BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SAMUEL HOFER,	:	
Claimant,	:	File No. 20700341.01
vs.	:	
CITY OF INDIANOLA, IOWA,	:	ARBITRATION DECISION
Employer,	:	
and	:	
IMWCA,	:	
Insurance Carrier, Defendants.	:	Head Note Nos.: 1100, 1108, 1400, 1402.30, 2206, 2500, 2700

STATEMENT OF THE CASE

The claimant, Samuel Hofer, filed a petition for arbitration seeking workers' compensation benefits from the City of Indianola, Iowa, ("Indianola") and its insurer IMWCA. Gary Mattson appeared on behalf of the claimant. Rachel Neff appeared on behalf of the defendants.

The matter came on for hearing on July 14, 2021, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner related to the COVID-19 pandemic, the hearing occurred via CourtCall. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-13, Claimant's Exhibits 1-9, and Defendants' Exhibits A-K. The claimant testified on his own behalf. Melissa McCoy, and Gregory Chia also testified. Kristi Miller was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted on August 13, 2021, after briefing by the parties.

STIPULATIONS

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

1. There was an employer-employee relationship at the time of the alleged injury.

2. Although entitlement to temporary disability and/or healing period benefits cannot be stipulated, the claimant was off work from February 20, 2020, to February 3, 2021.

3. If the alleged injury is a cause of permanent disability, the permanent disability is an industrial disability.

4. The claimant's gross earnings were nine hundred seventy-nine and 65/100 dollars ($979.65) per week, the claimant was single, and entitled to one exemption. This provides a weekly compensation rate of six hundred seven and 17/100 dollars ($607.17).

5. The costs requested in Claimant's Exhibit 7 have been paid.

The defendants waived their affirmative defenses. Credits against any award are no longer in dispute. The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. Whether the claimant sustained an injury, which arose out of and in the course of employment, on February 4, 2020.

2. Whether the alleged injury is a cause of temporary disability during a period of recovery.

3. Whether the alleged injury is a cause of permanent disability.

4. Whether the claimant is entitled to temporary total disability, temporary partial disability, or healing period benefits from February 20, 2020, to February 3, 2021.

5. The extent of permanent disability, should any be awarded.

6. Whether the commencement date for permanent partial disability benefits, if any are awarded, is February 3, 2021.

7. Whether the claimant is entitled to reimbursement for an independent medical examination ("IME") pursuant to Iowa Code section 85.39.

8. Whether the claimant is entitled to alternate medical care pursuant to Iowa Code section 85.27.

9. Whether the claimant is entitled to a specific taxation of costs.

FINDINGS OF FACT

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

Samuel Hofer, the claimant, was 29 years old at the time of the hearing. (Testimony). He is single. (Testimony; Claimant's Exhibit 4). He has no children. (Testimony). He is originally from Treynor, Iowa. (Testimony; CE 4). He graduated from high school there in 2010. (Testimony; CE 4). He obtained mostly B's. (Testimony).

After graduating from high school, Mr. Hofer worked for a brief time as a bartender at Harrah's Casino in Council Bluffs, Iowa. (Testimony). While working at Harrah's Casino, Mr. Hofer suffered a fractured ankle. (Testimony).

In the fall of 2010, Mr. Hofer enrolled in paramedic classes at Mercy College of Health Sciences in Des Moines, Iowa. (Testimony; CE 4). As a student, he interned with ambulance crews, and in hospitals. (Testimony). He also attended classes. (Testimony). The program in which Mr. Hofer enrolled was three semesters over one year. (Testimony). While in school, Mr. Hofer earned some income by teaching classes at Mercy College of Health Sciences. (Testimony). By 2011, Mr. Hofer obtained his paramedic specialist certification. (Testimony). He achieved just shy of a 4.0 grade point average during his paramedic training. (Testimony).

After graduation from Mercy College of Health Sciences in 2011, Mr. Hofer obtained employment with Lutheran Hospital in Des Moines. (Testimony; CE 4). As a paramedic at Lutheran Hospital, Mr. Hofer provided adjunct nursing care. (Testimony; CE 4). This involved assisting nursing staff in the emergency room. (Testimony). He performed tasks such as intubation, administration of medications, and other medical services. (Testimony). After nine months, Mr. Hofer left Lutheran Hospital. (Testimony; CE 4).

Along with Mr. Hofer's employment history, select medical records pre-dating the alleged injury date in 2020 were entered into the record. On February 16, 2011, Mr. Hofer reported to Warren County Chiropractic. (Joint Exhibit 11:1-2). He had pain in the low back and hips. (JE 11:2). He rated his pain 7 out of 10. (JE 11:2). He had a chiropractic adjustment. (JE 11:2).

On April 25, 2012, Mr. Hofer visited Drees Chiropractic with complaints of neck pain. (JE 1:1-3). He described the pain as occurring on both sides of his neck. (JE 1:1). He also reported pain in his lower back. (JE 1:1). He described his lower back pain as intermittent, moderate, dull, and localized to the right and left lower lumbar area. (JE 1:1). Bending aggravated his lower back pain. (JE 1:1). Mr. Hofer was unsure

what caused his pain, but indicated that he was sore for the past few weeks. (JE 1:1). Upon examination, Mr. Hofer showed decreased range of motion in the lumbar spine. (JE 1:2). The chiropractor adjusted L1, L4, L5, and the right ilium and sacrum. (JE 1:2).

Mr. Hofer had another chiropractic visit with Drees Chiropractic on August 1, 2012. (JE 1:2). Mr. Hofer complained of continued neck pain, and a recurrence of constant moderately severe pain in the low back. (JE 1:2). He reported that he assisted a balloon crew, which caused his back to be sore. (JE 1:2).

The claimant then worked for Clarke County Hospital in Osceola, Iowa. (Testimony; CE 4). At Clarke County, he worked on an ambulance as a paramedic. (Testimony; CE 4). This included responding to 911 calls and performing interfacility transfers of patients. (Testimony; CE 4). He also assisted in the emergency room of the Clarke County Hospital when not on 911 calls. (CE 4). After three years, Mr. Hofer left Clarke County for full time employment with Dallas County. (Testimony; CE 4).

Prior to beginning employment with Dallas County, Mr. Hofer had an examination at UnityPoint Health Methodist Occupational Medicine on June 17, 2015. (JE 2:1-2). The examination indicated normal range of motion in the spine. (JE 2:2). The examiner opined that Mr. Hofer was medically qualified to do the essential functions of the job. (JE 2:2). In Dallas County, Mr. Hofer was a full time employee on an ambulance crew. (Testimony). Again, he responded to 911 calls and performed interfacility transfers. (Testimony).

Starting in 2012, Mr. Hofer worked part time for Indianola in their Fire Department. (Testimony). He started as a paramedic only. (Testimony). He worked between 8 and 20 hours per week. (Testimony). As a paramedic, he responded only to 911 calls. (Testimony). He was stationed at a fire station, unless he was on a 911 call. (Testimony).

While a part time paramedic in 2016, Mr. Hofer participated in training meant to simulate firefighting with limited firefighters available. (Testimony). As he trained, he climbed a roof while holding several ladders. (Testimony). He slipped, but caught himself before falling any further. (Testimony). He sat out of training for 45 minutes, or so. (Testimony). After a brief rest, he felt improved enough to continue training. (Testimony). He picked up a firefighter as part of an additional rescue exercise, and felt a spasm in his lower back, and fell. (Testimony). He reported this to the lieutenant and chief on duty. (Testimony). He was sent to occupational health. (Testimony).

On February 2, 2016, Mr. Hofer reported to Methodist Occupational Health and Wellness at UnityPoint Health – Des Moines. (JE 2:3-4). He told Richard McCaughey, D.O., that he had occasional backaches in the past, but noticed pain and spasms in his low back after pulling someone across ice. (JE 2:3). He denied radiation of pain into either lower extremity. (JE 2:3). Dr. McCaughey did not observe any palpable spasm or defect in the lower back. (JE 2:3). Dr. McCaughey observed a “negative SLR” at the left and right, and also noted that Mr. Hofer was slow to move around the exam room.

(JE 2:3). The doctor recommended that Mr. Hofer cease taking Flexeril and Naprosyn, and begin taking Vicodin. (JE 2:3). He took Mr. Hofer off work, and recommended that Mr. Hofer perform gentle stretching. (JE 2:3).

At the request of Dr. McCaughey, Mr. Hofer returned to Methodist Occupational Health and Wellness. (JE 2:5). The claimant continued to complain of stiffness and achiness in his lower back, but told the doctor that he was doing considerably better. (JE 2:5). Dr. McCaughey inspected Mr. Hofer's back, and found it unremarkable. (JE 2:5). Dr. McCaughey observed that Mr. Hofer limited his flexion in the lower back, and displayed mild pain behaviors. (JE 2:5). Dr. McCaughey allowed Mr. Hofer to return to "lighter duties" at work. (JE 2:5). The doctor also recommended that Mr. Hofer engage in physical therapy. (JE 2:5).

On February 19, 2016, Mr. Hofer returned to Methodist Occupational Health and Wellness. (JE 2:6). Mr. Hofer continued to improve. (JE 2:6). Mr. Hofer was not working because he claimed that his employer told him to stay home if he had any restrictions. (JE 2:6). He rated his pain 1-3 out of 10, and denied any peripheral pain or paresthesias to his lower extremities. (JE 2:6). Duane V. Wilkins, M.D., noted that Mr. Hofer's lower lumbar strain with myofascial pain was nearly resolved. (JE 2:6). Mr. Hofer was allowed to conduct a trial of regular duty work, and the doctor reminded him to "be smart" about his body mechanics. (JE 2:6). Mr. Hofer was to continue physical therapy. (JE 2:6).

Mr. Hofer followed up with Dr. McCaughey on March 11, 2016. (JE 2:8). Mr. Hofer told the doctor that he had a good range of motion and that his lower back felt stronger. (JE 2:8). He again denied radiation of pain into the lower extremities. (JE 2:8). Dr. McCaughey noted that Mr. Hofer had a full range of motion in his lower back. (JE 2:8). Dr. McCaughey told Mr. Hofer to continue taking Advil, and continue physical therapy. (JE 2:8). As of this visit, Dr. McCaughey released Mr. Hofer to full duty work. (JE 2:8).

On April 4, 2016, Mr. Hofer continued his care with Methodist Occupational Health and Wellness. (JE 2:10-11). He worked full duty at the time of his examination. (JE 2:10). Mr. Hofer reported an overall improvement in his back pain, although he still had intermittent sharp pains radiating to his right hip. (JE 2:10). Physical examination of Mr. Hofer's lower back by Dr. McCaughey was unremarkable. (JE 2:10). Dr. McCaughey discharged the claimant from physical therapy to a home exercise program, and recommended that Mr. Hofer undergo a lumbar MRI. (JE 2:10). Dr. McCaughey offered no additional work restrictions, and continued the claimant at full duty employment. (JE 2:11).

Mr. Hofer reported to Alliance Radiology on April 13, 2016, for a lumbar MRI. (JE 4:1-2). The MRI was required due to low back pain and "catching" in the low back for two months. (JE 4:1). The MRI showed that Mr. Hofer had an extra vertebral segment below L5, which the radiologist designated L6. (JE 4:1). The radiologist indicated that Mr. Hofer had chronic degenerative disc disease at L5-6 with a focal extruded right

paracentral disc herniation, which could cause a right L6 radiculopathy. (JE 4:2). The age of the disease at L5-6 is uncertain. (JE 4:2). More modest disc degeneration was seen at L4-5 with a small right paracentral subligamentous disc protrusion with minimal effect on the right L5 nerve root. (JE 4:2). The age of this issue was also uncertain. (JE 4:2). The radiologist also suspected a distal spinal cord syringomyelia, and recommended an additional examination of the thoracic spine. (JE 4:2).

Dr. McCaughey saw Mr. Hofer again on April 19, 2016. (JE 2:12-13). Mr. Hofer reported that he performed his regular job duties without difficulty. (JE 2:12). He further told Dr. McCaughey that he continued to have occasional low back pain, but noted that the pain did not radiate. (JE 2:12). The physical examination of Mr. Hofer's back continued to be normal with no palpable spasm or defect. (JE 2:12). Dr. McCaughey reviewed the results of the MRI, and noted chronic degenerative disk disease at L5-6, an age indeterminate extruded paracentral herniated nucleus pulposus on the right, more moderate degenerative disc disease at L4-5, and a suspected syringomyelia. (JE 2:12). Dr. McCaughey suggested that the claimant continue his usual duties, and referred Mr. Hofer to a spinal specialist. (JE 2:12). Dr. McCaughey allowed the claimant to continue working full duty with no noted restrictions. (JE 2:13).

On May 17, 2016, Lynn Nelson, M.D., examined Mr. Hofer at Des Moines Orthopaedic Surgeons, P.C. ("DMOS"). (JE 5:1-2). Mr. Hofer reported that his symptoms began in February of 2016. (JE 5:1). He described his pain as a "hard, aching pain," which was the same throughout the day. (JE 5:1). The pain worsened upon sitting and bending. (JE 5:1). He denied paresthesias. (JE 5:1). Mr. Hofer rated his pain between 4 and 7 out of 10. (JE 5:1). Mr. Hofer was working with no restrictions at the time of the examination. (JE 5:1). At the time of his initial examination, Mr. Hofer weighed 304 pounds. (JE 5:1). Dr. Nelson reviewed the lumbar MRI and opined that the MRI showed "mild L4-5, L5-1, partially sacralized, versus L6, DDD and a small central right sided L5-S1 disk protrusion with a small central L4-5 disk protrusion, both without significant neurologic impingement." (JE 5:2). Dr. Nelson diagnosed Mr. Hofer with low back pain and obesity. (JE 5:2). Dr. Nelson noted, "[g]iven the lack of significant neurologic impingement and essentially normal neurologic exam, my recommendation at this time is for continued symptomatic treatment and giving his symptoms time to improve." (JE 5:2). Dr. Nelson did not recommend invasive treatments. (JE 5:2). Dr. Nelson allowed Mr. Hofer to return to physical therapy and to return to work with no restrictions. (JE 5:2). Finally, Dr. Nelson prescribed a muscle relaxant for moments when Mr. Hofer's pain flared. (JE 5:2).

Mr. Hofer returned to Warren County Chiropractic on January 31, 2017. (JE 11:3). He had continued low back pain that was controlled off and on with chiropractic adjustments since 2016. (JE 11:3). He also had radiation into the right leg. (JE 11:3). Activity increased his pain. (JE 11:3).

Yulia Johnson, D.O., examined Mr. Hofer at the Iowa Clinic on August 2, 2017. (JE 6:1-3). Mr. Hofer complained of lower back pain, and pain between the shoulder blades. (JE 6:1). The pain radiated down the left lateral thigh. (JE 6:1). He noted

working in the balloon field that week, but that "nothing out of the ordinary" occurred. (JE 6:1). Dr. Johnson diagnosed him with back pain with sciatica and syringomyelia. (JE 6:2). She prescribed Prednisone and hydrocodone-acetaminophen. (JE 6:2). She also provided Mr. Hofer with an injection, and recommended an MRI of the thoracic spine. (JE 6:2).

On August 8, 2017, Mr. Hofer had another MRI of the lumbar spine and thoracic without contrast. (JE 6:4-6). Kevin Koch, M.D., interpreted the MRI. (JE 6:4-6). Dr. Koch opined that Mr. Hofer had a sixth non-rib-bearing lumbar segment. (JE 6:4). Dr. Kohn also found disc desiccation at L4-5, L5-6, and L6-S1. (JE 6:4-5). L3-4 showed central disc protrusion at the L3-4 level that produced flattening of the thecal sac anteriorly posterior to the L3-4 disc space. (JE 6:5). The disc protrusion at L3-4 was "somewhat progressive today" compared to the 2015 MRI. (JE 6:5). L4-5 showed component of central disc protrusion at L4-5 producing thecal sac flattening anteriorly posterior to L4-5 with a posterior degenerative annular fissure at the L4-5 level. (JE 6:5). The degeneration at L4-5 also appeared "somewhat progressive today" compared to the previous MRI. (JE 6:5). The L5-6 level showed a "large central right paracentral disc protrusion with extrusion of disc material." (JE 6:5). The disc protrusion with extrusion was also progressive compared to the 2016 MRI results. (JE 6:5). Dr. Koch opined that "[t]here is likely impingement, irritation, or deflection of nerve root sheath exiting in the right lateral recess at the L5-L6 level." (JE 6:5).

The MRI of the thoracic spine showed a degree of scoliosis, and manifestations of syringohydromyelia. (JE 6:5-6). The thoracic level was stable compared to the 2016 MRI. (JE 6:6).

David Boarini, M.D., examined Mr. Hofer at the Iowa Clinic on August 23, 2017. (JE 6:7-10). Dr. Johnson referred Mr. Hofer to Dr. Boarini. (Testimony). Mr. Hofer complained of back pain and radiation down the right posterior thigh and sometimes the left posterior thigh. (JE 6:7). He denied weakness. (JE 6:7). Mr. Hofer told Dr. Boarini that his symptoms began in February of 2016, when working as a firefighter. (JE 6:7). He then aggravated his symptoms in August of 2017. (JE 6:7). Mr. Hofer weighed 305 pounds 12.8 ounces at this visit. (JE 6:8). Dr. Boarini diagnosed him as overweight, and having back pain with sciatica. (JE 6:8). He recommended that Mr. Hofer pursue aggressive weight loss, and consult with physical therapy for work hardening. (JE 6:8-9). Dr. Boarini indicated that he would re-examine Mr. Hofer if his radicular symptoms worsened. (JE 6:9).

Mr. Hofer began physical therapy at Athletico Physical Therapy ("Athletico") on August 24, 2017. (JE 3:1-3). He indicated that he had pain localized to his central low back and out to both of his hips. (JE 3:1). He used a muscle relaxer to alleviate his pain. (JE 3:1). He found stretching difficult because it caused a catch in his low back. (JE 3:1). His pain worsened with prolonged standing, a heavy physical load at work, or bending forward. (JE 3:1). Mr. Hofer indicated that his pain began on July 25, 2017. (JE 3:1). Mr. Hofer was helping with hot air balloons when his pain increased. (JE 3:1). The therapist observed that Mr. Hofer had a mild right hip drop upon ambulating, and

also had spasms in his lumbar spine. (JE 3:1). He performed physical therapy exercises. (JE 3:1-3).

Dr. Johnson examined Mr. Hofer again on November 9, 2017, at the Iowa Clinic. (JE 6:12-14). Mr. Hofer was transferring his prescriptions to Dr. Johnson's office. (JE 6:12). Mr. Hofer reported that he was in training for a full time job at a fire department. (JE 6:12). Mr. Hofer continued to take Cyclobenzaprine and Naproxen. (JE 6:13). Dr. Johnson diagnosed Mr. Hofer with back pain with sciatica. (JE 6:14). She renewed Mr. Hofer's prescription for Cyclobenzaprine and Naproxen. (JE 6:14).

As a result of this injury, he took hydrocodone, had an MRI and then had three weeks of physical therapy. (Testimony). He received workers' compensation benefits while he was off work. (Testimony). Mr. Hofer testified that he had no previous back issues, but did seek out chiropractic care dating back several years. (Testimony).

Eventually, he was released to work with no restrictions. (Testimony).

In February of 2018, Indianola hired Mr. Hofer as a full time firefighter paramedic. (Testimony; CE 4). Prior to his hiring, Mr. Hofer took a Candidate Physical Ability Test, interviewed several times, and took a written test. (Testimony). Eighty (80) percent of the time, Mr. Hofer worked on ambulance runs, and the remainder was firefighting duties or responses. (Testimony). Some of his other duties included pharmacy purchasing and inventory, and fire code inspections. (CE 4). His shifts entailed being on duty for 24 hours, and off duty for 48 hours at a time. (Testimony). He estimated that he earned between $68,000.00 and $70,000.00 per year. (Testimony; CE 4).

On March 1, 2018, UnityPoint Health Des Moines Occupational Medicine promulgated a record indicating that Mr. Hofer was medically qualified for the position of paramedic/firefighter with Indianola. (JE 2:14). He also was medically qualified to wear a respirator. (JE 2:14). Dr. McCaughey performed this examination, and signed the clearance. (JE 2:14).

Mr. Hofer continued his treatment with Athletico on August 15, 2018. (JE 3:4-6). The record indicates that this was Mr. Hofer's tenth visit to Athletico. (JE 3:4). He indicated that his back was not getting better. (JE 3:4). He also told the therapist that he could perform activities of daily living, but that he would be in pain after. (JE 3:4). He rated his pain 5 out of 10. (JE 3:4). The therapist found lumbar kyphosis throughout the lower lumbar and thoracic spine, especially at T5-8. (JE 3:4). The onset date for this pain was noted as August 15, 2018. (JE 3:5). Mr. Hofer performed physical therapy exercises. (JE 3:5-6).

On November 28, 2018, Dr. Johnson examined Mr. Hofer again at the Iowa Clinic for a biometric screening and a refill of Cyclobenzaprine and Naproxen. (JE 6:15-18). Mr. Hofer had syringomyelia and back pain with sciatica. (JE 6:16). Mr. Hofer weighed 307 pounds. (JE 6:16). Upon palpation of the back, Dr. Johnson found no tenderness. (JE 6:17). The claimant's medications were renewed. (JE 6:17).

Mr. Hofer reported to MercyOne Indianola Family Medicine Clinic on December 1, 2018. (JE 7:1-3). William Palmer, M.D., examined Mr. Hofer for complaints of low back pain and spasms. (JE 7:1). Mr. Hofer also noted that he had right sided sciatica. (JE 7:1). He hurt his back at work, and aggravated his pain in his lower back radiating to his right leg. (JE 7:1). Weightbearing aggravated his pain. (JE 7:1). Mr. Hofer weighed 315 pounds as of this visit. (JE 7:1). The bilateral lumbar region showed moderate tenderness to palpation. (JE 7:2). Dr. Palmer diagnosed Mr. Hofer with chronic bilateral low back pain with right sided sciatica. (JE 7:2). Dr. Palmer recommended continuing cyclobenzaprine for muscle spasms. (JE 7:2). Dr. Palmer also recommended ice and heat for 20 minutes along with nonsteroidal anti-inflammatories. (JE 7:2). Dr. Palmer provided an injection of Solu-Medrol and ordered a Medrol dosepak. (JE 7:3).

Michael Sutcliffe, D.O., examined Mr. Hofer at the Iowa Clinic on May 17, 2019. (JE 6:19-21). Mr. Hofer complained of lower back pain, requested a shot, and a refill of his Cyclobenzapine and hydrocodone. (JE 6:19). Mr. Hofer indicated that the pain radiated into his buttocks and hip on the right. (JE 6:19). Dr. Sutcliffe diagnosed Mr. Hofer with back pain with sciatica, fatigue, syringomyelia, and being overweight. (JE 6:20). He weighed 317 pounds. (JE 6:20). Dr. Sutcliffe renewed Mr. Hofer's prescriptions, and provided a new prescription for hydrocodone. (JE 6:21). Dr. Sutcliffe also administered an injection. (JE 6:21).

Mr. Hofer followed up with Dr. Johnson on June 27, 2019, at the Iowa Clinic. (JE 6:22-24). He complained of an aggravation to his lower back, and requested a refill of hydrocodone. (JE 6:22). He indicated he was unsure what he did to his back, but that he had a busy shift and then had lower back pain. (JE 6:22). This pain persisted for a month. (JE 6:22). He had no spasms or catching. (JE 6:22). He wore a brace at home, and noted that without a brace he had "a lot more pain." (JE 6:22). He testified that he wore the brace "fairly consistently for a couple months" in an attempt to support his lower back. (Testimony). When asked why he stopped wearing the brace, Mr. Hofer could not provide a reason. (Testimony). Mr. Hofer's diagnoses remained back pain with sciatica, fatigue, overweight, and syringomyelia. (JE 6:23). Dr. Johnson performed an injection of kenalog and decadron. (JE 6:24). She also refilled Mr. Hofer's hydrocodone and cyclobenzaprine. (JE 6:24). Mr. Hofer noted that he would follow up with a chiropractor for a decompression. (JE 6:24).

Amy Lynch, D.O., examined Mr. Hofer at the Iowa Clinic on July 10, 2019. (JE 6:25-28). Dr. Johnson referred Mr. Hofer to Dr. Lynch due to Mr. Hofer's continued lower back pain. (JE 6:25). Mr. Hofer indicated an initial injury three and a half years ago. (JE 6:25). His current episode of back pain was present for about four months. (JE 6:25). Mr. Hofer told Dr. Lynch that this episode of lower back pain began spontaneously, and was located over the lumbosacral area. (JE 6:25). He rated his pain from 7 to 10 out of 10. (JE 6:25). His pain radiated to his right buttock, and caused a catching feeling that made his body "lock up." (JE 6:25). Upon palpation of the lumbar spine, Mr. Hofer demonstrated no tenderness. (JE 6:27). When he did a straight leg raise, he had low back pain on the left. (JE 6:27). Dr. Lynch diagnosed Mr.

Hofer with chronic midline low back pain without sciatica. (JE 6:27). She referred Mr. Hofer for an MRI of the lumbar spine, and ordered physical therapy. (JE 6:27). Dr. Lynch opined that "the majority of his pain is mechanical in nature and related to weak stabilizers." (JE 6:27). During this visit, Mr. Hofer's mother told Dr. Lynch that she felt Mr. Hofer was never 100 percent better after his 2016 injury. (Testimony; JE 6:25). Mr. Hofer testified that he agreed that he never returned to his pre-2016 injury condition. (Testimony).

On July 17, 2019, Mr. Hofer had another MRI of his lumbar spine. (JE 6:29-30). The MRI was compared to the thoracic and lumbar MRIs in August of 2017. (JE 6:29). Joshua Rosebrook, M.D., interpreted the MRI results. (JE 6:30). At L3-4, Dr. Rosebrook observed a mild loss of disc height and disc desiccation with a moderate sized posterior central disc protrusion. (JE 6:29). These results are similar to slightly increased from the prior MRI. (JE 6:29). At L4-5, there was mild to moderate loss of disc and disc desiccation with a large focal posterior central disc protrusion. (JE 6:29). The findings may impinge upon the traversing nerve roots, especially at the right L5 nerve root. (JE 6:29). These findings were significantly progressed from 2017. (JE 6:29). L5-S1 showed moderate to severe loss of disc height and disc desiccation with a moderate to large focal posterior central to right paracentral disc protrusion. (JE 6:29). There was mild to moderate central canal, moderate to severe right and mild left lateral recess stenosis. (JE 6:29). The findings may impinge upon traversing nerve roots that particularly traversed the right S1 nerve root. (JE 6:29). This was similar to the findings in the 2017 MRI. (JE 6:29).

Dr. Rosebrook opined that the MRI showed moderate to severe degenerative disc disease with focal posterior central to right paracentral disc protrusions at L3-4, L4-5, and L5-S1, which caused moderate central canal, moderate to severe lateral recess, and mild bilateral foraminal narrowing. (JE 6:29). Overall, the findings were increased compared to 2017, especially at L4-5. (JE 6:30).

Mr. Hofer had a cervical MRI on July 29, 2019, at the Iowa Clinic. (JE 6:31-32). Dr. Koch interpreted the results of the MRI. (JE 6:32). Dr. Koch observed some cervicothoracic scoliosis. (JE 6:31). A very tiny syrinx in the cervical spinal cord measured approximately 1 mm. (JE 6:31). There was spondylosis at the C5-6 level with a central left paracentral annular bulge and posterior degenerative annular fissure. (JE 6:32). There was also a sizable right paracentral right posterolateral disc protrusion at C6-7 with a posterior degenerative annular fissure. (JE 6:32). Dr. Koch noted that there may be impingement. (JE 6:32).

On August 28, 2019, Mr. Hofer returned to the Iowa Clinic, where Dr. Lynch examined him. (JE 6:36-38). He continued to have lower back pain after a course of physical therapy. (JE 6:36). He rated his pain 8 out of 10. (JE 6:36). The pain localized over the lower lumbar spine and radiated toward bilateral SI joints. (JE 6:36). His pain was worse when standing and with increased activity. (JE 6:36). Mr. Hofer denied numbness and tingling in the legs. (JE 6:36). Dr. Lynch diagnosed Mr. Hofer with lumbar disc herniation, and chronic midline low back pain without sciatica. (JE

6:38). Mr. Hofer explained that he was desperate for relief and a permanent solution. (JE 6:38). Dr. Lynch explained that surgical intervention was unlikely to provide pain relief, and could make things worse. (JE 6:38). Dr. Lynch referred Mr. Hofer to pain management for a lumbar epidural steroid injection. (JE 6:38). Mr. Hofer recalled Dr. Lynch telling him to find a new career during this visit. (Testimony).

Dr. Johnson also examined Mr. Hofer at the Iowa Clinic on August 28, 2019. (JE 6:33-35). Mr. Hofer attended the appointment with his mother. (JE 6:33). His mother told Dr. Johnson that Mr. Hofer was begging for help. (JE 6:33). Mr. Hofer was told to find a new career by Dr. Lynch. (JE 6:33; Testimony). He took Tylenol and ibuprofen for pain, and was overdosing. (JE 6:33). He understood that he needed to lose weight and was trying a keto diet. (JE 6:33). He also performed mandatory workouts on his fire shifts. (JE 6:33). He weighed 300 pounds at this visit. (JE 6:34). Dr. Johnson scheduled an appointment with neurosurgery for Mr. Hofer, and planned an epidural steroid injection for immediate pain relief. (JE 6:35). Dr. Johnson also renewed Mr. Hofer's prescription for hydrocodone. (JE 6:35).

On August 30, 2019, Mr. Hofer attended his fourteenth visit for physical therapy at Athletico. (JE 3:7-8). The record indicates a diagnosis of chronic bilateral low back pain without sciatica. (JE 3:7). He had no change in pain despite dry needling, manual therapy or modalities. (JE 3:7). Mr. Hofer told the therapist that he was not a surgical candidate, according to another doctor. (JE 3:7). The therapist noted that Mr. Hofer had lumbar kyphosis throughout his lower lumbar spine, and kyphosis in the thoracic spine at T5-8. (JE 3:7). The therapist observed no spasm in the lumbar spine. (JE 3:7). He was discharged from Athletico to seek further pain management. (JE 3:8).

George Lederhaas, M.D., performed a lumbar epidural steroid injection on September 30, 2019. (JE 9:1). This injection was due to a right L5 radiculopathy and disk disease. (JE 9:1). Prior to the injection, Mr. Hofer opined that he had "sciatic-type symptoms" that went down his right leg to the knee. (Testimony). These symptoms were constant, but the severity would wax and wane depending on his activities. (Testimony). Mr. Hofer testified that this injection did not alleviate his symptoms. (Testimony).

On October 3, 2019, Troy Munson, M.D., examined Mr. Hofer at MercyOne Des Moines Neurosurgery. (JE 10:1-3). Mr. Hofer noted low back pain and right buttock pain. (JE 10:1). The pain also radiated down his lateral thigh towards the knee. (JE 10:1). Mr. Hofer indicated that this pain was present on and off for "many years." (JE 10:1). Dr. Munson indicated that Mr. Hofer found no improvement from physical therapy and medications. (JE 10:1). Mr. Hofer continued to work, but had severe pain during and after work. (JE 10:1). He had not yet noticed improvement from the lumbar epidural steroid injection on September 30, 2019. (JE 10:1). Dr. Munson noted that Mr. Hofer's pattern of pain did not fit any typical dermatomal distribution. (JE 10:2). The imaging suggested a right sided nerve compression in the lateral recess at L5-6 and L5-S1 with moderate central canal stenosis at L3-4, which "may not be symptomatic." (JE 10:2). Dr. Munson recommended giving the epidural steroid injection time to work. (JE

10:2). Dr. Munson discussed with Mr. Hofer that he had severe degeneration in his back, which was "much more than expected for his age of 28." (JE 10:2). Dr. Munson indicated that Mr. Hofer may be a surgical candidate. (JE 10:2). Mr. Hofer was not interested in changing his job or lifestyle. (JE 10:3).

Mr. Hofer visited Dr. Johnson at the Iowa Clinic on October 29, 2019. (JE 6:39-41). Mr. Hofer wanted to update Dr. Johnson on his back complaints. (JE 6:39). An anesthesiologist wanted Mr. Hofer to begin using Gabapentin. (JE 6:39). Mr. Hofer reported that the previous injection did not do anything at all. (JE 6:39). Dr. Johnson prescribed duloxetine, Gabapentin, and Losartan. (JE 6:41). Dr. Johnson also directed Mr. Hofer to call Dr. Sunny Kim in Minnesota for a consultation. (JE 6:41).

On November 19, 2019, Mr. Hofer had his first visit with Sunny S. Kim, M.D., in Alexandria, Minnesota. (JE 8:1-3). Mr. Hofer told Dr. Kim that his lower back pain was 8 out of 10 and extended into his right and left leg. (JE 8:2). He complained of numbness and tingling. (JE 8:2). He reported that he was injured at work "going on 4 years." (JE 8:2). His current episode of pain occurred progressively for the last six months. (JE 8:2). Bending and standing for more than 30 minutes was painful. (JE 8:2). Mr. Hofer continued to work full time with no restrictions. (JE 8:2). Upon physical examination, Dr. Kim found a limited range of motion in the lumbar spine. (JE 8:2). Dr. Kim noted no focal tenderness or muscle spasms with palpation of the lumbar spine. (JE 8:2). Dr. Kim recommended a right L3, L4, L4-5, and L5-S1 microdiscectomy, to be performed at the Maple Grove Surgery Center. (JE 8:3). Mr. Hofer wished to proceed with the surgery. (JE 8:3). Mr. Hofer stated that Dr. Kim did not tell him that it was "fairly urgent" that he have surgery, and instead insisted that surgery should be done whenever Mr. Hofer wanted to schedule it. (Testimony). Mr. Hofer originally planned on scheduling the surgery in March of 2020. (CE 4; Testimony).

Megan Lehr, D.O., examined Mr. Hofer on December 10, 2019, for an annual wellness visit. (JE 6:42-45). Mr. Hofer reported that his diet "could be better," and that he was unable to exercise due to his back pain. (JE 6:42). He slept well at night. (JE 6:42). Mr. Hofer noted that he was visiting Dr. Kim in Minnesota, and that he hoped to have surgery in March. (JE 6:42). Mr. Hofer weighed 298 pounds. (JE 6:44). Dr. Lehr increased his Gabapentin dosage, and reminded Mr. Hofer to continue losing weight. (JE 6:44).

On December 31, 2019, Mr. Hofer had an accident with an ambulance. (Testimony). Indianola provided a disciplinary write-up for this accident. (Testimony). Mr. Hofer agreed during the hearing that he continued to have chronic pain through 2019. (Testimony).

Dr. Lehr saw Mr. Hofer again on January 10, 2020, for complaints of ongoing cough and fever. (JE 6:46-49). Mr. Hofer was out of duloxetine and Gabapentin for almost one week, and found his pain increasing. (JE 6:46). Dr. Lehr diagnosed Mr. Hofer with acute bronchitis, benign hypertension, and syringomyelia. (JE 6:48). Dr. Lehr refilled his hydrocodone, Gabapentin, and duloxetine. (JE 6:48). He indicated that

his pain was a "deep ache," which increased in severity. (CE 4). He believed he had radiating pain to the lateral aspect of his right leg. (CE 4).

During the time between his release and early February of 2020, Mr. Hofer worked full time without restrictions. (Testimony). However, clearly and admittedly, his past job duties caused him increased issues with his back. (Testimony).

Mr. Hofer described his incidences of pain and continued treatment between 2016 and the alleged February 4, 2020, incident, as "flare-ups." (CE 4). He testified in his deposition that these "flare-ups" occurred on a frequent basis when he worked as a firefighter/paramedic for Indianola. (CE 4). The frequency of these "flare-ups" was dependent on the nature and extent of the activities undertaken by Mr. Hofer at his job. (CE 4). He testified that the "flare-ups" commonly occurred between once per quarter and once every six months. (CE 4). Mr. Hofer also testified at his deposition that several doctors treating him between 2016 and 2020 thought he could be a surgical candidate; however, the providers, especially Dr. Munson, were hesitant due to his youth. (CE 4).

On February 4, 2020, Mr. Hofer testified that he exited the ambulance after a call. (Testimony). As he twisted to exit the ambulance, he felt a pop in his lower back. (Testimony). He then felt weakness in his legs, and pain from his legs to his shoulders. (Testimony). This pain was "much more severe" than his "normal" or previous pain. (Testimony).

Mr. Hofer admitted that he understood the proper procedure to report a work injury in Indianola. (Testimony). He testified that he did not immediately report the injury as work related pursuant to the internal requirements of Indianola because he was "not satisfied" with treatment provided during his 2016 workers' compensation claim. (Testimony). He noted that he was told by an unspecified doctor that no one would ever help him, which eroded his trust in the provider. (Testimony).

Mr. Hofer returned to Dr. Lehr's office on February 6, 2020. (JE 6:50-52). Mr. Hofer complained of back spasm. (JE 6:50). He reported to Dr. Lehr that he exited a fire truck "a week ago," and twisted causing a pop. (JE 6:50). Mr. Hofer indicated that pain went down both of his legs, which felt "similar to previous episodes when he exacerbates his back pain." (JE 6:50). He continued to work, and denied weakness. (JE 6:50). Dr. Lehr found no focal deficits, and diagnosed Mr. Hofer with an acute exacerbation of pain. (JE 6:52). Mr. Hofer requested a steroid "to get him through to surgery next month so he can continue to work." (JE 6:52). Dr. Lehr agreed to provide a steroid injection, and recommended that he follow up with his neurosurgeon as soon as possible. (JE 6:52). After this appointment, Mr. Hofer testified that he scheduled the surgery as recommended by Dr. Kim. (Testimony).

It was not until several days after this incident that Mr. Hofer notified anyone with Indianola of this incident, on February 10, 2020. (Testimony; CE 4). Prior to reporting the injury, Mr. Hofer received care. (Testimony). He testified that he understood that he

should have reported the alleged injury. (Testimony). He testified that he thought this would be a short aggravation, so he did not report it. (Testimony).

Mr. Hofer alleges that he told Ms. McCoy about his scheduled back surgery. (Testimony). Ms. McCoy alleges that, on February 10, 2020, when she was finally informed of Mr. Hofer's injury, he told her that he had surgery scheduled for February 14, 2020, due to an "old work comp injury." (DE D:85; DE J:116-117; Testimony). Chief Chia indicated that he was not informed of the injury until some time after the injury date. (Testimony). Chief Chia indicated that he was told by Captain Aaron Hurt on February 7, 2020, of Mr. Hofer's injury. (Testimony). Mr. Hofer alleges that the chief was out of the country at the time, but Chief Chia testified that he did not leave until after the injury was reported. (Testimony). Chief Chia also noted that schedules were set about one month in advance, and that in order to have time off for his previously scheduled surgery, Mr. Hofer would have had to arrange for his time off for surgery in advance of the alleged February 4, 2020, injury. (Testimony). Mr. Hofer alleges that Ms. McCoy told him that his health insurance would not pay for the back surgery if it was considered work related. (Testimony). This caused Mr. Hofer to delay the back surgery previously allegedly scheduled for February 14, 2020. (Testimony).

Ms. McCoy spoke to Indianola's insurance broker, who advised her that the 2016 claim was closed. (Testimony). At that time, Ms. McCoy followed up with Mr. Hofer, and advised him to report a workers' compensation claim related to the alleged February 4, 2020, injury. (Testimony). Mr. Hofer did this. (Testimony). The claim was denied. (Testimony).

Mr. Hofer later submitted a claim for short-term disability benefits from Mutual of Omaha. (Testimony; DE I:115). This claim was denied, as Mutual of Omaha indicated it was a workers' compensation eligible claim. (Testimony). Interestingly, on his application for short-term disability, Mr. Hofer mentioned only his 2016 injury, and not his injury in February of 2020. (Testimony).

On February 10, 2020, Mr. Hofer completed an employee incident report form. (DE G:102-103). Mr. Hofer noted that he experienced a pop and back spasm after exiting his ambulance. (DE G:102). He noted injury to his lower back including pain and spasm. (DE G:102). Mr. Hofer also made note of his February of 2016 workers' compensation injury and "numerous back strains" since that time. (DE G:102).

Jason Villalobos, D.C., of Warren County Chiropractic, wrote a letter that appears to be dated February 10, 2020. (JE 11:6). Dr. Villalobos noted that Mr. Hofer was a patient of his office since February of 2011. (JE 11:6). Dr. Villalobos outlined that Mr. Hofer had chronic low back pain, upper back pain, neck pain, and headaches. (JE 11:6). The pain worsened in 2016. (JE 11:6). Dr. Villalobos continued that Mr. Hofer managed his back pain from 2011 to 2016 with less than five chiropractic adjustments per year. (JE 11:6). In 2017, 2018, and 2019, his chiropractic visits increased dramatically. (JE 11:6). Dr. Villalobos claimed that Mr. Hofer never had left side sciatica, nor right sided sciatica until February 4, 2020, when he hurt himself at work.

(JE 11:6). Dr. Villalobos also alleged that Mr. Hofer developed neurological symptoms at that time, and that the work injury made having surgery more urgent. (JE 11:6).

On February 11, 2020, Dr. Sutcliffe again examined Mr. Hofer at the Iowa Clinic. (JE 6:53-56). This was a preoperative examination for a surgery scheduled on February 14, 2020. (JE 6:53). Mr. Hofer made no mention to Dr. Sutcliffe as to his recent injury. (JE 6:53-56). Dr. Sutcliffe performed the examination, and cleared Mr. Hofer for his upcoming surgery. (JE 6:56).

Mr. Hofer had another chiropractic adjustment at Warren County Chiropractic on February 12, 2020. (JE 11:5). He complained of bilateral sciatica since February 4, 2020 with radiation into the bilateral legs. (JE 11:5). He claimed that he was injured at work, and the chiropractor noted, "work injury – Exacerbated his already bad low back – now has sciatic bilateral – tingling, numb and weakness." (JE 11:5).

Eventually, Mr. Hofer's health insurance approved of the surgery as recommended by Dr. Kim. (Testimony). On February 27, 2020, Dr. Kim performed a right L3-4, L4-5, and L5-S1 microdiskectomy and decompression on Mr. Hofer at the Maple Grove Center for Restorative Surgery in Maple Grove, Minnesota. (JE 8:4-5). Dr. Kim diagnosed Mr. Hofer with right herniated disks at L3-L4, L4-L5, and L5-S1. (JE 8:4). Dr. Kim opined that the surgery was necessary due to the claimant's "persistent chronic low back pain and leg pain," that failed to respond to conservative care. (JE 8:4). Dr. Kim opined that Mr. Hofer tolerated the procedure well. (JE 8:5).

Ultimately, the surgery helped alleviate his leg symptoms. (CE 4). However, it did not help his lower back pain. (CE 4). He also began to experience numbness after the surgery. (CE 4).

Jessica Rutherford, a claims examiner for the Iowa Municipalities Workers' Compensation Associated, drafted a missive to the claimant dated March 2, 2020. (CE 3:1). In the letter, Ms. Rutherford wrote that Mr. Hofer's injury predated the alleged February 4, 2020, date of injury. (CE 3:1). She concluded that any claim for benefits was denied. (CE 3:1).

On March 17, 2020, Dr. Lehr examined Mr. Hofer as a follow up to his back surgery. (JE 6:57-59). Dr. Lehr noted that Mr. Hofer was struggling with right sided low back pain with radiation since a 2016 work injury. (JE 6:57). Dr. Lehr noted that Mr. Hofer "had another work injury" in early February which caused her to strongly encourage him to get surgery at that time. (JE 6:57). Mr. Hofer reported that he was doing well after the surgery, with pain at 2 out of 10. (JE 6:57). He had a small amount of tightness into his right hip. (JE 6:57). In early April, he had a follow up appointment with his neurosurgeon, and would likely be cleared for physical therapy at that time. (JE 6:57). Dr. Lehr kept Mr. Hofer off work until his next neurosurgical visit. (JE 6:59). She recommended that he continue to use Gabapentin and hydrocodone. (JE 6:59).

Dr. Kim spoke to Mr. Hofer via video on April 10, 2020. (JE 8:6-7). Mr. Hofer told Dr. Kim that the pain in his right leg was mostly dissipated, but that he still had some low back pain. (JE 8:7). Dr. Kim opined that Mr. Hofer was making satisfactory progress, and recommended that Mr. Hofer begin physical therapy or chiropractic care for the next three weeks. (JE 8:7).

Mr. Hofer returned to Athletico at the recommendation of Dr. Kim on April 15, 2020. (JE 3:9-11). Mr. Hofer told the therapist that he continued to have spasms in his lumbar spine. (JE 3:9). After two blocks of walking, his back would stiffen. (JE 3:9). Mr. Hofer indicated that he had no restrictions, and could use his back as tolerated; however, he could not lift or return to work. (JE 3:9). Mr. Hofer claimed that the date of onset of his back issues was February 27, 2020. (JE 3:9). The record notes a history of disc herniation in 2017 with a flare up in May of 2017 after standing and working for long periods of time. (JE 3:9). The record notes that Mr. Hofer was unable to work, walk, stand, bend, lift, or drive long distances. (JE 3:10). Therapy was performed, and the therapist promulgated a treatment plan. (JE 3:11).

Dr. Lehr saw Mr. Hofer again on April 20, 2020, at the Iowa Clinic. (JE 6:60-62). Mr. Hofer continued to complain of tightness in his back with right leg weakness post-surgery. (JE 6:60). He had no sciatic pain. (JE 6:60). He recently had his first physical therapy appointment, and noted that it was difficult. (JE 6:60). Dr. Lehr recommended that Mr. Hofer continue taking his medications, follow up with his neurosurgeon, and remain off work. (JE 6:62).

On May 27, 2020, Mr. Hofer had a re-evaluation at Athletico. (JE 3:12-14). Mr. Hofer "improved greatly" since beginning physical therapy. (JE 3:12). He showed improvement in range of motion, strength, and the ability to lift and carry for work related duties. (JE 3:12). He reported that his back got "pretty sore and stiff." (JE 3:12). Overall, he felt 70 percent better. (JE 3:12). The hardest things to do for Mr. Hofer were bending and lifting. (JE 3:12). Mr. Hofer opined that he could not perform his required work duties. (JE 3:12).

Mutual of Omaha denied Mr. Hofer's claim for short-term disability on June 23, 2020. (CE 9:1-5). Mutual of Omaha opined that the claim was denied because Mr. Hofer's injury arose out of or in the course of his employment. (CE 9:1). Mutual of Omaha wrote that Indianola told them that Mr. Hofer was injured in a ladder accident. (CE 9:2). This seems to indicate that Indianola was connecting the injury to the original 2016 incident. Mr. Hofer also claimed that the injury arose out of, and in the course of his employment with Indianola. (CE 9:2).

Mr. Hofer returned to Athletico on July 1, 2020. (JE 3:15-19). This was his thirty-third visit to Athletico. (JE 3:15). Mr. Hofer had poor motor control for bending with proper spine stability. (JE 3:15). He could lift up to 45 pounds, and carry up to 65 pounds. (JE 3:15). The therapist noted that Mr. Hofer's job demands required lifting and carrying 50 pounds up ladders while wearing equipment. (JE 3:15). The therapist expected that Mr. Hofer would be fit for full duty within the next eight weeks based upon

"typical tissue healing and extent of surgery." (JE 3:15). Mr. Hofer complained of difficulty "feeling his back muscles." (JE 3:15). He felt like his back muscles were not activating. (JE 3:15). The therapist indicated a plan to continue functional work activities until the patient could return to work. (JE 3:16).

Dr. Lehr visited with Mr. Hofer again on July 7, 2020, at the Iowa Clinic. (JE 6:63-65). Mr. Hofer complained of numbness in his low back that started near his incision site, and radiated out to the sides of his hips. (JE 6:63). The numbness was constant, but not painful. (JE 6:63). He also complained of back spasms. (JE 6:63). Mr. Hofer reported that he still could not bend forward at the waist due to pain and tightness. (JE 6:63). Overall, Mr. Hofer felt that he was improving. (JE 6:63). Dr. Lehr recommended continued physical therapy and his current medication regimen. (JE 6:65). Dr. Lehr noted, "I do think unfortunately his numbness may be permanent due to his prolonged nerve impingement." (JE 6:65). Dr. Lehr also provided a referral to a therapist for treatment of depression. (JE 6:65). She prescribed Wellbutrin. (JE 6:65).

On July 10, 2020, Mr. Hofer continued his physical therapy with Athletico. (JE 3:20-21). Mr. Hofer told the therapist that he felt as though he had a "rib out." (JE 3:20). The therapist indicated that they continued exercises in core stability and lifting for proper mechanics. (JE 3:20). Mr. Hofer continued to have chronic pain in the left side of the lumbar spine. (JE 3:21).

Dr. Kim consulted with Mr. Hofer via video again on July 15, 2020. (JE 8:8-9). Mr. Hofer indicated that he had lumbar pain radiating to his buttocks. (JE 8:9). He rated his pain 5 out of 10. (JE 8:9). He also had numbness in the low back into the hip, but no longer had leg pain. (JE 8:9). Mr. Hofer had no improvement, and was unable to return to work. (JE 8:9). Dr. Kim opined that this may indicate a recurrent disc herniation, and requested another lumbar MRI. (JE 8:9).

Mr. Hofer had another lumbar MRI at the Iowa Clinic on August 5, 2020, as ordered by Dr. Kim. (JE 6:66-67). The MRI was interpreted by Dr. Koch and compared to previous MRIs. (JE 6:66-67). The MRI showed a component of syringohydromyelia in the distal visualized thoracic spinal cord. (JE 6:67). A component of disc protrusion at T11-12 with a small amount of extrusion of disc material and a migration of extruded disc material in reference to the T11-12 disc space level. (JE 6:67). The MRI continued to show a central disc protrusion at L3-4 with a posterior degenerative annular fissure and thecal sac flattening. (JE 6:67). Central right paracentral disc protrusion at L4-5 is also visualized with extrusion of disc material and caudal migration of extruded disc material centrally. (JE 6:67). Dr. Koch opined that there was likely impingement, irritation, or deflection of the nerve root sheath exiting in the right lateral recess at L4-5. (JE 6:67). Dr. Koch saw the central right paracentral disc protrusion at the L5-S1 level with some extrusion of disc material centrally right paracentrally with caudal migration of the extruded disc material centrally right paracentrally in reference to the L5-S1 disc space. (JE 6:67). Thecal sac flattening was also noted with some right lateral recess stenosis at the L5-S1 level. (JE 6:67).

Dr. Kim visited with Mr. Hofer via video again on September 11, 2020. (JE 8:10-11). Dr. Kim opined that the recent lumbar MRI showed a right L4-5 recurrent disc herniation. (JE 8:11). There was also a question as to whether or not there was a herniated nucleus pulposus at T11-12. (JE 8:11). Since the thoracic vertebrae were at the edge of the MRI, Dr. Kim recommended a thoracic MRI. (JE 8:11).

Mr. Hofer was terminated on September 15, 2020. (Testimony; DE H:113). Mr. Hofer's doctor indicated that he needed another six months off work, and his leave was exhausted. (DE H:113). Mr. Hofer's final day of on the job work was February 10, 2020. (Testimony; DE H:113). This termination was not a "for cause" termination. (Testimony; DE H:114). Mr. Hofer utilized all of his leave, and alleged that he needed to remain off work for another six months before possibly returning. (Testimony; DE H:113). Chief Chia testified that Indianola needed to fill the open position. (Testimony). Chief Chia further testified that Mr. Hofer was welcome to reapply, and at the time of his termination would have been rehired if he could pass a physical test. (Testimony). Mr. Hofer intended to make his position with Indianola into a career. (CE 4). He hoped to continue and be promoted within the fire department. (CE 4).

On September 17, 2020, Mr. Hofer returned to Dr. Lehr's care at the Iowa Clinic. (JE 6:68-70). Mr. Hofer had a cyst under his left arm, and continued to have lower back pain. (JE 6:68). His leg pain resolved, but his low back pain continued. (JE 6:68). He also complained of numbness in his back. (JE 6:68). Dr. Lehr noted the recent MRI that showed a recurrent disc herniation on the right at L4-5, and at T11-12. (JE 6:68). Dr. Lehr recommended that Mr. Hofer continue to follow up with Dr. Kim for his back pain, and proceed with a thoracic MRI. (JE 6:70).

Mr. Hofer had a thoracic MRI on September 28, 2020, at the Iowa Clinic. (JE 6:71). Rodlon Herrera, D.O., interpreted the MRI results. (JE 6:71). Dr. Hererra found no new or progressive findings since the August 8, 2017, thoracic MRI. (JE 6:71).

On October 9, 2020, Dr. Kim met with Mr. Hofer via video; however, the meeting was cut short. (JE 8:12-13). Dr. Kim did not have the images of the thoracic MRI available, so the meeting concluded. (JE 8:13).

Mr. Hofer attended his forty-eighth visit of physical therapy on October 13, 2020. (JE 3:22-24). He awaited results of an MRI. (JE 3:22). The therapist recommended that physical therapy be held until Mr. Hofer received the MRI results and followed up with a surgeon. (JE 3:22). Mr. Hofer was discharged from therapy. (JE 3:22-24).

On October 13, 2020, Dr. Kim responded to a check box letter from defendants' attorney. (Defendants' Exhibit A:1-9). Dr. Kim agreed that Mr. Hofer had disc degeneration and disc bulges at L3-4, L4-5, and L5-S1, with a large disc herniation at L4-5. (DE A:1). As of November 19, 2019, Dr. Kim felt that it was "fairly urgent" that Mr. Hofer proceed with the surgery performed on February 27, 2020. (DE A:2). He further agreed that, as of November 19, 2019, Mr. Hofer was "pretty much completely incapacitated and getting more severe." (DE A:2). Mr. Hofer also complained of

radicular pain to his left leg during the November 19, 2019, visit. (DE A:2). Upon performing surgery, Dr. Kim noted no new, acute changes to the claimant's low back. (DE A:2). Dr. Kim could not agree to a reasonable degree of medical certainty whether the enlargement of the disc herniation at L4-5 was due to a natural progression of disc herniation or an acute injury. (DE A:3). Dr. Kim opined that it was normal to see a disc herniation naturally progress over time. (DE A:3). Dr. Kim concluded by agreeing that Mr. Hofer needed low back surgery as of November 19, 2019, due to the then existing conditions of his low back, and any alleged worsening after this date did not change the claimant's need for surgery. (DE A:3).

Dr. Kim spoke to Mr. Hofer again via video on November 6, 2020. (JE 8:14-15). Mr. Hofer continued to complain of back pain, weakness, and numbness. (JE 8:15). The thoracic MRI showed disc herniations at T8, T9, T9-10, and T11-12, with significant cord deformation. (JE 8:15). Dr. Kim opined that "[t]hese pathologies explain his leg weakness and numbness." (JE 8:15). Dr. Kim recommended a thoracic CT to assess these herniations, as they were calcified. (JE 8:15). Dr. Kim opined that these herniations would most likely require a surgical intervention. (JE 8:15). Dr. Kim concluded that lumbar spine imaging did not explain Mr. Hofer's symptoms. (JE 8:15).

On November 17, 2020, Mr. Hofer had a thoracic CT scan at the Iowa Clinic. (JE 6:72-73). The CT scan was interpreted by Dr. Koch. (JE 6:72-73). Dr. Koch found some components of scoliosis. (JE 6:73). He also noted mild spondylosis at T5-6 with a slight degree of loss of height in the superior endplate of the T6 vertebral body. (JE 6:73). More advanced spondylosis was seen at T8-9, T9-10, and T11-12, with a relatively sizable disc osteophyte complex that projected. (JE 6:73).

Mr. Hofer began treatment at the Mayo Clinic on January 5, 2021. (JE 12:1-36). Mr. Hofer visited neurology, neurologic surgery, and radiology. (JE 12:1-36). Eduardo Benarroch, M.D., of the department of neurology first examined Mr. Hofer. (JE 12:20-36). Mr. Hofer complained of pain and lower extremity symptoms along with thoracic disc disease. (JE 12:20). Mr. Hofer noted that he had low back pain dating back to 2011, which predominantly involved the lower thoracic and upper lumbar spine. (JE 12:20). This pain was accompanied with a "sense of spasms." (JE 12:20). The pain rarely radiated to the right lateral thigh. (JE 12:20). After April of 2016, his symptoms substantially worsened. (JE 12:20). Mr. Hofer noted that one year prior, he began to notice pain in his thoracic spine radiating as a "jolt" upwards towards the cervical spine and downwards towards the lumbar spine. (JE 12:21). A thoracic MRI showed issues in the thoracic spine. (JE 12:21). Mr. Hofer reported a 70 percent improvement in his low back pain since his February 27, 2020, surgery with Dr. Kim. (JE 12:21). Dr. Benarroch diagnosed Mr. Hofer as follows: 1. Chronic low back pain involving lower thoracic and lumbar regions; 2. Status post right L3-4, L5, L4-5, and L5-S1 microdiskectomies in February 2020; 3. Degenerative disc disease in the thoracic spine that has remained stable since 2017; 4. Syringohydromyelia which is probably developmental and has been stable since 2016; and, 5. No clear clinical evidence of thoracic myelopathy despite the suspicion raised by the MRI. (JE 12:22).

Dr. Benarroch told Mr. Hofer that, despite the substantial abnormalities of the thoracic spine, which had remained stable until 2017, there is "no clear clinical evidence" for a thoracic myelopathy to account for his subjective lower extremity symptoms. (JE 12:22). Dr. Benarroch also told Mr. Hofer that his neurologic examination was normal. (JE 12:22). Dr. Benarroch recommended a somatosensory evoked potential of the left lower extremity to determine if there was any interruption in the sensory pathway. (JE 12:22).

After Dr. Benarroch examined Mr. Hofer, Lorenzo Rinaldo, M.D., Ph.D., from the department of neurologic surgery examined Mr. Hofer. (JE 12:1-2). Mr. Hofer's main complaint was low back pain, difficulty walking, and sensory disturbances. (JE 12:1). Dr. Rinaldo reviewed Mr. Hofer's treatment history. (JE 12:1). Mr. Hofer mentioned working as a firefighter and having a traumatic injury "several years" prior. (JE 12:1). Since that injury, he told Dr. Rinaldo that his back pain became significantly worse. (JE 12:1). Mr. Hofer reported that his back pain was the most limiting factor, and that he had difficulty controlling his lower extremities in space. (JE 12:1). He also indicated that he had difficulties doing his regular leisure activities with others, sometimes had difficulty doing all of the family activities, that he struggled performing two hours of physical labor, and had great difficulty doing vacuuming or yard work. (JE 12:11-12). He also complained of poor sleep. (JE 12:13). Upon examination, Mr. Hofer displayed full strength in his upper and lower extremities. (JE 12:1). Dr. Rinaldo also reviewed the previous MRI examinations. (JE 12:1-2). Specifically, Dr. Rinaldo opined that the most recent lumbar MRI showed a small residual central disc herniation at L3-4, and larger residual disc fragments at L4-5 and L5-S1 that caused moderate to severe lateral recess stenosis. (JE 12:2).

Dr. Rinaldo opined that Mr. Hofer displayed mild thoracic myelopathy, which is the cause of his walking difficulties and sensory disturbances. (JE 12:2). Dr. Rinaldo saw no indications requiring surgical intervention on the syrinx. (JE 12:2). Dr. Rinaldo further opined that Mr. Hofer had axial low back pain that was "multifactorial in etiology." (JE 12:2). Dr. Rinaldo recommended facet injections as an initial diagnostic, and also recommended a referral to the Spine Center to maximize nonsurgical management. (JE 12:2). Of note, Mr. Hofer did not mention his alleged February 4, 2020, injury.

On February 3, 2021, Mr. Hofer returned to the Mayo Clinic for treatment in the Spine Center. (JE 12:37-44). Charonn Woods, M.D., examined Mr. Hofer. (JE 12:37). Mr. Hofer described his back issues as starting in 2016 with "two consecutive injuries while training to become a firefighter." (JE 12:37). His back spasms were "so significant they required a visit to urgent care." (JE 12:37). His back pain persisted through 2017, and he managed them until he had surgery in 2020. (JE 12:37). Of note, Mr. Hofer did not mention his alleged February 4, 2020, injury. (JE 12:37-44). He reported that his most disruptive pain symptoms were back spasms of the lumbar spine. (JE 12:38). He was terminated from his firefighter position in 2020 due to his inability to tolerate activities required for work. (JE 12:38). Dr. Woods reviewed the thoracic and lumbar MRIs, which showed a syrinx from the mid thoracic level to the conus medullaris which is improved. (JE 12:38). He also had multilevel spondylosis with multilevel disc

degeneration most notable at T8-9 in the thoracic spine and post-operatively at L3-4, L4-5, and L5-S1 levels. (JE 12:38). Dr. Woods diagnosed Mr. Hofer as follows: 1. Multifactorial low back pain; 2. Lumbar spondylosis without myelopathy; 3. Thoracic spondylosis without myelopathy; 4. Thoracolumbar syrinx; and, 5. Status post L3-4, L4-5, L5-S1 microdiscectomy in 2020. (JE 12:38).

The somatosensory evoked potentials examination was also performed during this visit. (JE 12:39). The examination was normal with no electrophysiologic evidence of impaired conduction in the central proprioceptive pathways of the bilateral lower extremities. (JE 12:39). Dr. Woods spoke to Mr. Hofer and recommended lifestyle modifications, medications, interventions, and therapy. (JE 12:43). Dr. Woods found multiple pain generators in Mr. Hofer's lumbar spine, including the disc degeneration, facet arthropathy, and myofascial pain components. (JE 12:43).

Dr. Woods recommended that Mr. Hofer try Lyrica instead of Gabapentin. (JE 12:43). She also recommended that Mr. Hofer continue to take Flexeril and hydrocodone. (JE 12:43). Dr. Woods did not recommend physical therapy. (JE 12:43). She recommended targeting the L1-2 and L2-3 facets and pursuing a pain rehabilitation program. (JE 12:43).

Dr. Kim responded to another letter from defendants' counsel with a missive dated February 17, 2021. (DE A:5-6). Dr. Kim opined that the changes in Mr. Hofer's most recent thoracic CT and MRI scans were "not severely significant." (DE A:5). These changes were also not due to his alleged 2020 work injury. (DE A:5). Dr. Kim would not connect any future potential surgery to the alleged 2020 work injury. (DE A:5). Finally, Dr. Kim opined that Mr. Hofer's alleged work incident in February of 2020 did not cause any issues to his thoracic spine. (DE A:6).

John Kuhnlein, D.O., M.P.H., F.A.C.P.M., F.A.C.O.E.M., performed an IME on Mr. Hofer on April 13, 2021, at the request of the defendants. (DE B:10). He completed an IME report on June 14, 2021. (DE B:10). Dr. Kuhnlein is board certified in occupational and environmental medicine, a fellow of the American College of Preventive Medicine, and a fellow of the American College of Occupational and Environmental Medicine. (DE B:38). Dr. Kuhnlein reviewed Mr. Hofer's job duties with him. (DE B:10). Mr. Hofer told Dr. Kuhnlein that 85 percent of his work was EMT work. (DE B:10). Mr. Hofer said that his heaviest lifts were over 100 pounds. (DE B:10). He also exerted 20 pounds of force routinely, and occasionally exerted greater than 100 pounds of force. (DE B:10). Dr. Kuhnlein further reviewed the job description and requirements with Mr. Hofer. (DE B:10-11). Dr. Kuhnlein then reviewed Mr. Hofer's medical history dating back to 2011. (DE B:11-30). Dr. Kuhnlein noted that between the February 4, 2020, alleged work injury and the surgery on February 27, 2020, Mr. Hofer had no other workup that might determine if the alleged work injury caused any physical change to his back. (DE B:24).

Mr. Hofer described his low back spasms as constantly waxing and waning across the back to his flanks and the bottom of his rib cage. (DE B:30). The pain

radiated to his buttocks and both legs. (DE B:30). Dr. Kim released Mr. Hofer to work full duty as of April 10, 2020. (DE B:30). Mr. Hofer reported to Dr. Kuhnlein that the Mayo Clinic doctors told him to "work as tolerated." (DE B:31). Mr. Hofer related problems lifting more than 20 pounds at any level and traveling in small vehicles. (DE B:31). He also had problems standing for more than 30 to 45 minutes. (DE B:31). He had problems climbing and descending stairs. (DE B:31). Mr. Hofer told Dr. Kuhnlein that his symptoms remained unchanged over the past year. (DE B:31). Mr. Hofer also told Dr. Kuhnlein that he could no longer hunt, perform mechanical work, or do outdoor activities; however, he could go fishing. (DE B:32). His sleep patterns varied, and he had problems sleeping because of his pain. (DE B:32).

Dr. Kuhnlein noted diagnoses of multilevel degenerative lumbar disc disease, chronic musculoskeletal low back pain, and syringomyelia. (DE B:33). Dr. Kuhnlein opined that there was no objective evidence that the February 4, 2020, work activities caused further physical injury to the low back or lumbar spine, or "that 'this was the straw that broke the camel's back.'" (DE B:33). Dr. Kuhnlein further noted that there was a lack of evidence that the alleged injury accelerated the need for surgery. (DE B:33). Dr. Kuhnlein recognized that Mr. Hofer reported a change in his symptoms on or about February 4, 2020; however, Dr. Kuhnlein opined that there was a lack of evidence that would suggest even a temporary exacerbation of a pre-existing condition. (DE B:35). Dr. Kuhnlein found no evidence that Mr. Hofer's work activities on February 4, 2020, caused a permanent injury to his low back either due to an acute injury or a material aggravation of his previous low back condition. (DE B:35). There also was a lack of evidence that the work activities accelerated or "lit up" Mr. Hofer's thoracic condition. (DE B:35). Since Dr. Kuhnlein found no evidence that an injury or permanent impairment occurred on February 4, 2020, he opined that there was no date for MMI. (DE B:35). In Dr. Kuhnlein's opinion, Mr. Hofer required no additional medical care related to the February 4, 2020, work activities. (DE B:35). Dr. Kuhnlein also provided no permanent restrictions based upon the February 4, 2020, incident. (DE B:36).

Dr. Kuhnlein made note that Mr. Hofer likely required permanent work restrictions related to his overall lumbar spine condition, but not the alleged February 4, 2020, work incident. (DE B:36). The work restrictions for Mr. Hofer's overall lumbar spine condition included lifting 20 pounds occasionally from the floor to waist, 20 pounds occasionally from the waist to the shoulder, and 10 pounds occasionally over the shoulder. (DE B:37). Additional restrictions included sitting, standing or walking on an as tolerated basis with the ability to change positions for comfort. (DE B:37). Mr. Hofer could also occasionally stoop, squat, bend at the waist, crawl, or kneel. (DE B:37). Mr. Hofer had no restrictions on climbing stairs. (DE B:37). Mr. Hofer could occasionally work at or above shoulder height, and could grip or grasp without restrictions. (DE B:37).

On May 5, 2021, Mr. Hofer visited Pain Specialists of Iowa, where Jolene Smith, D.O., treated him. (JE 13:1-5). Mr. Hofer reported lumbar pain, facet arthropathy, and myofascial pain. (JE 13:1). Mr. Hofer rated his pain 8 out of 10 in the bilateral low back with numbness traveling down his bilateral legs past the knees and into the feet. (JE

13:1). His pain started in 2016, and he had a surgery in 2020 with three months of benefit. (JE 13:1). Past injections and physical therapy provided little benefit. (JE 13:1). His 2016 injury is what ultimately prompted the surgery. (JE 13:2). The record contains no mention of the alleged February 4, 2020, injury.

At the arrangement of claimant's counsel, Sunil Bansal, M.D., M.P.H., examined Mr. Hofer for an IME on October 7, 2020 in Urbandale, Iowa. (CE 1:1-21). However, Dr. Bansal did not issue a report on his examination until May 6, 2021. (CE 1:21). It is unclear what caused the almost 7-month delay between the examination and the report. Dr. Bansal is board certified in occupational health. (CE 1:1). Dr. Bansal reviewed Mr. Hofer's medical treatment dating back to 2016 and prior. (CE 1:1-16). Mr. Hofer told Dr. Bansal that he had an original injury in 2016, and then on February 4, 2020, he twisted his back getting out of an ambulance causing a "severe spasm" in his back. (CE 1:16-17). Mr. Hofer complained of constant back pain and frequent spasm. (CE 1:17). He also complained of numbness in his back and into his legs. (CE 1:17). Dr. Bansal noted that Mr. Hofer was terminated from his position with Indianola, and that he would not be able to perform his normal job duties as of the examination. (CE 1:18).

Upon physical examination, Dr. Bansal observed tenderness to palpation over the lumbar spine. (CE 1:18). Using two point discriminators, Dr. Bansal also noted a loss of sensory discrimination in the posterior lower right and left extremity. (CE 1:18). There was also a loss of sensory discrimination in the left midfoot. (CE 1:18).

Dr. Bansal opined that Mr. Hofer sustained "an acute on chronic injury" to his lower back as a result of the alleged incident on February 4, 2020. (CE 1:19). Dr. Bansal attributes stress to the lower lumbar disc pressures due to Mr. Hofer's job duties that increased his vulnerability to injury. (CE 1:19). The incident fully aggravated Mr. Hofer's underlying spondylosis, which necessitated the surgery by Dr. Kim. (CE 1:19). Dr. Bansal related the herniated discs at L3-L4, L4-L5, and L5-S1 to the February 4, 2020, incident. (CE 1:19). Dr. Bansal opined that Mr. Hofer achieved maximum medical improvement ("MMI") on February 3, 2021, as of his last visit with Dr. Woods. (CE 1:20). Based upon lingering issues with range of motion and sensory and motor nerve issues, Dr. Bansal provided a permanent impairment rating of 21 percent to the body as a whole. (CE 1:20-21). Dr. Bansal provided permanent restrictions of no lifting greater than 20 pounds, no frequent bending or twisting, and no prolonged standing or sitting for greater than 30 minutes at a time. (CE 1:21).

On May 26, 2021, Rene Haigh, M.S., C.R.C., of Paradigm issued an Employability Analysis. (DE C:47-82). Ms. Haigh reviewed a plethora of materials in preparing the report. (DE C:47). She also completed a vocational interview with Mr. Hofer. (DE C:47). Ms. Haigh then reviewed Mr. Hofer's work restrictions and medical treatment. (DE C:47-49). Mr. Hofer outlined a sedentary lifestyle, as physical activity and poor quality of sleep aggravate his symptoms. (DE C:49). He tried to get out of the house in order to remain active. (DE C:49). He had limitations in cleaning his home due to his symptoms. (DE C:49). He used a riding lawn mower to mow his lawn, and has his brother assist him with snow removal. (DE C:49). He had not applied for Social

Security Disability benefits. (DE C:49). Mr. Hofer mentioned that he had a Class B commercial driver's license ("CDL"), which was valid until August 28, 2027. (DE C:50).

Mr. Hofer reviewed his hobbies with Ms. Haigh. (DE C:50). He also indicated that extended driving or sitting in a vehicle, such as to the Mayo Clinic, caused him soreness. (DE C:50). Mr. Hofer could lift a full laundry hamper, which he estimated to be between 20 and 25 pounds. (DE C:50). Ms. Haigh discussed Mr. Hofer's educational background, and various firefighting certifications. (DE C:50). Mr. Hofer opined that he was skilled with using the computer and Microsoft Office products. (DE C:50). Ms. Haigh opined "given Mr. Hofer's most recent relevant work experience he would possess at least intermediate to advanced computer skills." (DE C:50). Mr. Hofer reiterated that he applied for four jobs since his termination by Indianola. (DE C:52). These jobs were in security, as a loan officer, and as an insurance broker. (DE C:52). At the time, Mr. Hofer also told Ms. Haigh that he considered returning to college to obtain his bachelor's degree in emergency management, or fire sciences, or some other related field. (DE C:52).

Based upon Mr. Hofer's description of his work history, Ms. Haigh opined that he was capable of performing work from light up to the very heavy physical demand category prior to his work injury. (DE C:53). Ms. Haigh considered Dr. Bansal's restrictions in opining that Mr. Hofer was capable of selectively medium physical demand category work. (DE C:53). Medium category work includes "[e]xerting 20 to 50 pounds of force occasionally, or 10 to 25 pounds of force frequently, and/or greater than negligible up to 10 pounds of force constantly to move objects." (DE C:53). Ms. Haigh declined to contradict Dr. Bansal's restrictions. (DE C:53). Ms. Haigh identified at least 18 jobs for which Mr. Hofer would qualify based upon his restrictions as imposed by Dr. Bansal. (DE C:54-55). These included jobs in the medical field, customer service, and data entry. (DE C:54-55). Ms. Haigh opined that, even with Dr. Bansal's restrictions, Mr. Hofer remained employable in his geographic area, and possessed skill transferability into "many alternative occupations." (DE C:55).

Mr. Hofer returned to Dr. Smith's office at Pain Specialists of Iowa on June 2, 2021. (JE 13:6-9). Dr. Smith performed a bilateral lumbar medial branch block at L4-5 and L5-S1. (JE 13:6-7). Again, there is no mention of an alleged February 4, 2020, work injury.

On June 17, 2021, Dr. Smith examined Mr. Hofer again at Pain Specialists of Iowa. (JE 13:10-12). Mr. Hofer described his pain as located in the bilateral low back and "very deep" into both of his hips. (JE 13:10). He had no pain down his legs. (JE 13:10). This is the first mention in several months of his "aggravation of existing injury" occurring in January of 2020. (JE 13:10). Mr. Hofer mentioned his lawyer, and that his 2016 injury case was closed. (JE 13:10). The medical branch blocks provided at most a 10 percent benefit. (JE 13:10). Mr. Hofer continued to take Naproxen and Cyclobenzaprine. (JE 13:10). Dr. Smith recommended one additional epidural injection. (JE 13:11). If the injection did not improve the symptoms, then Dr. Smith would consider recommendation of a spinal cord stimulator. (JE 13:11).

Mr. Hofer returned to Pain Specialists of Iowa on June 28, 2021. (JE 13:13-14). Dr. Smith performed a caudal epidural steroid injection. (JE 13:13-14).

With the restrictions of Dr. Kuhnlein and Dr. Bansal, Mr. Hofer felt that it would not be safe for him, the public, or his coworkers, to return to employment as a firefighter/paramedic. (Testimony).

Mr. Hofer applied for, and received, unemployment benefits from July of 2020 to March of 2021. (Testimony). He applied for several jobs, including a few from Ms. Haigh's report. (Testimony). He testified that he was waiting on an interview for a sales position with a uniform company, and as an anti-human trafficking investigator. (Testimony). He also has considered pursuing being an educator for paramedic courses, and/or a degree in emergency management. (Testimony). Mr. Hofer also indicated an interest in fire investigation, for which he is certified. (Testimony). He testified that he also had interest in legal careers. (Testimony). Mr. Hofer has not looked into any staffing companies or Iowa Works for additional employment. (Testimony). He is looking especially for sedentary, office-style work. (CE 4). He has the ability to run Microsoft Office and computers, generally. (Testimony).

Mr. Hofer continues to complain of low back pain. (Testimony). He alleges that this pain radiates to his hips. (Testimony). This pain causes him to modify some activities of daily living, such as dressing. (Testimony). He also uses a riding lawnmower to maintain his property. (Testimony). He can walk up to a block, but beyond that, his symptoms increase. (Testimony). He also has difficulty standing for more than 30 minutes. (Testimony). If he does this, it can cause his back to feel "locked up," at which time, he periodically takes narcotic prescriptions. (Testimony). Mr. Hofer also testified that he has to sit if he cooks a meal in the kitchen that takes over 30 minutes to finish. (Testimony). Mr. Hofer continues to enjoy fishing, but has not tried to hunt since his injury. (Testimony).

CONCLUSIONS OF LAW

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

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, that the employee's injuries arose out of, and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). 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. Id. An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000). The injury must not have occurred coincidentally at work, but must be caused by or related to the work, working

environment, or conditions of employment. Meyer v. IBP, Inc., 710 N.W.2d 213, 222 (Iowa 2006)(citing Koehler Elec., 608 N.W.2d at 3).

The Iowa Supreme Court has held that an injury occurs "in the course of employment" when:

> it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

There is no question that Mr. Hofer was in the course of his employment when, on February 4, 2020, he turned to exit a parked ambulance while on duty, and felt a spasm in his lower back. The question is whether this injury arose out of his employment. Mr. Hofer has a lengthy history of back pain dating back to at least 2011. He also has a previous work injury causing lower back pain dating to 2016. Between 2016, and his alleged work injury in 2020, Mr. Hofer had periodic "flare ups" of his lower back pain. He testified that he did not report his alleged injury on February 4, 2020, due to his belief that it was another temporary "flare up" of his 2016 injury.

The Iowa Supreme Court provided "significant guidance in applying the 'arising out of' element in workers' compensation claims." See e.g. Jackson v. United Parcel Service, File No. 5040135 (Appeal Jan. 17, 2014)(citing Meyer v. IBP, Inc., 710 N.W.2d 213 (Iowa 2006)). In Meyer, the Court stated:

> It means there must be a 'causal relationship between the employment and the injury.' Koehler Elec. v. Wills, 607 N.W.2d 1, 3 (Iowa 2000). Although we have attached a causation label to this element from time to time, it has a special definition in workers' compensation law. The element requires that the injury be a natural incident of the work, meaning the injury must be a ''rational consequence of the hazard connected with the employment.' Id. at 3-4 (quoting 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995)). 'In other words, the injury must not have coincidentally occurred while at work, but must in some way be caused by or related to the working environment or the conditions of . . . . employment.' Id. at 3 (quoting

Miedema 551 N.W.2d at 311); see 1 Larson at 9-1 ('Injuries arising out of risks or conditions personal to the claimant do not arise out of the employment unless the employment contributes to the risk or aggravates the injury.').

In applying this arising-out-of element, it is important not to draw in the causation standards applicable to tort law. The concept of proximate or legal cause applicable to tort law is misplaced in determining work-connectedness under workers' compensation law. 1 Larson § 2.06, at 3-7.

Larson provides a lengthy explanation:

> It is instantly apparent that 'arising out of the employment' does not mean exactly the same thing as 'legally caused by the employment.' It is true, as many courts and writers have said, that 'arising' has something to do with causal connection; but there are many shades and degrees of causal connection, of which 'legal' or 'proximate' cause is only one. Taking the words themselves, one is first struck by the fact that in the 'arising' phrase the function of the employment is *passive* while in the 'caused by' phrase it is *active*. When one speaks of an event 'arising out of employment,' the initiative, the moving force, is something other than the employment; the employment is thought of more as a *condition* out of which the event arises than as the force producing the event in affirmative fashion. In tort law the beginning point is always a person's *act*, and the act causes certain consequences. In workers' compensation law the beginning point is not an act at all; it is a relation or condition or situation – namely, employment. No one would suggest that the employer's only act, the act of hiring the employee, is the operative factor from which all consequences are to be traced. Thus, at the very outset, it is plain that the attempt to make 'arising' equivalent to 'causation' is blocked by the words themselves.
>
> One is next entitled to ask, if the original draftsmen meant to say 'caused by the employment,' why did they not do so? The phrase is not only shorter than the 'arising' phrase, but much more familiar; it would have come naturally to any draftsman, unless he or she intended to say something different from 'caused by.'
>
> Finally, proximate cause or legal cause is out of place in compensation law because, as developed in tort law, it is a concept that is itself thoroughly suffused with the idea of fault; that is, it is a theory of causation designed to bring about a

> just result when starting from an act containing some element of fault. The primary test of legal cause in the United States is foreseeability, which is the 'fundamental basis of the law of negligence.' Therefore, 'if the harm which has actually occurred is one of the particular risks which made the actor's conduct negligent, it is obviously a consequence for which the actor must be held legally responsible.' In other words, the essence of the actor's fault is that, although the consequences of his or her conduct were foreseeable, he or she nevertheless carried on that line of conduct. The foreseeability of the consequences is an inextricable part of the fault-character of the act.
>
> But what relevance has foreseeability if one is not interested in the culpability of the actor's conduct? There is nothing in the theory of compensation liability that cares whether the employer foresaw particular kinds of harm or not. The only criterion is connection in fact with the employment, whether it is foreseeable in advance, or apparent only in retrospect. This criterion cannot in any logical sense be made to depend on foreseeability . . . .

Id. at 3-7 to 3-8; further citations omitted.

Meyer, 710 N.W.2d at 222-224.

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. 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 Sys., 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.

Iowa employers take an employee subject to any active or dormant health problems, and must exercise care to avoid injury to both the weak and infirm, and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is "proximate" when it is a

substantial factor, or even the primary or most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

While a claimant is not entitled to compensation for the results of a preexisting disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). It is well established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

> a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

The information in the record shows that Mr. Hofer had a work injury in 2016. He had an initial MRI of his lumbar spine after the injury. He continued to treat for back pain until another MRI in 2017, which showed progression when compared to the previous MRI.

Then, in 2019, Mr. Hofer had an injection for his ongoing lower back pain. Also in 2019, Mr. Hofer visited Dr. Lynch. He brought his mother along to the visit. She stated that Mr. Hofer had never been "100 percent" since his 2016 injury. Mr. Hofer agreed with this statement upon questioning. Mr. Hofer had another MRI in 2019, which the radiologist noted to show similar to slight increases from 2017. The radiologist concluded that Mr. Hofer had moderate to severe degenerative disc disease. Mr. Hofer told Dr. Lynch that he was desperate for relief and a permanent solution to his lower back pain issues. Dr. Lynch warned him at the time that surgery could make his lower back issues worse. In 2019, Mr. Hofer had another lumbar injection. He followed this up by visiting Dr. Munson in October of 2019. Mr. Hofer told Dr. Munson that he had low back pain that radiated down the lateral right thigh towards the knee for "many years." Finally, in November of 2019, Mr. Hofer reported to Dr. Kim describing an injury at work "going on four years" ago. Mr. Hofer told Dr. Kim that the current incidence of pain began to progressively worsen. Dr. Kim recommended a multilevel microdiscectomy, and noted in the records that Mr. Hofer wished to proceed with the

same. Mr. Hofer alleges that he was told to schedule the surgery at his convenience, and that he planned to have the surgery in March of 2020.

Then, on February 4, 2020, Mr. Hofer alleged that he sustained an injury while exiting an ambulance. He alleged that the pain and symptoms experienced after the alleged incident were worse than prior to the incident and his other "flare-ups." Mr. Hofer had no additional imaging or objective testing done. He visited his primary care physician, who recommended that he accelerate his timeline for surgery. Originally, the surgery was scheduled for February 14, 2020. Interestingly, Mr. Hofer was able to schedule the surgery, and arrange for time off in a short period of time after his alleged injury. According to Indianola Fire Chief Chia, schedules for firefighters and paramedics are set one month in advance. This calls into question the veracity of Mr. Hofer's testimony as to the timing of his surgery being scheduled. After Mr. Hofer reported his alleged injury to Indianola, the surgery was briefly delayed. Mr. Hofer wrangled with Indianola and his health insurer before he rescheduled the surgery for February 27, 2020. Also, around this time, Mr. Hofer applied for short-term disability benefits from Mutual of Omaha. In this application, he listed his 2016 injury as the reason for his application.

Dr. Kim issued a check-box letter in 2020. He opined that it was "fairly urgent" that Mr. Hofer had the recommended surgery. Further, Mr. Hofer was "pretty much completely incapacitated" and getting more severe as of the November of 2019 visit. Additional imaging done in November of 2020 could not explain Mr. Hofer's continued post-surgical complaints. In early 2021, Mr. Hofer began treatment with the Mayo Clinic. He noted upon intake that he had back pain since 2011, and that since 2016, his symptoms substantially worsened.

Dr. Kuhnlein performed an IME of the claimant and opined that there was no evidence that the work activities of February 4, 2020, caused further physical injury to the claimant's low back, or lumbar spine. Dr. Kuhnlein also noted that the incident on February 4, 2020, would not be the "straw that broke the camel's back," or accelerated the claimant's need for surgery. Further, Dr. Kuhnlein noted that there was no evidence of a temporary or permanent exacerbation of the pain or injury from 2016. Dr. Kuhnlein offered no restrictions related to the February 4, 2020, incident, but did indicate that there should be permanent restrictions related to the 2016 incident and injury.

Dr. Bansal examined Mr. Hofer and opined that Mr. Hofer sustained a permanent aggravation of his pre-existing back issues. He opined that Mr. Hofer obtained an acute on chronic injury to his lower back. This presumably means that Mr. Hofer had a chronic back issue, and then had an acute injury on February 4, 2020, that further injured his chronic issue. Specifically, Dr. Bansal opined that the February 4, 2020, incident "fully aggravated" the claimant's underlying spondylosis.

There are a number of issues in the record that are concerning as it relates to the question of whether the claimant's injury arose out of his employment on February 4, 2020. First, the claimant's insistence that he did not schedule the surgery prior to the

February 4, 2020, work incident. I find the testimony of Chief Chia credible. Specifically, as it relates to scheduling, Chief Chia noted that schedules were set one month in advance. We do not have objective evidence in the record as to when Mr. Hofer requested time off for his surgery. We do have evidence indicating that he scheduled it for February 14, 2020, initially, and then moved it to February 27, 2021. Mr. Hofer alleges that this was due to the recommendation of his primary care provider after his alleged February 4, 2020, injury. It is difficult to square how Mr. Hofer could arrange for a lengthy amount of time off when the schedules for firefighters and paramedics were set one month in advance. Mr. Hofer did not explain how that was possible.

The second issue is that Mr. Hofer had considerable pre-existing issues dating back to at least 2016 when he had an initial work injury. In 2017, Mr. Hofer had an MRI that showed worsening from his previous MRI. As of 2019, Mr. Hofer and his mother noted that he was never at 100 percent recovery from his 2016 injury. A 2019 MRI showed slight increases in disc issues since 2016 and 2017. Mr. Hofer was then referred to Dr. Kim. Dr. Kim recommended surgery, and later noted that the need for surgery was "fairly urgent" and that Mr. Hofer was "pretty much completely incapacitated" when he examined him in 2019. Mr. Hofer continued to work during this time, but he did report periodic issues especially in 2019. Dr. Kim also noted that he observed no differences during the procedure from the pre-operative examination(s) or imaging. Finally, Dr. Kuhnlein performed an IME, and concluded that there was no evidence that Mr. Hofer's alleged work injury caused further injury to his back. Dr. Kuhnlein also noted that there was no objective testing, such as imaging, performed on Mr. Hofer between the alleged injury date and the surgery performed by Dr. Kim. Taking that into account with Dr. Kim's surgical finding, it shows that there was likely no objective worsening of Mr. Hofer's pre-February 4, 2020, condition.

The burden is on Mr. Hofer to show that the injuries alleged arose out of and in the course of employment. He proved that the alleged injuries occurred in the course of employment. However, the evidence in the record does not show that Mr. Hofer sustained an injury arising out of his employment. The claimant had issues into 2019 wherein injections were provided, and then Dr. Kim recommended a surgery. This is buttressed by the opinions of Dr. Kuhnlein, and the lack of objective evidence showing a worsening of the 2016 injury.

While it could be argued that the February 4, 2020, incident "lit up" Mr. Hofer's condition, I do not find adequate evidence that the claimant has carried that burden. Based upon the foregoing evidence, I find that the claimant failed to prove by a preponderance of the evidence that the February 4, 2020, incident arose out of Mr. Hofer's employment with Indianola.

Considering this finding, the issues relating to temporary disability and permanent disability are moot.

Iowa Code section 85.39 IME Reimbursement

Mr. Hofer is also seeking reimbursement of the independent medical examination performed by Dr. Bansal on October 7, 2020. Iowa Code 85.39(2) states:

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

An employer is not liable for the cost of an independent medical exam for an injury that is determined to not be a compensable injury. Id. A reasonable fee for an independent medical examination made pursuant to Iowa Code 85.39(2) is based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the exam is conducted. 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).

There are two issues with ordering reimbursement for the claimant's IME with Dr. Bansal. The first is that the IME was conducted prior to the opinion of Dr. Kuhnlein, or any other impairment rating. The second is that I found that the February 4, 2020, incident and the injuries subsequent to said injury were not caused by the February 4, 2020, incident. Since the required conditions for reimbursement of Dr. Bansal's IME were not met, I cannot order the defendants to reimburse the claimant.

Alternate Care pursuant to Iowa Code section 85.27

Iowa Code 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care…. The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

Iowa Code 85.27(4).

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975). An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986).

By challenging the employer's choice of treatment - and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See e.g. Iowa R. App. P. 14(f)(5); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that care was unduly inconvenient for the claimant. Id. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," and injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

Considering the above findings that the injuries alleged by the claimant did not arise out of and in the course of the claimant's employment, the claimant's request for alternate care is moot. Therefore, the petition with regard to this issue is denied.

Costs

Claimant seeks the award of costs. 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.

Pursuant to the holding in Des Moines Area Regional Transit v. Young, 867 N.W.2d 839 (Iowa 2015), only the report of an IME physician, and not the examination itself, can be taxed as a cost according to 876 IAC 4.33(6). The Iowa Supreme Court reasoned, "a physician's report becomes a cost incurred in a hearing because it is used as evidence in lieu of the doctor's testimony," while "[t]he underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." Id. (nothing additionally that "[i]n the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition"). The commissioner has found this rationale applicable to expenses incurred by vocational experts. See Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App., December 17, 2018); Voshell v. Compass Group, USA, Inc., File No. 5056587 (App., September 27, 2019).

In my discretion, I decline to award costs in this matter.

ORDER

THEREFORE, IT IS ORDERED:

The claimant shall take nothing further from these proceedings.

The claimant's request for alternate medical care is denied.

The parties shall bear their own costs.

The 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 4TH day of October, 2021.

ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Gary Mattson (via WCES)

Rachael Neff (via WCES)

Skylar Limkemann (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.