

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SAMUEL KING,

Claimant,

vs.

GENUINE PARTS COMPANY,

Employer,

and

SAFETY NATIONAL CASUALTY
CORP.,Insurance Carrier,
Defendants.

File No. 19004365.01

ARBITRATION DECISION

Head Note Nos.: 1106, 1108.50, 1402.20,
1402.40, 1801, 1801.1,
2501, 2502, 2907, 3001

STATEMENT OF THE CASE

Samuel King, claimant, filed a petition in arbitration seeking workers' compensation benefits from Genuine Parts Company, employer and Safety National Casualty Corporation, insurance carrier, as defendants. Hearing was held on February 23, 2022. This case was scheduled to be an in-person hearing occurring in Cedar Rapids, Iowa. However, due to the declaration of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via Internet-based video. Accordingly, this case proceeded to a live video hearing via CourtCall with all parties and the court reporter 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.

Samuel King, Lance Wilshusen, and Jennifer Murwanashyaka all testified live at trial. The evidentiary record also includes joint exhibits 1-10, claimant's exhibits 1-12, and defendant's exhibits A-N. Defendants objected to claimant's exhibit 1, pages 10 and 11 as being untimely. The objection was overruled but defendants were given additional time to submit rebuttal evidence. All other exhibits were received without objection. The evidentiary record remained open at the conclusion of the arbitration

hearing. On March 3, 2022, the defendants advised the undersigned that they decided not to obtain any rebuttal evidence. The evidentiary record closed at that time.

The parties submitted post-hearing briefs on April 1, 2022, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury which arose out of and in the course of employment on June 5, 2019.
2. Whether the alleged injury was the cause of permanent disability. If so, the amount of industrial disability claimant is entitled to receive.
3. The appropriate commencement date for any permanency benefits.
4. The amount of claimant's gross earnings.
5. Whether the alleged injury was the cause of temporary disability. If so, claimant's entitlement to temporary benefits.
6. Whether defendants are responsible for past medical expenses.
7. Whether claimant is entitled to reimbursement for an independent medical examination pursuant to Iowa Code section 85.39.
8. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Samuel King, alleges he sustained a work-related injury to his lower back on June 5, 2019. Defendants, Genuine Parts Company (a/k/a Apache and hereinafter referred to as "Apache"), employer, and Safety National Casualty Company, insurance carrier, deny claimant sustained a work-related injury.

Mr. King began working at Apache on February 4, 2019, as an order filler. Mr. King testified at hearing that he injured his lower back on Wednesday, June 5, 2019, while working on a rush order and lifting a fert hose. A fert hose is a 2- to 3-inch-wide hose, approximately 100 feet long and weighs around 100 pounds. Mr. King worked his regular shift on Thursday and Friday of that week. He reported the injury a couple of days later to his supervisor, Javier Salazar. In his deposition testimony, Mr. King said he did not remember if he reported the injury via a phone call or via a text. (Def. Ex. N, p. 39)

On Sunday, June 9, 2019, Mr. King went to the emergency room. Mr. King said he lifted a box the wrong way on Wednesday and has been having low back pain. He reported that he previously had sciatica. The impression was low back pain radiating to the right leg. Mr. King was taken off work for three days. (Tr. p. 28; JE2, pp. 13-17)

Lance Wilshusen, the technical services manager at Apache testified at the hearing. Part of his duties are to oversee the safety programs. He testified that Mr. Salazar was Mr. King's supervisor, but Mr. Salazar was no longer employed with Apache. The defendants do not have the text message that Mr. King sent to Mr. Salazar, but Mr. Wilshusen instructed Mr. Salazar to use the exact words from the text message to complete the injury report. On Monday, June 10, 2019, Mr. Salazar completed an incident investigation form. Mr. Salazar's report states that the claimant reported his injury on Sunday at 9:20 p.m. The text message stated, "I felt the sting on wed.. [sic]lifting a box.. [sic]but I worked thurs & fri.. [sic] thinking it would blow over. Couldn't get out of bed sat..[sic]" (De. Ex. B, p. 2) The report indicates there were no details on how the back injury happened, and the claimant went to his own doctor during the weekend. He did not mention anything about the pain and continued working that day and the remainder of the week. He could not get out of bed on Saturday morning. (Def. Ex. B, p. 2)

According to Mr. Wilshusen, Mr. King was instructed to contact Mr. Salazar because he still needed to complete the injury reporting process. Mr. Wilshusen told Mr. King if he needed medical treatment, he should be seen at the occupational health clinic. Mr. King did not come back to the office until Thursday, June 13; he brought the emergency room paperwork with him. Mr. Wilshusen scheduled an appointment for Mr. King to be seen at the Work Well Clinic on Friday, June 14, 2019. Mr. King did not show up for this appointment. (Testimony; JE9, p. 102)

Mr. King went to the Work Well Clinic Monday, June 17, 2019. He reported that on June 5, 2019, he had a lifting twisting injury while at work. He was holding a very large box with two widespread arms. He reported that he lifted and twisted to place the box onto a different surface when he felt sudden and severe right low back pain. In the Work Well Clinic questionnaire he also stated that he was injured when he lifted a box wrong at work. The assessment was lumbar strain. Mr. King was to continue with his current medications, Flexeril, and prescription strength ibuprofen. Physical therapy was also recommended. Mr. King was kept off work for a few more days. (JE9, pp. 103-04; 107)

On June 19, 2019, Mr. King went to Apache to complete the reporting process. He told Mr. Salazar he was "helping another fellow co-worker" and was injured while lifting 2" fert bale hose. (Def. Ex. B, p. 2; Tr. pp 101-106)

Mr. King saw Ignatius Brady, M.D., on June 21, 2019, for recheck of his back pain. His pain was in his low back and made worse with movement. The doctor noted that Mr. King had full range of motion but was quite hesitant to demonstrate it. He was tender to palpation in the low back. Dr. Brady noted that in the lumbar thoracic area there was quite a bit of increased muscle tone, but that was not the area of Mr. King's complaints. Mr. King had a normal gait. The assessment was lumbar strain. He was to continue with Flexeril, ibuprofen, and physical therapy. Mr. King was instructed to return to work next week with restrictions on his hours and activities. (JE9, pp. 112-14)

On June 28, 2019, Mr. King returned to Dr. Brady. He was doing a little better and he did not need as much Flexeril. Mr. King's left buttock area was his area of greatest pain. His motion was improved. Mr. King was able to demonstrate lunges without difficulty. He had normal gait. The assessment was lumbar strain. He was instructed to continue with his current activity and hour restrictions and physical therapy. (JE9, pp. 115-17)

Mr. King was a no-show for his physical therapy on July 10, 2019. He saw Dr. Brady on July 11, 2019, and reported he was doing somewhat better. Mr. King was working 5-hour shifts and was in pain by the end of the shift. He had full range of motion and some tenderness, fullness, and tightness. His hour and activity restrictions remained the same. (JE8, p. 76, JE9, p. 118)

On July 18, 2019, Mr. King returned to physical therapy. His back was good and he did not have any pain, just stiffness. Mr. King did not show up for his appointment on July 22, 2019. He was discharged from therapy on July 24, 2019. His pain was 3/10. (JE8, p. 81-85)

Mr. King saw Dr. Brady again on July 25, 2019. He was improving with better range of motion and less pain. He was only taking ibuprofen occasionally. Mr. King felt ready to increase his activity level. Dr. Brady discontinued the physical therapy, but continued his home exercises. Claimant was restricted to lift less than 40 pounds. He no longer had any limitation on the number of hours he was allowed to work. (JE9, pp. 121-23)

Dr. Brady saw Mr. King for the last time on August 15, 2019. Mr. King was doing well and did not need medications. He felt ready to return to full activity. He had full range of motion in his back without any hesitation. Dr. Brady stated that Mr. King was doing well, and he did not anticipate he would need further follow-up. Mr. King was ready to try regular duty. Dr. Brady stated Mr. King had no permanent impairment nor did he require any permanent restrictions as the result of the injury. (JE9, pp. 124-26)

Mr. King was off work from Monday, June 10 through Sunday, June 23, 2019. He returned to light duty work for 4-5 hour shifts on Monday, June 24, 2019. On July 25, 2019, he was released to return to work but restricted to lifting less than 40 pounds; there was no limitation on the number of hours he could work. Mr. King was released to full duty with no restrictions on August 15, 2019. (Tr., p. 106; JE9, pp. 112-122; Def. Ex. N, p. 50) After his release to return without restrictions Mr. King returned to his pre-injury job as an order filler. He worked in this job until his employment ended in February 2020. During this time, he did not miss any time from work due to back pain. He did not report any back problems to Apache and he did not seek any treatment for his back. (Testimony; Def. Ex. N, p. 51)

With regard to Mr. King's current claim, it is important to note that Mr. King did not seek any treatment for his low back from August 2019 until February 2021. During

this timeframe Mr. King did have medical appointments, but not for his back. (JE1, pp. 1-10; JE 10, pp. 176-78; Def. Ex. N, pp. 59-60)

Mr. King was one of several Apache employees who was selected for a random drug screening on February 17, 2020. He was advised by his supervisor that he needed to go to WorkWell for a drug screen. Mr. King went to the drug screening but did not successfully complete the screening. He did not show up for work on February 18 or 19. Apache's employment records indicate that they considered Mr. King's no call/no show a voluntary resignation effective February 17, 2020. (Def. Ex. F, p. 8; G, p. 9; Tr. pp. 115-118)

Initially, Mr. King denied having any back problems prior to June 5, 2019. However, a review of the medical records demonstrates that Mr. King did have problems with his low back prior to the alleged date of injury. Mr. King was seen at the University of Iowa Hospitals and Clinics (UIHC) in December 2008. He had fallen two stories while painting a house. He sustained multiple injuries including one to his low back. In October 2008, an MRI of the lumbar spine revealed annular tears at L3-L5. He continued to seek treatment for low back pain and a numb sensation in his right leg into 2011. In August 2011, he was referred to Nasser Azeez, M.D., for evaluation of chronic low back pain that he had since his work injury in 2008. As late as 2013 Mr. King continued to go to the UIHC with what he described as chronic low back pain. Treatment recommendations included prescription medications, x-rays, an MRI, physical therapy, and home exercises. (JE10, pp. 127-178) Despite these numerous visits at the UIHC, Mr. King initially denied having any problems with his low back or any work injuries prior to the alleged June 2019 work injury.

Defendants contend Mr. King is not a credible witness. In support of their contention defendants point out several inconsistencies in Mr. King's testimony during his deposition and during the hearing. Mr. King was less than forthcoming about the back problems he had prior to the alleged June 5, 2019 work injury. Initially, Mr. King denied receiving prior back treatment. However, once confronted with medical evidence of prior treatment, he conceded that he had received prior treatment. (Tr. pp. 70-74) Mr. King denied prior back problems to Dr. Brady. (JE9, p. 103) In his answers to interrogatories Mr. King failed to disclose all of his prior employers. (Tr. p. 75-76) I find that Mr. King was less than forthcoming in his testimony and that overall his credibility is not strong.

The records contain varying accounts of the task Mr. King was performing at the time of the alleged injury. At times, Mr. King reported he was lifting a box with two widespread arms and at other times he was lifting a large fert hose. On at least one occasion he reported that he was lifting the hose with a co-worker. At hearing Mr. King testified that his injury occurred while lifting a fert hose and he did not know why some of the records said lifting a box. He mentioned that in certain areas the hoses came in a box. Another possible explanation given by Mr. King was that it was his fiancée who provided that history to medical providers. Later, Mr. King admitted that maybe he reported that he was lifting a box because people outside of the industry would not

know what a fert hose was. (Tr. pp. 80-85) I accept Mr. King's most recent testimony that he was lifting a fert hose at the time of the alleged injury as the most probable scenario.

There are several medical doctors who have offered their opinions in this case.

Dr. Brady provided treatment to Mr. King from June 17, 2019 through August 15, 2019. (JE9) He has offered his opinions on several occasions throughout this case. Claimant's counsel sent a letter to Dr. Brady on October 27, 2020. (Cl. Ex. 3, pp. 42-44) The letter stated that on June 5, 2019, "Mr. King lifted a very large box at work. Mr. King was holding the box with his arms widespread. Mr. King lifted and twisted his body to place this on a different surface when he felt sudden and severe right low back pain." (Cl. Ex. 3, p. 42) The letter also stated that Mr. King "has had no back injuries in the past. Mr. King has further never had a previous work-related injury" (Id.)

On November 2, 2020, Dr. Brady responded to claimant's counsel. Dr. Brady stated:

I have reviewed my notes from treatment, which date from 6/17/19 through 8/15/19. Those notes show a fairly straightforward course from initial low function, high pain and need for medication, with steady improvement at each recheck, such that he was discharged on 8/15/20 working full duty, off of medications. At that time, I did not anticipate that he would require further care. I do not have any communication from the patient or his employer since that time.

(Cl. Ex. 3, p.45)

Dr. Brady's diagnosis for Mr. King's work-related injuries was a "work-related lumbar strain." (Cl. Ex. 3, p. 45) Dr. Brady opined that the June 5, 2019 work injury was the cause of Mr. King's lumbar strain. Dr. Brady was not aware of any other contributing factors. (Cl. Ex. 3, p. 45)

On January 19, 2022, defendants' attorney wrote to Dr. Brady to summarize the conference they had together earlier that day. The letter advised Dr. Brady that despite Mr. King denying any prior back injury, there are medical records from 2010 and 2011 that reveal low back treatment. The letter also explained to Dr. Brady that Mr. King did not treat for his low back between August 2019 and February 2021. Furthermore, Mr. King had a physical on November 3, 2020 and did not report any back pain and denied musculoskeletal complaints. The letter provided Dr. Brady with the treatment records from Dr. Mathew and the IME report from Dr. Manshadi¹. Dr. Brady was then asked to respond to a series of questions. (Def. Ex. M, pp. 50-51)

¹ See explanation on page 9.

On January 20, 2022, Dr. Brady authored a responsive missive to defendants. In addition to reviewing his own treatment notes, Dr. Brady also reviewed notes from Dr. Chen, Dr. Aguilar, Dr. Morrissey, and Dr. Mathew. Dr. Brady stated, “[m]y notes indicate that I believed the patient had never had a back injury before I met him. The notes from 2011 show a discrepancy in that history. He had serious enough back pain to require specialist consultation with Dr. Chen.” (Def. Ex. M, p. 52) Dr. Brady indicated that as of August 2019 Mr. King’s work-injury complaints resolved with no permanent residuals. Dr. Brady was asked, “[a]t the time of his discharge in August 2019, did Mr. King have any signs or symptoms of sacroiliitis, bursitis, SI joint dysfunction, or lumbosacral radiculopathy?” (Def. Ex. M, p. 51) Dr. Brady responded, “No.” (Def. M, p. 52) Dr. Brady stated, “I have no information to link his current problems to the condition I treated in 2019.” (Id.) He reiterated that Mr. King did not have an impairment at the time of his last visit. (Id.)

On February 4, 2022, claimant’s counsel sent a check the box letter to Dr. Brady for his review. The letter stated:

I am in receipt of a letter that you sent to Attorney Aaron Oliver on January 20, 2022 regarding my client Sam King. In looking back, I note that you had previously offered me opinions in a letter dated November 2, 2020. I have enclosed a copy of my letter and your response for ease of your review. Based upon the information that you have received from both Mr. Oliver and me to date, I would like you to give your opinions to a reasonable degree of medical certainty regard the following question:

1. Based upon the information you have received from Mr. Oliver and me to date, do the opinions that you provided in your November 2, 2020 letter to me remain the same?

(Cl. Ex. 3, p. 46)

Dr. Brady placed an “X” yes to Yes. (Cl. Ex. 3, p. 46)

A review of Dr. Brady’s opinions reveals his diagnosis for Mr. King was a work-related lumbar strain that resolved by the time he was discharged on August 15, 2019. Dr. Brady stated at the time of the discharge Mr. King did not show any signs of sacroiliitis, bursitis, SI joint dysfunction, or lumbosacral radiculopathy. I find Dr. Brady’s opinions in this case to be persuasive because he had the advantage of seeing Mr. King on several occasions close in time to the date of injury. Additionally, Dr. Brady had the advantage of seeing Mr. King in August 2019 at the time of his discharge. Dr. Brady has first-hand knowledge of his symptoms and conditions at that time.

Stanley Mathew, M.D., has also offered his opinions in this matter. At the request of his attorney Mr. King saw Dr. Mathew in February 2021. This was the first time Mr. King sought treatment for his low back since his discharge in August 2019. Mr. King reported that he injured his back in June 2019 while doing some heavy lifting at

work. Since that time, his back has gotten progressively worse. He underwent a couple months of physical therapy. He now had low back pain radiating down his right leg with numbness and tingling. Dr. Mathew noted that Mr. King had an antalgic gait. Dr. Mathew's impression was enthesopathy lumbar spine, sacroiliitis trochanteric bursitis. Dr. Mathew wanted to rule out L5 radiculopathy. He performed 6 trigger point injections. Mr. King submitted the bills for treatment to his personal health insurance. (JE5, pp. 24-28; testimony)

On March 29, 2021, claimant's counsel wrote a letter to Dr. Mathew. He described the work injury as follows: "Mr. King lifted a very large box at work. Mr. King was holding the box with his arms widespread. Mr. King lifted and twisted his body to place this on a different surface when he felt sudden and severe right low back pain." (Cl. Ex. 2, p. 23) The letter also stated that Mr. King "has had no back injuries in the past. Mr. King has further never had a previous work-related injury" (*Id.*) The letter asked Dr. Mathew to respond to a series of questions. (Cl. Ex. 2, pp. 23-25)

On June 16, 2021, Dr. Mathew authored a missive to claimant's counsel. His diagnoses for Mr. King's injury include enthesopathy of the lumbar spine, sacroiliitis, trochanteric bursitis, clinical lumbosacral radiculopathy. Dr. Mathew opined that the June 5, 2019, workplace incident was a substantial contributing factor in bringing about his low back pain. Dr. Mathew felt it was reasonable that Mr. King continues to have low back pain, numbness and tingling down his right leg and those are a direct result of his work injury. He placed Mr. King at maximum medical improvement (MMI) as of one year post injury. Dr. Mathew felt he developed a chronic pain syndrome and would benefit from continued pain management, injection therapy, oversight of physical therapy and he may benefit from pain psychology due to the development of chronic pain. (Cl. Ex. 2, pp. 26-27)

Mr. King continued to see Dr. Mathew. He reported moderately severe pain in his low back and right leg. The doctor noted that he responded well to injection therapy and reported several weeks of reduced pain. An EMG was unremarkable. An MRI showed degenerative changes and disc bulging mainly at L3-4 and L4-5 with mild spinal canal stenosis at both levels. Mild bilateral foraminal stenosis was also noted at L5-S1. By July 2021, Mr. King rated his pain as severe 10/10. He requested injection therapy from which he received several weeks of pain relief. Mr. King underwent a lumbar injection in October of 2021 and responded well. Dr. Mathew diagnosed chronic pain related depression. He recommended pain psychology and referred Mr. King for a lumbar epidural. On November 30, 2021, Mr. King reported his pain was 5/10. Dr. Mathew recommended consideration of trigger point injection. (JE3, p. 18; JE5, pp. 29-54)

On November 15, 2021, claimant's counsel wrote another letter to Dr. Mathew. This time he advised Dr. Mathew that Mr. King did have a significant past medical history regarding his low back. He provided Dr. Mathew with additional information regarding the prior back problems. The letter, however, repeated the history of lifting a heavy box at work. Additionally, the letter provided a copy of Dr. Manshadi's IME report

(discussed below). Dr. Mathew was then asked to answer questions regarding future treatment and Dr. Manshadi's IME report. (Cl. Ex. 2, pp. 29-32)

On December 5, 2021, Dr. Mathew responded with recommendations for future treatment. Additionally, he agreed with Dr. Manshadi's rating and restrictions. (Cl. Ex. 2, pp. 33-34) It is noteworthy that Dr. Mathew was not asked about and did not address the issue of causation after he was informed of Mr. King's prior back problems.

In January 2022, Dr. Mathew signed another check the box letter authored by claimant's counsel. By signing the letter Dr. Mathew indicated that Mr. King developed chronic and permanent pain due to the June 5, 2019 work injury. He also indicated that the work injury was a substantial contributing factor to the development of chronic pain related depression. He made recommendations for additional treatment. (Cl. Ex. 2, pp. 35-36)

I do not find the opinions of Dr. Mathew as persuasive as those of Dr. Brady. Dr. Mathew had the disadvantage of not seeing Mr. King until February 2021, approximately 20 months after the date of injury and nearly 18 months since Mr. King was discharged from treatment. In June 2021, Dr. Mathew causally connected Mr. King's back complaints to the work injury; however, this was based on an incorrect and incomplete history. Dr. Mathew was told the injury occurred while Mr. King was lifting a box and that he had no prior back injuries or work injuries. Once the history was corrected, Dr. Mathew did not address the issue of causation. Furthermore, Dr. Mathew failed to provide any type of explanation of how Mr. King's symptoms were related when there had been a gap in treatment for over a year and there was the appearance of new symptoms. I find Dr. Mathew's opinions are not persuasive in this case.

Consideration is also given to the opinion of claimant's IME doctor. On October 18, 2021, at the request of his attorney, Mr. King underwent an IME with Farid Manshadi, M.D. At that evaluation, Mr. King reported that his low back pain was on the right side and radiated into the right buttock and right posterior thigh, but not below the knee. He rated his pain constantly at 4 or 5. He denied having these lower back symptoms prior to the June 5, 2019 work injury. Dr. Manshadi opined as follows:

[T]he 06/05/19 work incident was a substantial contributing factor in bringing about Mr. King's back injury. Specifically right-sided SI joint dysfunction, especially looking at the mechanism of the injury where Mr. King described that he was lifting a hose weighing between 100 and 110 pounds and then twisted in his low back not unusually can cause these issues with the sacroiliac joint.

(Cl. Ex. 1, p. 8)

Dr. Manshadi placed Mr. King at MMI as of October 18, 2021. He felt Mr. King could require additional medical treatment for his right sacroiliac joint dysfunction. He placed Mr. King in the DRE Lumbar Category 2 and assigned six percent impairment of

the whole person. He instructed Mr. King to avoid repetitious twisting or bending at his waist. He also recommended avoiding repetitious squatting. He was restricted to lifting no more than 20 pounds. Dr. Manshadi reaffirmed his opinions on February 4, 2022. (Cl. Ex. 1, pp. 6-8; 10-11)

I do not find the opinions of Dr. Manshadi to be persuasive. In October 2021 Dr. Manshadi diagnosed Mr. King with right-sided SI joint dysfunction and relates the condition to the work injury. The physician who saw Mr. King closer in time to the injury specifically noted that Mr. King did not have any signs of sacroiliitis, bursitis, SI joint dysfunction, or lumbosacral radiculopathy when he saw him in August of 2019. Furthermore, Dr. Manshadi fails to explain the gap in treatment from August 2019 until February 2021. Dr. Manshadi also does not provide any explanation for Mr. King's development of new symptoms after August 2019. Due to the lack of rationale and explanation contained in Dr. Manshadi's report, I find that his opinions carry little to no weight.

The first issue to be addressed in this case is whether Mr. King sustained an injury that arose out of and in the course of his employment on June 5, 2019. Based on the written evidence and testimony of the witnesses at hearing, I find that Mr. King did sustain an injury to his low back that arose out of and in the course of his employment on June 5, 2019. Specifically, I find that Mr. King sustained a lumbar strain while lifting a fert hose.

Mr. King contends the work injury caused temporary disability. If Mr. King demonstrates entitlement to temporary benefits a determination will first need to be made as to whether the injury caused any permanent partial disability because that will determine if Mr. King would be entitled to temporary total disability benefits or healing period benefits.

Thus, we now turn to the issue of whether Mr. King sustained any permanent impairment as the result of the June 5, 2019 work injury. For the reasons set forth above, I find the opinions of Dr. Brady carry the greatest weight in this case. Thus, I find Mr. King sustained a work-related lumbar strain that resolved by August 15, 2019. At that time, Dr. Brady did not see any signs of sacroiliitis, bursitis, SI joint dysfunction, or lumbosacral radiculopathy. Relying upon that evidence, I further find Mr. King did not sustain any permanent impairment as the result of the work injury. Additionally, I find that Mr. King does not have any permanent restrictions as the result of the June 5, 2019 work injury. Thus, I find Mr. King did not sustain any permanent disability as the result of the June 5, 2019 work injury. Mr. King has not demonstrated entitlement to permanent partial disability benefits.

Because Mr. King failed to prove entitlement to any permanent partial disability benefits, the issue of the appropriate commencement date is moot.

We now turn to the issue of claimant's weekly workers' compensation rate. The parties agree that Mr. King was single and entitled to one exemption. However, the

parties disagree on claimant's correct gross weekly earnings. This will impact claimant's claim for temporary total disability and temporary partial disability (TPD) benefits.

Claimant contends his gross earnings were \$707.10 per week at the time of the work injury. (Cl. Ex. 8, p. 76) Defendants contend that the applicable gross earnings at the time of the work injury were \$693.70 per week. (Def. Ex. J, p. 38) Mr. King was paid \$15.00 per hour and received a paycheck once every two weeks. Claimant's rate calculation contains fourteen weeks of payroll benefits, based on the paychecks that are issued biweekly. Defendants used weekly pay periods to reach their rate calculation. Defendants argue that the use of biweekly pay periods is not appropriate.

Defendants' rate calculation is contained in claimant's exhibit J, p. 38. Unfortunately, it is not entirely clear what documents defendants used to reach the number of hours worked each week by the claimant as his actual wage documents were not cited to or attached. For the pay end date February 16, 2019, defendants' rate calculation states claimant worked 42.82 hours. However, there are no documents in evidence to support this number. (Def. Ex. J, p. 38) Defendants submitted a document they entitled "wage statement". However, there was no testimony to provide any explanation of what this document is or how it was prepared. I find that the wage statement is not consistent with the payroll records in evidence. (Def. Ex. C, pp. 4-5; Cl. Ex. 8). For example, for the pay period ending on March 9, 2019, the payroll records indicate claimant worked 47.65 hours, but the wage statement indicates claimant worked 56.65 hours. For the pay period ending on April 20, 2019, the payroll records indicate claimant worked 40.4 hours but the wage statement indicates claimant worked 46.28 hours. Therefore, I find defendants' exhibit C, pages 4 and 5 are not accurate and cannot be relied upon. (Def. Ex. C, pp. 4-5)

The wage statement does not contain any information for the pay period ending on February 16, 2019. Claimant submitted payroll records with pay period end dates on March 9, 2019 through June 1, 2019. There are no payroll records for the pay period ending on February 16, 2019, thus there is no way for the undersigned to know if 42.82 hours is the accurate number for that pay period. (CE 8, pp. 77-83) Because there is no way to know whether the hours stated in the defendants' rate calculation for the pay end date of February 16, 2019, the undersigned cannot rely on that week for the rate calculation.

There is an additional problem with the rate calculation submitted by the defendants. Defendants' calculation is based on a week-by-week calculation. However, the claimant was paid once every two weeks. In certain circumstances the payroll records do not provide an adequate weekly breakdown of the wage information. For example, when holiday or sick pay is included the payroll records fail to indicate in which week those hours belong. I find a rate calculation based on pay periods is most representative of claimant's customary hours and earnings. Additionally, the record contains unrefuted testimony by the claimant that the earnings set forth in claimant's rate calculation were accurate. (Tr. pp. 68-69) I find that the weeks included in

claimant's rate calculation reflect his customary earnings. I further find that the rate calculation submitted by the claimant is correct in this case. Therefore, I find that at the time of the work injury Mr. King's gross weekly earnings were \$707.10.

Mr. King has alleged entitlement to temporary total disability, temporary partial disability, or healing period benefits. The first timeframe for which Mr. King seeks benefits is June 9, 2019 through June 21, 2019. Defendants concede that if Mr. King sustained a compensable injury, then he is entitled to temporary total disability benefits during this timeframe. I find Mr. King was taken off work during this time period by the emergency room doctor and by Dr. Brady. I find Mr. King is entitled to temporary total disability benefits from June 9, 2019 through June 21, 2019.

Mr. King is also seeking temporary partial disability benefits from June 21, 2019 through February 17, 2020. I find during the time period of June 24, 2019 through July 25, 2019 Dr. Brady restricted the number of hours that Mr. King could work to 4-5 hours per shift. (JE9) Therefore, I find Mr. King was not capable medically of returning to employment substantially similar to the employment he was engaged in at the time of the injury. Mr. King is entitled to temporary partial disability benefits for the time period listed above.

I found Mr. King's gross weekly earnings to be \$707.10. Mr. King was paid once every two weeks. His biweekly gross weekly earnings amount to \$1,414.20. Unfortunately, the evidentiary record does not contain a daily breakdown of the number of hours Mr. King worked; rather, there are merely biweekly breakdowns. According to the payroll information, Mr. King earned \$378.00 from June 16, 2019 through June 29, 2019. As noted above, Mr. King demonstrated entitlement to temporary total disability benefits during a period of this time, Sunday, June 16 through Friday, June 21, 2019. There is evidence in the record that the employees worked on Saturdays, but there is no evidence that work was performed on Sundays. I find Mr. King did not work on Sundays and therefore, I find from June 24 through June 30, Mr. King earned \$378.00. For that week, he has shown entitlement to $66 \frac{2}{3}$ the difference between his gross weekly earnings of \$707.10 and his earnings of \$378.00. Thus, he is entitled to temporary partial disability benefits in the amount of \$219.40 from June 24 through June 30, 2019.

From July 1, 2019 through July 14, 2019, Mr. King earned \$799.50. His biweekly gross earnings are \$1,414.20. Thus, I find he is entitled to TPD benefits in the amount of \$409.80 from July 1, 2019 through July 14, 2019.

From July 15, 2019 through July 28, 2019, Mr. King earned \$651.00. He has demonstrated entitlement to TPD benefits in the amount of \$508.80.

From July 29, 2019 through August 11, 2019 Mr. King earned \$1,325.59. I find he has demonstrated entitlement to TPD benefits in the amount of \$59.07.

From August 12, 2019 through August 14, 2019, Mr. King was still medically restricted on the number of hours he could work per shift. Unfortunately, based on the payroll records in evidence, the undersigned cannot determine the number of hours worked during this partial pay period. I find claimant has failed to demonstrate entitlement to any temporary partial disability benefits during this timeframe.

Dr. Brady could not relate Mr. King's symptoms after August 15, 2019 to the work injury. (Def. Ex. M, p. 52) Based on the opinions of Dr. Brady, I find any symptoms or conditions Mr. King had as the result of the work injury had resolved as of August 15, 2019. I find Mr. King has not demonstrated entitlement to any temporary partial disability or temporary total disability benefits after August 15, 2019.

Claimant is seeking payment of past medical expenses as set forth in claimant's exhibit 12. Based on the opinions of Dr. Brady, I find that claimant has failed to prove that any medical expenses incurred after August 15, 2019 are related to the work injury. Thus, defendants are not responsible for any medical expenses dated after August 15, 2019.

Mr. King is seeking reimbursement for expenses incurred at the Hy-Vee Pharmacy. I find that the expenses incurred on June 10, 2019 in the amount of \$14.00 and \$28.00 are reasonable and necessary as the result of the work injury. These medications were prescribed for Mr. King at the June 9, 2019, emergency room appointment for his low back injury. (JE2, pp. 13-17; Cl. Ex. 12, pp. 87-88) Mr. King is also seeking reimbursement in the amount of \$30.00 for a prescription filled on June 24, 2019 for Cyclobenzaprine prescribed by Dr. Brady. I find that this treatment is reasonable and necessary as the result of the work injury. Mr. King is seeking reimbursement for expenses incurred from January 6, 2020 through September 17, 2021. I find that these expenses were incurred after August 15, 2019, and therefore were not reasonable and/or necessary because of the work injury. Thus, I find defendants are responsible for the expenses incurred at the Hy-Vee pharmacy on June 10, 2019 and June 24, 2019. (Cl. Ex. 12, p. 87-88)

Next Mr. King is seeking medical expenses incurred at Mercy Medical Center on June 9, 2019. I find that the treatment Mr. King received on this date was reasonable and necessary due to the work injury. Thus, I find defendants are responsible for the expenses incurred at this visit. (Cl. Ex. 12, p. 87, 93)

Mr. King is also seeking medical expenses incurred at Unity Point Health - St. Luke's Hospital. On June 21, 2019 Mr. King saw Dr. Brady for recheck of his back pain and also underwent physical therapy for his low back. I find that this treatment was reasonable and necessary because of the work injury. Thus, I find defendants are responsible for these medical expenses. (JE8, pp. 64-67)

Mr. King is also seeking medical expenses incurred at Unity Point Health - St. Luke's Hospital from February 22, 2021 through January 31, 2022. However, based on the opinions of Dr. Brady, I find that claimant has failed to prove that any medical

expenses incurred after August 15, 2019 are related to the work injury. Thus, defendants are not responsible for any medical expenses dated after August 15, 2019.

Mr. King is seeking reimbursement in the amount of two thousand dollars (\$2,000.00) for an IME pursuant to Iowa Code section 85.39. (Cl. Ex. 12) On October 18, 2021, Dr. Manshadi saw Mr. King for an IME. I find that Dr. Brady had previously stated that Mr. King had no permanent impairment for the work injury. (JE9, p. 124) Claimant is entitled reimbursement for Dr. Manshadi's IME report.

Finally, claimant is seeking an assessment of costs as set forth in claimant's exhibit 11. Costs are to be assessed at the discretion of the Iowa Workers' Compensation Commissioner or the deputy hearing the case. In this case I find that claimant was generally not successful, and therefore exercise my discretion to not assess costs against the defendants. Each party shall bear their own costs.

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. 6.904(3)(e).

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

Based on the above findings of fact, I conclude that claimant sustained an injury to his low back on June 5, 2019 which arose out of and in the course of his employment.

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 the opinions of Dr. Brady carry the greatest weight in this case. I further conclude that claimant failed to demonstrate by a preponderance of the evidence that he sustained any permanent disability as the result of the June 5, 2019 work injury.

The parties have a dispute regarding the appropriate weekly workers' compensation rate for the claimant. Section 85.36 states the basis 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 required for the work or employment. The various subsections of section 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, 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, however. Iowa Code section 85.36(6).

Based on the above findings of fact, I conclude the weeks included in claimant's rate calculation reflect his customary earnings and claimant's rate calculation is correct. Therefore, I conclude that at the time of the work injury Mr. King's gross weekly earnings were \$707.10.

The weekly benefit amount payable to an employee shall be based upon 80 percent of the employee's weekly spendable earnings, but shall not exceed an amount, rounded to the nearest dollar, equal to 66-2/3 percent of the statewide average weekly wage paid employees as determined by the Department of Workforce Development. Iowa Code section 85.37.

The weekly benefit amount is determined under the above Code section by referring to the Iowa Workers' Compensation Manual in effect on the applicable injury date. The parties stipulated claimant was single and entitled to one exemption. I conclude his gross average weekly wage was \$707.10, I utilize the Iowa Workers' Compensation Manual ("rate book") with effective dates of July 1, 2018 through June 30, 2019 and determine that the application weekly rate for claimant's weekly benefits is \$446.86.

Claimant is seeking temporary total disability benefits from June 9, 2019 through June 21, 2019. 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. Iowa Code section 85.33(1).

Based on the above findings of fact, I conclude claimant was restricted from working during this time period based on the restrictions from the emergency room physician and Dr. Brady. I conclude claimant is entitled to temporary total disability benefits during this period. Additionally, in their post-hearing brief defendants concede that if claimant sustained a work injury then he is entitled to temporary total disability benefits from June 9, 2019 through June 21, 2019. I conclude claimant has demonstrated entitlement to 1.857 weeks of temporary total disability benefits for the timeframe of June 9, 2019 through June 21, 2019, payable at the applicable weekly workers' compensation rate.

Claimant is seeking temporary partial disability benefits from June 21, 2019 through February 17, 2020. Under Iowa law an employee is entitled to appropriate temporary partial disability benefits during those periods in which the employee is temporarily, partially disabled. Temporary partial benefits means benefits payable to an employee because of the employee's temporary partial reduction in earning ability due to the employee's temporary partial disability. Iowa Code section 85.33(2).

If an employee is entitled to temporary partial benefits under subsection 3 of this section, the employer for whom the employee was working at the time of injury shall pay to the employee weekly compensation benefits, as provided in section 85.32, for and during the period of temporary partial disability. The temporary partial benefit shall be sixty-six and two-thirds percent of the difference between the employee's weekly earnings at the time of injury, computed in compliance with section 85.36, and the employee's actual gross weekly income from employment during the period of temporary partial disability. If at the time of injury an employee is paid on the basis of the output of the employee, with a minimum guarantee pursuant to a written employment agreement, the minimum guarantee shall be used as the employee's weekly earnings at the time of injury. However, the weekly compensation benefits shall not

exceed the payments to which the employee would be entitled under section 85.36 or section 85.37, or under subsection 1 of this section.

Section 85.33(4)

Based on the above findings of fact, I conclude that claimant had medical restrictions placed on the number of hours he could work due to the work injury from June 22, 2019 through August 14, 2019. I conclude claimant was partially disabled during this time period and he had temporary partial reductions in earnings due to the work injury.

I conclude from June 24 through June 30, Mr. King earned \$378.00. For that week, he has shown entitlement to $66 \frac{2}{3}$ the difference between his gross weekly earnings of \$707.10 and his earnings of \$378.00. Thus, he is entitled to TPD benefits in the amount of \$219.40 from June 24 through June 30, 2019.

From July 1, 2019 through July 14, 2019, Mr. King earned \$799.50. His biweekly gross earnings are \$1,414.20. Thus, I conclude he is entitled to TPD benefits in the amount of \$409.80 from July 1, 2019 through July 14, 2019.

From July 15, 2019 through July 28, 2019, Mr. King earned \$651.00. I conclude he has demonstrated entitlement to TPD benefits in the amount of \$508.80.

From July 29, 2019 through August 11, 2019 Mr. King earned \$1,325.59. I conclude claimant has demonstrated entitlement to TPD benefits in the amount of \$59.07.

From August 12, 2019 through August 14, 2019, Mr. King was still medically restricted on the number of hours he could work per shift. Unfortunately, based on the payroll records in evidence, the undersigned cannot determine the number of hours worked during this partial pay period. I conclude claimant has failed to demonstrate entitlement to any temporary partial disability benefits during this timeframe.

Dr. Brady could not relate Mr. King's symptoms after August 15, 2019 to the work injury. (Def. Ex. M, p. 52) Based on the opinions of Dr. Brady, I conclude any symptoms or conditions Mr. King had as the result of the work injury had resolved as of August 15, 2019. I conclude Mr. King has not demonstrated entitlement to any temporary partial disability benefits after August 15, 2019.

Claimant asserts defendants should be liable for payment of 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).

Based on the above findings of fact, I conclude that defendants are responsible for the reasonable and necessary medical expenses incurred by the claimant at Hy-Vee Pharmacy on June 10, 2019 and June 24, 2019. Additionally, defendants are responsible for the reasonable and necessary medical expenses incurred on June 9, 2019 at Mercy Medical Center. Finally, defendants are responsible for the reasonable and necessary medical expenses incurred on June 21, 2019 at Unity Point Health – St. Luke’s Hospital. I conclude that claimant failed to demonstrate that he incurred any medical expenses causally related to the work injury after August 15, 2019.

Claimant seeks reimbursement for the IME performed by Dr. Manshadi. Iowa Code section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated “permanent disability” and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the IME.

Defendants are responsible only for reasonable fees associated with claimant's IME. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991).

Mr. King is seeking reimbursement under Iowa Code section 85.39 for Dr. Manshadi’s IME in the amount of two thousand dollars (\$2,000.00). (Cl. Ex. 12) I find that Dr. Brady had previously stated Mr. King had no permanent impairment for the work injury. Based on the above findings of fact, I conclude that the prerequisites of section 85.39 were met. Therefore, I conclude defendants shall reimburse claimant for Dr. Manshadi’s IME. (JE9, p. 124; Cl. Ex. 10, p. 85)

Finally, claimant is seeking an assessment of costs as set forth in claimant’s exhibit 11. All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner or the deputy commissioner hearing the case. 876 IAC 4.33. I found that claimant was generally not successful in his case and therefore exercise my discretion and do not assess costs against defendants. Each party shall bear their own costs.

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the rate of four hundred forty-six and 86/100 dollars (\$446.86).

Defendants shall pay one point eight five seven (1.857) weeks of temporary total disability benefits from June 9, 2019 through June 21, 2019.

Defendants shall pay one (1) week of temporary partial disability benefits in the amount of two hundred nineteen and 100/100 dollars (\$219.40) from June 24, 2019 through June 30, 2019.

Defendants shall pay two (2) weeks of temporary partial disability benefits in the amount of four hundred nine and 80/100 dollars (\$409.80) from July 1, 2019 through July 14, 2019.

Defendants shall pay two (2) weeks of temporary partial disability benefits in the amount of five hundred eight and 80/100 dollar (\$508.80) from July 15, 2019 through July 28, 2019.

Defendants shall pay two (2) weeks of temporary partial disability benefits in the amount of fifty-nine and 17/100 dollars (\$59.07) from July 29, 2019 through August 11, 2019.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.


Defendants shall pay the medical providers, reimburse claimant, reimburse all third-party payers, or otherwise satisfy and hold claimant harmless for medical expenses as set forth above.

Defendants shall reimburse claimant for the IME in the amount of two thousand and no/100 dollars (\$2,000.00).

Each party shall bear their own costs.

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

Signed and filed this 21st day of July, 2022.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Matthew Dake (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.