

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DENNIS MAHER,

Claimant,

vs.

SOLAR TRANSPORT, L.L.C.,

Employer,

and

ZURICH AMERICAN INSURANCE
COMPANY,Insurance Carrier,
Defendants.

File No. 5068608

ARBITRATION DECISION

Head Note Nos.: 1108.50, 1402.40, 1803,
1801.01, 2602

STATEMENT OF THE CASE

Dennis Maher, claimant, filed a petition in arbitration seeking workers' compensation benefits from Sole Transport, L.L.C., employer and Zurich American Insurance Company, insurance carrier as defendants. Hearing was held on July 28, 2020. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via video means, using CourtCall. Accordingly, this case proceeded to a live video hearing via CourtCall with all parties appearing remotely.

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

Dennis Maher and Eric Osterhaus were the only witnesses to testify live at trial. The evidentiary record also includes joint exhibits JE1-JE5, claimant's exhibits 1-3, and defendant's exhibits A-K. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on August 24, 2020, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether the stipulated July 11, 2018 work injury caused permanent disability. If so, the extent of industrial disability claimant is entitled to.
2. Whether claimant is entitled to temporary total/healing period benefits from November 8, 2018 to February 1, 2019.
3. The appropriate commencement date for any permanency benefits.
4. Whether defendants are responsible for past medical expenses.

FINDINGS OF FACT

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

Claimant, Dennis Maher, was 69 years old at the time of the hearing. He alleges injury to his neck and low back as the result of a July 11, 2018 work injury with Solar Transport, L.L.C. Mr. Maher began working for Solar Transport in February of 1999. (Testimony) Defendants admit a temporary neck injury, but deny any injury to his low-back.

Mr. Maher worked for Solar Transport as a truck driver, hauling gasoline to Kum & Go convenience stores. On July 11, 2018, Mr. Maher was parked in his fuel truck on the shoulder of an exit ramp off of Interstate 90 in Minnesota. His fuel truck was struck by a motorist who fell asleep. The collision totaled the other vehicle and ruptured the fuel tank on Mr. Maher's truck. Mr. Maher was transported via ambulance to the hospital to be examined. (Testimony)

Mr. Maher was receiving treatment shortly before the work injury. On July 5, 2018, Mr. Maher was seen by Jason A. Huisenga, D.O., at UnityPoint Health in Storm Lake. Mr. Maher complained of pain in his left quadriceps muscle and hip pain. He was able to ambulate with a limp. He was assessed with left quadriceps muscle strain. Mr. Maher was instructed to ice, use non-steroidal anti-inflammatories, stretch, and he was scheduled for physical therapy. (JE2, pp. 17-19)

On July 6, 2018, Mr. Maher attended physical therapy. The primary diagnosis was left quadriceps strain and the treatment diagnosis was left hip, back, and leg pain. Mr. Maher reported that he developed pain about three weeks ago in his left SI region, left hip, and lateral leg. Rising from a chair is very difficult and painful for Mr. Maher. His pain limited his ability to mow his lawn. He was to attend therapy 1-2 times per week for up to 6 weeks. (JE3, p. 47-48)

Mr. Maher attended therapy again on July 9, 2018. He reported he was a little sore. He stopped carrying his wallet in his back pocket. The therapist noted that Mr. Maher had an antalgic gait which was more significant with initial steps after sitting. The treatment diagnosis was left hip, back, and leg pain. Mr. Maher was to continue with home exercise program, manual therapy, and iontophoresis. (JE3, p. 49)

Just a few days later, Mr. Maher was involved in the work accident which is the subject of this lawsuit. Mr. Maher was taken to the Sanford Jackson Hospital emergency room. The notes indicate that he was at a full stop in his fuel truck when a Buick T-boned his truck on the driver's side and hit the front wheel of his truck. Mr.

Maier reported neck tenderness, but denied back pain. Upon examination he had normal range of motion. Mr. Maier reported left hip pain and that he had chronic left hip pain and was presently undergoing physical therapy for his left hip pain. At the emergency room he was diagnosed with a cervical sprain and was discharged. (JE1, pp. 1-16)

Mr. Maier saw Timothy K. Daniels, M.D., at Unity Point on July 12, 2018. He reported that he was sitting in his parked semi when he was hit behind the cab on the driver's side by a car. Since the accident, he has experienced neck pain, right side pain, and left hip pain. CT scan of the cervical spine revealed mild disc space narrowing at C5-6 and C6-7. CT scan of the head without contrast was normal. The assessment was strain of neck muscle. He was prescribed physical therapy for his neck pain. He was also given Flexeril 5 mg three times per day as needed. Mr. Maier was scheduled to see Dr. Huisenga on Tuesday, July 17. He was to remain off work until the 18th of July. (JE2, pp. 20-22)

Mr. Maier began physical therapy for his neck on July 16, 2018. He reported that he had a prior medical history of left hip and low back pain that he was currently receiving physical therapy for through Medicare. He reported his neck pain began on July 11, 2018, when he was in the accident. He also had right lower rib pain. He was to attend physical therapy 2-3 times per week for up to 4 weeks. (JE3, pp. 50-53)

On July 17, 2018, Mr. Maier reported to Dr. Huisenga that he had some improvement with physical therapy. He had full range of motion in his upper and lower extremities as well as the lumbar and cervical spine. Dr. Huisenga's assessment was strain of neck muscle. He recommended continued physical therapy because he had made significant progress. The doctor released Mr. Maier to return to work on July 23, without restrictions. (JE2, pp. 23-25)

By July 24, Mr. Maier had attended 3 sessions of physical therapy for neck pain. He had met his long-term goal to eliminate neck pain so that he could move his neck freely and return to work. He was educated on a home exercise program (HEP). Mr. Maier was discharged from physical therapy for his neck on August 1, 2018. He had attended all three sessions and met his goals, including eliminating his neck pain. (JE2, pp. 26-28)

On October 2, 2018, Dr. Huisenga opined that Mr. Maier had reached maximum medical improvement (MMI) without any permanent impairment. Mr. Maier was released to return to work without restriction. (JE2, p. 28)

Mr. Maier saw Dr. Huisenga at UnityPoint Health on October 26, 2018 for a well-adult Medicare annual exam. He denied any myalgias, muscle weakness, joint pain, arthritis, or muscular pain. The physical exam did not reveal any problems or complaints related to his spine. The assessment included, hyperlipidemia, essential hypertension, and abnormal glucose. (JE2, pp. 29-34)

Mr. Maier returned to his previous job at Solar Transport on July 23, 2018. He continued to perform his pre-injury job until around November 8, 2018. During this time, Mr. Maier did not miss time from work. Mr. Maier testified that his neck injury healed

and he returned to truck driving. However, his back and leg pain continued and worsened over time. (Testimony)

On November 5, 2018, Mr. Maher went to physical therapy with Christopher Beck, P.T.A. At this appointment, Mr. Maher completed a questionnaire. He was asked if this was a work related injury covered under Workers' compensation benefits; he left the answer blank. Mr. Maher reported onset of right-sided hip and thigh pain which began approximately 3 weeks ago. He said he was having similar pain in July of this year. His pain on the left side had fully resolved. Mr. Maher was involved in a MVA at work and had therapy for neck pain. Yesterday he noticed some discomfort in his neck, but nothing serious. He does not recall any mechanism of injury for this new onset of right-sided pain. He was instructed to attend therapy 2-3 times per week, for 4 weeks. (JE3, pp. 59-60) Mr. Maher did not indicate that his symptoms were work-related. Mr. Maher did not indicate to the physical therapist that his symptoms were related to the MVA.

On November 6, 2018, Eric Osterhaus, Regional Operations Manager, Solar Transport sent an email to Bridget Nixon and Aaron New regarding Mr. Maher. The emails reads:

Denny called off yesterday, today, and tomorrow. He has a diagnosis from a Physical Therapist that he has a pinched nerve in his right leg when he walks. He said it is not workers comp, and he does not have a doctor's note stating he cannot work. At this point and time I am allowing him to use "sick days".

(Def. Ex. J, p. 23)

At the hearing, Mr. Osterhaus testified that during the phone call Mr. Maher was adamant that this was not a workers' comp issue. Mr. Osterhaus credibly testified that it would have been just as easy for him to send an email that said this was a worker's comp issue because then his safety team takes it over at that point. A workers' comp injury is actually less work for Mr. Osterhaus. (Testimony)

On November 9, 2018, Dr. Huisenga stated Mr. Maher should remain out of work from November 6, 2018 through November 19, 2018. The note does not state the reason that he should not work and there are no corresponding clinical notes. (JE2, p. 35)

Mr. Maher returned to Dr. Huisenga on November 16, 2018. The note states he reported continued moderate back pain. He cannot fully extend or fully flex, cannot ambulate with comfort and cannot sit with comfort or function in his current job. His pain is worse with bending, lifting, standing straight, and changing positions. He has been attending physical therapy with some improvement, but he thought that he would be getting better faster. Mr. Maher would like another week off of work to recuperate. The assessment was sciatica of right side. He was instructed to ice the area, use Tylenol, and stretch. He was also to do physical therapy. Mr. Maher was referred to Dr. McGuire. He was given a note to remain off work until November 26, 2018. (JE2, pp. 36-39)

On November 20, 2018, Mr. Maher was seen at Iowa Spine Care by Daniel J. McGuire, M.D. Dr. McGuire reported that Mr. Maher was still employed. Mr. Maher said driving his semi was the easy part of his job. When he was out of his truck moving hoses, things could get quite heavy. Mr. Maher felt that in retrospect, his problems with his back and left, then right leg pain have slowly increased over the past six months. He also had a motor vehicle accident on July 11, 2018. Before the MVA, he was doing reasonably well, but he has gone downhill since that time. Mr. Maher had been unable to work the past 3 or 4 weeks due to severe back and right leg pain. His severe pain makes performing the heavy parts of his job basically impossible. Dr. McGuire assumed Mr. Maher had lumbar spondylosis that was giving him back pain. Dr. McGuire assumed he had some spinal stenosis that was causing the leg pain. He noted that Mr. Maher has good care, but he continues to get worse. He recommended x-rays and an MRI of the lumbar spine. (JE4, p. 68) According to Mr. Maher's history, his problems with his back and left, then right leg pain had slowly increased since May of 2018 which is two months before the MVA.

On November 23, 2018, Mr. Maher had a MRI of his lumbar spine without contrast. The MRI released mild lumbar levoscoliosis with mild anterior subluxation of L4 over L5 and suggestion of bilateral L4 spondylolysis; small generalized disc bulges from L2 to S1 associated with ligamentous and facet joint hypertrophy causing appearing degree of central spinal stenosis; a varying degree of neural foraminal compromise most pronounced and moderate to severe in degree at L4-L5. (JE3, pp. 63-64)

Dr. McGuire reviewed Mr. Maher's x-rays and MRI on November 26, 2018. He called Mr. Maher who reported he was doing a bit better. Dr. McGuire noted that he was hesitant to take Mr. Maher off of work for 2 or 3 months because he was concerned he may never get back to work again. Dr. McGuire got the impression that Mr. Maher wanted to try to work a few more years. (JE4, p. 69)

Mr. Maher saw Dr. McGuire on November 30, 2018. Mr. Maher reported he was doing better. He had been off of work for 3 weeks. Dr. McGuire's impression was, hopefully resolving episode of back and sciatica and lumbar spondylosis. Dr. McGuire suggested that perhaps Mr. Maher retire or get a different job, but that was not an option. Mr. Maher wanted to continue to work. Dr. McGuire advised Mr. Maher that he would not do any damage to himself by working, but he would probably be quite uncomfortable. He was kept off work for another 10 days. (JE4, p. 70)

On December 10, 2018, Mr. Maher returned to Dr. McGuire. He reported he uses a cane part-time and was still quite restricted with right leg symptoms. He could be up for maybe 20 minutes or so, but then he had significant right posterior right aches and pains. Dr. McGuire noted that Mr. Maher wanted to have a little bit more time before he made an ultimate decision. Dr. McGuire again explained to him that at the age of 69 the surgery had an excellent chance to help, but it might not get him back to 10-12 hour shifts of driving a semi-truck and moving heavy equipment items. Dr. McGuire said off work until his follow-up appointment. (JE4, pp. 71-72)

Mr. Maher returned to Dr. McGuire on December 19, 2018. He remained symptomatic with back and right leg symptoms. His symptoms are quite tolerable if he does very little. He had been off work for 8 weeks. Mr. Maher decided to stay off work. Dr. McGuire explained to Mr. Maher that if he was off work and his symptoms kept him from doing normal things then he would readily do surgery because there is an excellent chance that surgery would allow him to enjoy retirement. Even, if Mr. Maher is not retired, Dr. McGuire could do surgery but it is doubtful that he could return to working 12 or 14 hour days. Mr. Maher noted that he was on short-term disability through February 7, 2018 and Dr. McGuire completed those forms for him. He scheduled him for an epidural in Spencer after the 1st of the year. Dr. McGuire kept him off work due to persistent back and right sciatica pain. (JE4, pp. 73-74)

On January 2, 2019, Mr. Maher was discharged from physical therapy. He reported minimal to no pain and met all of his therapy goals. (JE3, p. 67)

Mr. Maher underwent a right L5-S1 epidural steroid injection on January 4, 2019. (JE4, p. 75)

On January 21, 2019, Mr. Maher returned to Dr. McGuire. He was feeling better and wanted to try to return to work. His right hamstring was still a little tight. Dr. McGuire's impression was hopefully resolving sciatica. He felt he probably had a surgical lesion at L4-L5 on the right. Mr. Maher was going to try to return to work on February 4, 2019. He was instructed to be careful moving heavy hoses. Dr. McGuire noted that if Mr. Maher was unable to tolerate work, then he might want to consider a laminectomy, go through rehabilitation, and see if he can do the job or look for a different job. (JE4, pp. 78-79)

Mr. Maher returned to UnityPoint on February 11, 2019 with pain in his left knee. He could not fully extend or fully flex his left knee and was barely able to put weight on it. Dr. Huisenga assessed a sprain of the lateral collateral ligament of the left knee. He was prescribed Naprosyn for a week and if symptoms persisted then physical therapy. (JE2, pp. 41-42)

On March 14, 2019, Mr. Osterhous sent an email to the "STTermination" email group regarding Mr. Maher. The email indicated that after 20 years with Solar Transport, Denny will retire on April 1, 2019. (Def. Ex. C, p. 4)

On April 26, 2019, Mr. Maher presented to Dr. Huisenga for follow-up of hypertension. (JE2, pp. 43-46)

At the request of his attorney, Mr. Maher underwent an IME with Robin L. Sassman, M.D., on January 28, 2020. On February 24, 2020, Dr. Sassman issued a report setting forth her opinions in this case. She noted Mr. Maher was involved in a MVA on July 11, 2018. Since that time, he has noted low back pain with radicular symptoms. Initially, he also noted cervical symptoms; however, the cervical symptoms have since resolved. Mr. Maher reported that he is doing well since retirement. He avoids lifting because that seems to aggravate his symptoms. When he was working he had a lot of back pain and right leg pain. His lumbar symptoms have improved since he is no longer working at a physically demanding job; however, his symptoms are easily aggravated by activity. Mr. Maher denied any neck or right shoulder pain. In her

examination she noted no tenderness in his lumbar spine, normal lower-extremity strength, negative SLR test, and normal sensation in his right lower extremity. She did note decreased sensation in his left leg; however, Mr. Maher is not attributing his left-leg complaints to the work injury. Dr. Sassman's diagnoses were cervical strain, resolved; lumbar pain with radiculopathy with MRI evidence of spinal stenosis at multiple levels. She opined that given that he did not have these symptoms before the collision and that the mechanism is consistent with the injury, it was her opinion that the July 11, 2018 injury was a substantial aggravating factor of the low back spinal stenosis and directly and causally related to the now-resolved cervical symptoms. Dr. Sassman placed Mr. Maher at MMI one year after the date of the July 11, 2018 injury. She did not have any other treatment recommendations. Dr. Sassman assigned 17 percent whole person impairment for the lumbar spine. (Cl. Ex. 2; testimony)

On June 11, 2020, Dr. McGuire authored a missive to the attorney for the defendants. Dr. McGuire stated that he had a conference with the defendants' attorney this past Monday morning. In the letter Dr. McGuire noted a physical therapy record from July 6, 2018 which predated the MVA. In that note, Mr. Maher reported that he had changed how he carried a wallet in his back pocket. Dr. McGuire stated that this was a common maneuver for people with back and leg symptoms. The physical therapy note also stated that Mr. Maher continued with some back and left hip complaints and he had returned to work. Additionally, Dr. McGuire referenced a November 20, 2018 physical therapy note. This physical therapy note stated that Mr. Maher presented with a 3-week history of right-sided hip and thigh pain and that the left side had fully resolved. Dr. McGuire noted that he first saw Mr. Maher on November 20, 2018. At that visit, Mr. Maher reported a 6-month gradual onset of increasing problems with back and left, then right leg pain. At that time, Dr. McGuire admitted that he was not focused on the exact dates of symptoms. Mr. Maher provided a rather generic common history of some off and on problems. Apparently, the attorney for the defendants provided a more exact chronology of events during the conference he had with Dr. McGuire. In his missive to defendants, Dr. McGuire wrote:

Mr. Maher did tell me that he had had some prior back complaints, but I did not really interrogate him to the amount of treatment. You are correct on the 11/05/2018 office visit. He did not attribute his back complaints to the work injury. Even with me, he really did not focus on the incident. He had told me that he had about 6 months of symptoms, and in fact the motor vehicle incident had been only about 5 months ago.

I do not believe the work incident materially aggravated his spine, precipitating right leg symptoms.

It is difficult to causally relate the treatment of his back and right leg symptoms, which I did over the winter, back to the incident of early July.

I would not impose any permanent lifelong work restrictions as it pertains to the incident of 07/11/2018. Given the history, I cannot give an overt reason to assign any impairment as it pertains to the 07/11/2018 incident.

(Def. Ex. I, pp. 21-22)

Mr. Maher has not treated for his low back since January of 2019. (Ex. K, p. 30) Also in January of 2019, he passed a DOT physical with normal gait and a normal back/spine examination. (JE5, p. 82; testimony)

After the July 11, 2018 work injury, Mr. Maher was off of work for approximately 10 days. Then Mr. Maher returned to his pre-injury job until Dr. Huisinga took him off of work on November 9, 2018, due to low back pain. He remained off of work until early February 2019. During this time Mr. Maher received short-term disability benefits. (JE2, p. 35, Ex. A, p. 1, Ex. K, pp. 32-36, testimony)

Mr. Maher returned to his pre-injury job at Solar Transport on February 4, 2019. He continued working until March 14, 2019 when he advised Eric Osterhaus that he was retiring. His retirement date is listed as April 1, 2019. (Ex. A, p. 1, Ex. C, p. 4, Ex. K, p. 36, testimony)

On June 3, 2019, Mr. Maher began working at Arnold Motor Supply and was still employed there at the time of hearing. He works approximately 20 hours per week delivering auto parts in the Storm Lake area. His job includes lifting auto parts that vary in sizes and weights, including car batteries in excess of 50 pounds. Mr. Maher has not provided Arnold Motor Supply with the recommended work restrictions from his IME doctor. Mr. Maher has not looked for other work. (Testimony, Def. Ex. E, p. 6; Ex. F, p. 13; Ex. K, p. 37-41)

At hearing Mr. Maher testified that he has not sought or received any medical treatment since January 2019. He is only able to drive 30-45 minutes before he has to get out and walk around a bit. If he lifts too much he still experiences back pain. Overall, he tries to be careful with his back because he does not want to undergo an operation. (Testimony)

The first issue to be determined is whether the July 11, 2018 work injury was the cause of any permanent partial disability. Claimant relies on the opinions of Dr. Sassman who performed an IME at the claimant's request.

Dr. Sassman conducted an IME in this case. Her diagnoses included cervical strain, resolved; lumbar pain with radiculopathy with MRI evidence of spinal stenosis at multiple levels. Mr. Maher told Dr. Sassman that he did not have any low back symptoms prior to the injury in question. He did not have low back symptoms until the July 11, 2018 MVA. He also told her that since the MVA he has had low back pain with radicular symptoms. Based on this information, Dr. Sassman opined that given that Mr. Maher did not have these symptoms before the collision and that the mechanism is consistent with the injury, the July 11, 2018 work event was a substantial aggravating factor of the low back spinal stenosis and directly and causally related to the now-resolved cervical symptoms. She is the only physician in this case to assign any permanent impairment to Mr. Maher for his back. Dr. Sassman stated that there was no ratable impairment for his cervical spine. (Cl. Ex. 2)

Unfortunately, the information that Dr. Sassman relied upon to form her opinions is not accurate. The treatment records in this case demonstrate that Mr. Maher did have back pain prior to July 11, 2018. At hearing, he conceded that his low back and/or left-leg side problems were active and ongoing at the time of the injury. (Transcript p. 67) Additionally, the medical documentation does not support Mr. Maher's contention that he had low back pain with radicular symptoms since the July 11, 2018 MVA. I find that the history and information that Dr. Sassman relies on in forming her opinion is not accurate and/or complete. Because Dr. Sassman relies on an incorrect history, I find her opinions carry very little weight.

Defendants rely on the opinions of Dr. Huisinga and Dr. McGuire. Dr. Huisinga is Mr. Maher's primary care physician. Dr. Huisinga released him to return to work, full duty with no restrictions on July 23, 2018. At that time, he also placed Mr. Maher at maximum medical improvement (MMI). Dr. Huisinga opined that the work injury did not result in any permanent impairment. (JE2, p. 28)

Dr. McGuire has also offered his opinions in this case. The defendants did not select Dr. McGuire; rather, Mr. Maher was referred to Dr. McGuire by his own doctor. Dr. McGuire provided treatment to Mr. Maher. Once Dr. McGuire was provided with the chronology in this case, he stated, "I do not believe the work incident materially aggravated his spine, precipitating right leg symptoms. It is difficult to causally relate the treatment of his back and right leg symptoms, which I did over the winter, back to the incident of early July." (Def. Ex. I, pp. 21-22) Dr. McGuire did not assign any impairment or any permanent restrictions as the result of the July 11, 2018 work incident. (Id.)

Just days before the July 11, 2018 work injury, Mr. Maher was treating for back pain. Following the accident, he denied back pain. It was not until late October or early November of 2018, that he again mentioned back pain. It was not until around this same time that sciatica was mentioned. At that time, he told his employer that the back pain was not work-related. (Ex. J, p. 23) Around that same time he also did not indicate to his physical therapist that he thought his symptoms were related to a work injury. He was unable to recall any mechanism of injury for his new onset of right sided pain. (JE3, p. 58)

I find the opinions of Dr. Huisinga and Dr. McGuire are more consistent with the record as a whole and carry greater weight than the opinion of Dr. Sassman. Additionally, neither Dr. Huisinga nor Dr. McGuire was selected by the defendants and therefore it can hardly be argued that they are biased in favor of the defendants. I find that Mr. Maher reached maximum medical improvement from the July 11, 2018 work injury on July 23, 2018. Additionally, I find that claimant did not sustain any permanent partial disability as the result of the July 11, 2018 work injury.

Next, claimant is seeking temporary total disability benefits from November 8, 2018 to February 1, 2019 for his low back. Mr. Maher missed approximately 10 days of work after the MVA due to neck pain. Then he returned to his pre-injury job and did not miss work or seek medical treatment for several months. His personal physician, Dr. Huisinga placed him at MMI as of July 23, 2018. With regard to causation, I found the opinions of Dr. Huisinga and Dr. McGuire carried greater weight than those of Dr.

Sassman. Based on the evidence on a whole, I find that Mr. Maher has failed to demonstrate that his symptoms after July 23, 2018 were related to the July 11, 2018 work injury. Furthermore, there is no medical documentation to demonstrate that Mr. Maher missed any additional time from work because he had restrictions as the result of the July 11, 2018 injury. While he may have been restricted from work during this time period, I find that the record does not support the contention that Mr. Maher missed work due to the work injury. Thus, I find claimant is not entitled to temporary total disability benefits from November 8, 2018 to February 1, 2019.

Claimant is seeking payment of past medical expenses as set forth in claimant's exhibit 3. The medical charges all appear to have been incurred in November of 2018. Based on the opinions of Dr. Huisinga and Dr. McGuire and based on the evidence as a whole, I find that the claimant has failed to demonstrate that these charges were incurred as the result of the July 11, 2018 MVA. Thus, I find that defendants are not responsible for these expenses.

CONCLUSIONS OF LAW

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

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Based on the above findings of fact, I conclude that Mr. Maher has failed to carry his burden of proof to demonstrate by a preponderance of the evidence that he sustained any permanent partial disability as the result of the July 11, 2018 work injury. Just days before the July 11, 2018 work injury, he was treating for back pain. Following the accident, he denied back pain. His personal physician placed him at MMI on July

23, 2018. At that time, Dr. Huisinga stated that Mr. Maher had no permanent impairment, nor did he require any permanent restrictions as the result of the work injury. It was not until late October or early November of 2018, that Mr. Maher again mentioned back pain. At that time, he told his employer that the back pain was not work-related. (Ex. J, p. 23) Around that same time he also did not indicate to his physical therapist that he thought his symptoms were related to a work injury. Mr. Maher reported that he was unable to recall any mechanism of injury for his new onset of right sided pain. (JE3, p. 58)

I conclude that the opinions of Dr. Huisinga and Dr. McGuire are more consistent with the record as a whole and carry greater weight than the opinion of Dr. Sassman. I conclude that Mr. Maher reached maximum medical improvement from the July 11, 2018 work injury on July 23, 2018. Additionally, I conclude that Mr. Maher did not sustain any permanent partial disability, nor does he have any permanent restrictions, as the result of the July 11, 2018 work injury. As such, Mr. Maher has failed to demonstrate by a preponderance of the evidence that he is entitled to any permanent partial disability benefits as the result of the July 11, 2018 motor vehicle accident. Because claimant has failed to prove entitlement to permanent partial disability benefits, the issue of the appropriate commencement date is moot.

Next, claimant is seeking temporary total disability benefits from November 8, 2018 to February 1, 2019 for his low back. When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

Based on the above findings of fact, I conclude Mr. Maher has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits from November 8, 2018 to February 1, 2019. His personal physician, Dr. Huisinga placed him at MMI as of July 23, 2018. With regard to causation, I found the opinions of Dr. Huisinga and Dr. McGuire carried greater weight than those of Dr. Sassman. Based on the evidence on a whole, I find that Mr. Maher has failed to demonstrate that his symptoms after July 23, 2018 were related to the July 11, 2018 work injury. Furthermore, there is no medical documentation to demonstrate that Mr. Maher missed any additional time from work because he had restrictions as the result of the July 11, 2018 injury. Thus, I conclude claimant has not demonstrated entitlement to temporary total disability benefits from November 8, 2018 to February 1, 2019.

Mr. Maher is also asking that defendants be responsible for past medical expenses. The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the

injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Specifically, claimant is seeking payment of past medical expenses as set forth in claimant's exhibit 3. These medical charges were all incurred in November of 2018. Based on the opinions of Dr. Huisinga and Dr. McGuire and based on the evidence as a whole, I find that the claimant has failed to demonstrate that these charges were incurred as the result of the July 11, 2018 MVA. Thus, I find that defendants are not responsible for these expenses.


ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing further from these proceedings.

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

Signed and filed this 27th day of October, 2020.


ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Willis Hamilton (via WCES)

Aaron Oliver (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.