, it is appropriate to award costs based upon my discretion. I award the claimant the requested fees for the filing fee and reporting services, amounting to \$202.40. The defendants argue that awarding the fee for Dr. Burd's report is inappropriate since it was requested by the claimant while causation was not at issue. While I agree that causation was not at issue, permanent disability was at issue. Therefore, I also award the claimant \$800.00 for the report of Dr. Burd.

ORDER

IT IS THEREFORE ORDERED:

Regarding the November 6, 2013, date of injury, File Number 5063689, the defendants are to pay unto claimant eighty-five (85) weeks of permanent partial disability benefits at the rate of five hundred ninety-seven and 39/100 dollars (\$597.39) per week from the stipulated commencement date of March 3, 2014.

Regarding the February 15, 2018, date of injury, File Number 5067904, the defendants are to pay unto claimant three hundred (300) weeks of permanent partial disability benefits at the rate of six hundred eighty-nine and 67/100 dollars (\$689.67) per week from the stipulated commencement date of February 19, 2019.

That the proper weekly rate for the January 22, 2016, date of injury, File Number 5063690, is six hundred twenty-four and 23/100 dollars (\$624.23) per week.


That defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code 85.30. Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, 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 defendants shall be given credit for benefits previously paid.

That defendants shall reimburse claimant for costs totaling one thousand and two and 40/100 dollars (\$1,002.40).

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

Signed and filed this 28th day of August, 2020.


ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jacob J. Peters (via WCES)

Patrick V. Waldron (via WCES)

Cory Abbas (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.