

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARK LAWSON,	:	
	:	
Claimant,	:	
	:	
vs.	:	
	:	File No. 5063845
LEHIGH NORTHWEST CEMENT,	:	
	:	ARBITRATION
Employer,	:	
	:	DECISION
and	:	
	:	
LIBERTY MUTUAL INSURANCE	:	
COMPANY,	:	
	:	
Insurance Carrier,	:	
Defendants.	:	Head Note No.: 1103

STATEMENT OF THE CASE

Mark Lawson filed a petition in arbitration seeking workers' compensation benefits from Lehigh Northwest Cement and Liberty Mutual Insurance. The case came for hearing in Des Moines, Iowa, on May 28, 2019. Lawson participated personally and through his attorney, Sarah Baumgartner. The defendants participated through attorney Jeffrey Lanz. The case was fully submitted on June 25, 2019.

The record consists of:

- Hearing testimony by Lawson;
- Hearing testimony by John Ward, a supervisor on the day shift at Lehigh;
- Joint Exhibits 1 through 7;
- Claimant's Exhibits 1 through 2; and
- Defendants' Exhibits A through I.

Under Rule 876 IAC 4.19(3)(f), the parties jointly submitted a hearing report which defined the claims, defense, and issues submitted to the undersigned. The parties entered into various stipulations in the hearing report. All of the parties' stipulations were accepted and are hereby incorporated into this arbitration decision. No

factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision except to help clarify the analysis of a disputed issue. The parties are now bound by their stipulations.

ISSUES

The parties submitted the following disputed issues for determination:

- 1) Whether Lawson sustained an injury arising out of and in the course of his employment with Lehigh on December 22, 2016;
- 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 and if so, the nature and extent of any permanent disability;
- 4) Whether Lawson gave timely notice of his alleged work injury under Iowa Code section 85.23;
- 5) Whether Iowa Code section 85.34(7) on successive disabilities applies to Lawson's alleged work injury;
- 6) Whether Lawson is entitled to payment for an independent medical examination (IME) under Iowa Code section 85.39; and
- 7) Whether Lawson is entitled to payment of medical expenses.

FINDINGS OF FACT

Lawson was 60 years old at the time of hearing. (Hearing Transcript, page 11) He was married at all times material hereto. (Tr. p. 11) Lawson completed high school through the 11th grade and ultimately received his GED. (Tr. p. 12)

Lehigh hired Lawson in approximately 1997. (Tr. p. 13) During Lawson's career with Lehigh, he has held the following positions:

- Worked in the yard;
- Mill laborer;
- Miller;
- Extra man;
- Burner helper; and
- Burner. (Tr. p. 13)

Lawson is an active individual. In addition to working for Lehigh, he has a side construction business. (Defendants' Exhibit B, pp. 4–5, 8–9) He owns an acreage in the country. On the property, he has horses. Lawson owns a skid loader, trailer, enclosed trailer, and dump trailer. (Def. Ex. B, Deposition pp. 6–8) In addition to his home, Lawson also has multiple sheds on his property and keeps horses. (Tr. pp. 41–43)

Lawson has a history of back problems going back to at least 1999. (Joint Exhibit 1, p. 1) A radiographic report from North Iowa Mercy Health Center (North Iowa Mercy) details magnetic resonance imaging (MRI) of Lawson's back found:

- Right L4-5 foraminal broad based disc bulge or protrusion;
- Mild broad based disc bulge L2-3;
- Small central disc protrusion L5-S1; and
- D11-12, L2-3, and L4-5 levels of degenerative disc disease primarily evidenced by disc desiccation with narrowing additionally seen at L2-3.

(Jt. Ex. 1, pp. 1, 2)

Lawson sought treatment for his back problems again in 2001. (See Jt. Ex. 1, pp. 2–8) Lawson was experiencing right-sided low back and buttock pain, beginning at the lateral hip and radiating to his medial knee and down to his medial ankle. (Jt. Ex. 1, p. 7) North Iowa Mercy performed another MRI, which showed:

- A small midline herniation of the L5-S1 disc which is unchanged compared to 1999;
- A pronounced focal bulge versus far right posterolateral herniation of the L4-5 disc which appears slightly more prominent than on the previous study; and
- Mild broad-based midline bulging of the L2-3 disc which is unchanged.

(Jt. Ex. 1, pp. 5–6)

Lawson sustained a back injury in 2007. (Jt. Ex. 1, p. 9) His job was primarily to run computers, but Lehigh required him to perform heavier labor while the plant was shut down. (Jt. Ex. 1, p. 9) Lawson was changing a return roller on a belt when he twisted the roll away and felt a pop in his lower back that caused non-radiating pain. (Jt. Ex. 1, p. 9)

On January 6, 2008, Lawson sustained another back injury. (Jt. Ex. 1, p. 11) He was moving materials with a wheelbarrow when the handle broke. (Jt. Ex. 1, p. 11) Lawson strained his back and felt a pop in the low back area. (Jt. Ex. 1, p. 11) After the pop, Lawson experienced pain down his right leg and some tingling. (Jt. Ex. 1, p. 11) Jay Mixdorf, M.D., diagnosed Lawson with myofascial low back pain secondary to strain with right sciatica and pre-existing degenerative disk disease. (Jt. Ex. 1, p. 11)

X-rays and an MRI showed:

- Multifocal lumbar spine degenerative disk disease and/or degenerative spondylosis;
- L4-5 symmetrical broad based disc bulge with an asymmetrical disc protrusion within and lateral to the right L4-5 neural foramen contacting the nerve roots;
- Mild symmetrical broad based disc bulges L2-3, L3-4, and L5-S1; and

- L2-3 through L5-S1 degenerative disc disease evidenced by disc height loss and/or disc desiccation with L2-3 degenerative spondylosis seen to a degree as well.

(Jt. Ex. 1, pp. 13, 17)

Based on the radiographs, Dr. Mixdorf's assessment was right radiculopathy with degenerative changes in the lumbar spine. (Jt. Ex. 1, p. 13) David Beck, M.D., first saw Lawson on March 10, 2008. (Jt. Ex. 2, p. 28) Lawson wished to avoid surgery, so they opted to try an injection. (Jt. Ex. 2, p. 28) After injections failed to remedy Lawson's symptoms, he underwent surgery. (Jt. Ex. 1, p. 18; Jt. Ex. 2, p. 31)

Because of the surgery, Lawson missed work for a period of time. (Jt. Ex. 2, pp. 32–43) Lawson was ultimately able to return to full-duty work with Lehigh. (Jt. Ex. 2, p. 43) Dr. Beck found Lawson to have reached maximum medical improvement (MMI) effective March 1, 2009, and assigned him an impairment rating of 10 percent of the body as a whole. (Jt. Ex. 2, p. 43) Dr. Beck also recommended a lifting restriction of 50 pounds. (Jt. Ex. 2, p. 44)

On October 29, 2010, Robert Jones, M.D., performed an independent medical examination (IME) of Lawson. (Jt. Ex. 4, p. 61) Dr. Jones assigned Lawson an impairment rating of 12 percent to the whole person. (Jt. Ex. 4, p. 62) Dr. Jones prescribed the following work restrictions:

- Limit lifting from floor to waist to 45 pounds occasionally;
- May lift up to 20 pounds frequently;
- Avoid lifting far out from the body and preferably lift close to the body;
- Avoid excessive bending, lifting, twisting, stooping, and crawling. (Jt. Ex. 4, p. 62)

The parties entered into an agreement for settlement under Iowa Code section 85.35(2) on January 5, 2012. (Def. Ex. D, p. 7) In the agreement for settlement, the parties agreed that Lawson sustained a 19 percent permanent partial disability of 19 percent for loss of earning capacity. (Def. Ex. D, p. 7)

Between the 2008 surgery and 2016 injury, Lawson experienced pain he describes as constant. (Tr. pp. 16–17) He takes hydrocodone daily just to moderate the pain so he can make it through the day. (Tr. p. 17)

Lawson continued to work for Lehigh, where he ultimately reached the position of burner — kiln operator. (Tr. p. 13) An ordinary day in the position consists of sitting at a desk and running a computer all day. (Tr. p. 13) When the plant goes on shutdown, Lawson must perform manual labor such as jackhammering and shoveling. (Tr. p. 14;

Cl. Ex. 2 (video of Lawson and a coworker jackhammering during a plant shutdown in April 2019))

Lawson could not recall if there was a plant shutdown that necessitated him performing manual labor in December of 2016, but he testified it was possible. (Tr. p. 18) Lehigh used to have a shutdown in December and April each year. (Tr. p. 18)

In December of 2016, Lawson was walking across the floor in his shop on his personal property when he felt a sharp pain that radiated down his buttocks and leg. (Tr. pp. 15–16; Jt. Ex. 2, p. 47) The pain was such that it took Lawson to the floor. (Tr. p. 16) He was physically unable to get up for approximately 10 minutes. (Tr. pp. 16, 18) Lawson was unable to stand up straight once he got to his feet. (Tr. p. 18) Once he got into his home, he telephoned Dr. Boedeker, his personal physician. (Tr. p. 18)

Lawson saw Dr. Boedeker, who referred him to Dr. Beck, the surgeon who treated his 2008 back injury. (Tr. pp. 18–19) Dr. Beck saw Lawson on December 19, 2016. (Jt. Ex. 2, p. 48) He described Lawson as miserable. (Jt. Ex. 2, p. 48) An MRI showed:

- Left first central disc extrusion located at and below the level of the L4-5 disc space, narrowing the left lateral recess and potentially impinging upon the traversing left L5 nerve root;
- Operative changes right hemilaminotomy noted; and
- The aneurysm multilevel degenerative spondylotic disc space changes and facet arthropathy in the lumbar spine as detailed above, progressed since 2008. Moderate spinal canal narrowing is noted at L4-5 related to the disc extrusion, broad-based disc bulge and facet arthropathy. (Jt. Ex. 1, p. 24–25)

Dr. Beck performed an L5-S1 laminotomy and discectomy on December 22, 2016. (Jt. Ex. 2, pp. 48–49, 53; Tr. p. 19) Lawson's group health plan, provided by Lehigh, paid the medical relating to the care for this latest back injury. (Def. Ex. E, pp. 21–25)

Lawson was off work from December 3, 2016, through February 20, 2017, because of his back. (Def. Ex. C; Jt. Ex. 2, pp. 51–52) He took vacation from December 3 through December 11, 2016. (Def. Ex. E, p. 28) Then Lawson received short-term disability (STD) benefits from December 12, 2016, through February 19, 2017, under a plan paid for by Lehigh. (Def. Ex. E, pp. 26, 31–32) STD benefits are not available under the plan for work injuries. (Ex. E, pp. 31–32)

On February 20, 2017, Lawson resumed working for Lehigh in the job of kiln — burner. Lawson was working the same job for Lehigh on the date of hearing. However, he had switched shifts to the night shift, which paid more and was less busy.

On December 27, 2017, Lawson's attorney sent Lehigh a letter dated, December 27, 2017, stating that she represented Lawson for a workers' compensation claim relating to an injury he sustained while employed with the company. (Def. Ex. G) The notice of injury is dated 370 days after December 22, 2016, the alleged date of injury in this case. Lawson was unable to recall whether he informed Lehigh before the letter that he believed his December 2016 back injury was work related. (Def. Ex. B, Depo. p. 11)

In 2018, Lawson's construction business continued its work. That year, its projects included building a deck as well as installing doors, windows, and a handrail. (Def. Ex. B, Depo. pp. 4-5) Lawson's construction business had gross receipts in 2018 of \$9,002.00 with a net loss of \$13,683.00. (Def. Ex. I, p. 58)

Lawson saw Sunil Bansal, M.D., on February 22, 2019, for an IME. (Jt. Ex. 6, p. 68) Dr. Bansal is a board-certified occupational health physician. (Jt. Ex. 6, p. 68) Dr. Bansal reviewed the following records as part of the IME:

- Neurosurgery of North Iowa;
- Healthworks Occupational Health;
- Mercy North Iowa;
- Mercy Rehabilitation Services;
- Dr. Jones;
- Forest Park Family Medicine Clinic; and
- Mason City Physical Therapy. (Jt. Ex. 6, pp. 68-76)

Dr. Bansal also performed a physical examination of Lawson. (Jt. Ex. 6, pp. 78-79)

In a report dated March 13, 2019, Dr. Bansal found Lawson reached MMI on February 22, 2019, the time of his evaluation. (Jt. Ex. 6, p. 79) On the question of causation, Dr. Bansal opined:

In my medical opinion, Mr. Lawson incurred an L4-L5 disc herniation from the cumulative prolonged sitting he performed while working at Lehigh Portland Cement. Studies have shown that prolonged sitting will stress the lumbar spine, most notably at the L4-L5 level, consistent with Mr. Lawson's pathology.

Analysis of the data shows the greatest change in disc height is at the L4-5 level after prolonged sitting without intermittent breaks.

Research has shown multiple reasons including biomechanical forces to account for the increased pressures at these discs. The results of this study support this clinical finding. The largest change in disc height with prolonged sitting was found at the L4-L5 level. Age and hours sitting were found to be significant risk factors for development of disc herniation at the L4-5 level. Our findings are in agreement with such a relationship.

(Jt. Ex. 6, p. 79 (citing Billy, Gregory G et al. "Changes in lumbar disk morphology associated with prolonged sitting assessed by magnetic resonance imaging," *PM & R: The Journal of Injury, Function, and Rehabilitation*, vol. 6,9 (2014): 790-5) (italics in original)) This decision will refer to this article as Billy and Lemieux for ease of reference.

Defense counsel wrote a letter to Dr. Beck regarding Lawson's injury. (Jt. Ex. 2, pp. 54–55) The letter consisted of eight numbered paragraphs, each containing affirmative statements regarding Lawson's injury. (Jt. Ex. 2, pp. 54–55) Dr. Beck confirmed these statements by signing and dating a letter on March 14, 2019. (Jt. Ex. 2, p. 55) By doing so, Dr. Beck confirmed in pertinent part he believes the following:

- Dr. Beck has no documentation in his file that Lawson's back condition at the time and the need for surgery was related to his work activities;
- His office asks patients if their injury is work related, and he has no evidence in his notes that Lawson indicated his injury was such;
- Dr. Beck cannot state with a reasonable degree of medical certainty that Mr. Lawson's back condition and need for the December 22, 2016, back surgery was caused by or substantially aggravated his work activities;
- Lawson reached MMI on February 20, 2017;
- Lawson would have an additional impairment rating of two percent to the body as a whole under the Fifth Edition of the AMA Guides;
- Dr. Beck does not recommend any permanent work restrictions for Lawson due to his 2016 back injury; and
- He does not recommend further treatment for Lawson's 2016 back injury. (Jt. Ex. 2, pp. 54–55)

William Boulden, M.D., F.A.A.O.S., of Capital Orthopaedics & Sports Medicine performed a defense IME of Lawson on April 11, 2019. (Jt. Ex. 7, p. 81) Dr. Boulden reviewed medical records and performed a physical examination of Lawson. (Jt. Ex. 7, pp. 81–83) On the question of causation, Dr. Boulden disagreed with Dr. Bansal's opinion:

It is also noted that there is no history that he had a fall at work in the notes that I have seen. They are alleging that his occupation of sitting caused him to have a herniated disc. He has stated via some unknown article that I am not familiar with that sitting increases the stress across L4-5. I would disagree that that is the cause for his "herniated disc" at L4-5.

It is well known among spinal surgeons that women do have more problems at L4-5 than men because of their anatomy. That is why there is more degeneration, subsequent herniations, and spondylolisthesis problems in females at L4-5. It is stated that it is at least three times more prevalent at L4-5 in females than males. As stated earlier, the male anatomy is different, so L5-S1 has the most stress because of the most motion; at this level therefore, men have more herniated disease at L5-S1 than at L4-5. Based on these facts, I would totally disagree with Dr. Bansal's assessment and his conclusions.

I would also like to point out that if Dr. Bansal's assumptions are correct, we would have an epidemic of herniated discs at L4-5 because of the significant increase of sedentary type work that is being utilized throughout the world as compared to the past. This is not, in my opinion, a cause and effect and I do not believe that is the situation here, other than the fact that he had increasing progression of degenerative disc disease. Subsequently, when that is the case, a disc can spontaneously rupture without any type of physical activities, and I would definitely not relate a sitting activity as a stressful situation that would cause a herniated disc. This is based on 40-plus years of observation and taking care of low back problems.

With reference to question number two, I would state that the patient's back condition and need for surgery on December 22, 2016, was not caused or even aggravated by his work activities of sitting. I have made a dissertation about stress across the discs in the lower back, stating that women have more common problems at L4-5 than men because of their anatomy differences. In males, however, L5-S1 is more stressed and degenerative changes occur at L5-S1 more commonly than at any other disc level; therefore, males have more herniations at L5-S1. I see nothing that would be a cause and effect relationship to his occupation causing the herniated disc at L4-5 other than pre-existing degenerative disc disease. Dr. Kirkaldy-Willis, over the years, has been the mentor of the cascading effects of degenerative disc disease. It is during the process of degeneration that discs can spontaneously herniate without any type of traumatic event.

(Jt. Ex. 7, p. 84)

Dr. Boulden also disagreed with Dr. Bansal's impairment rating:

[Dr. Bansal] gave [Lawson] a rating of 11 percent using DRE Classification. It is inappropriate to use that classification, because it was a second operation on the same spinal level, L4-5. That is clearly

described on Page 398 of the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition*, concerning range of motion and the utilization of it. Using *The Guides*, range of motion on Table 15-7 on Page 404, it would be two (2) percent of the lumbar spine. Dr. Beck had already recommended that rating of two (2) percent.

(Jt. Ex. 7, pp. 83–84)

On April 25, 2019, Dr. Boulden signed a statement authored by defense counsel. By doing so, Dr. Boulden adopted multiple numbered opinions, including that his review of photographs of Lawson's work station did not change his opinion on causation; neither the design of the work station nor the particular chairs that Lawson used while working at Lehigh increased risk of injury, given his pre-existing back condition, or the herniated disc at L4-5. (Jt. Ex. 7, p. 86–87)

On May 8, 2019, defense counsel wrote a letter to Dr. Beck that consisted of a series of affirmative statements. (Jt. Ex. 2, pp. 56–57) Dr. Beck signed the letter and doing so, confirmed the statements. (Jt. Ex. p. 57) By doing so, Dr. Beck confirmed in pertinent part he believes the following:

- Dr. Beck viewed photographs of Lawson's work station at Lehigh, provided by defense counsel;
- Dr. Beck reviewed Dr. Bansal's IME report on causation and Dr. Boulden's opinion disputing it, and he agrees with Dr. Boulden's opinions;
- Nothing Dr. Beck observed in the photographs, Dr. Bansal's opinions, or Dr. Boulden's opinions changes his opinions as expressed in the letter authored by defense and signed by Dr. Beck on March 14, 2019;
- Based on Lawson's recount of the symptoms' sudden onset while he was walking at home, Dr. Beck's opinion is that the walking across the floor at home in his shop was most likely the event that caused the herniation and need for surgery;
- Neither the design of Lawson's workspace or the chair he used while working contributed (caused or substantially aggravated) Lawson's herniated disc at L4-5 and subsequent need for surgery;
- Neither the design of Lawson's workspace or the chair he used while working created a hazard or exposed him to a risk of injury that would not also be present elsewhere; and
- The risk of back injury, given Lawson's preexisting condition, was in no way connected to or increased by the design of the work station or chairs he used while working, not to any other aspect of his regular job duties at Lehigh. (Jt. Ex. 2, pp. 56–57)

CONCLUSIONS OF LAW

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

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

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

Dr. Bansal is the only medical expert to find a causal connection between Lawson's work at Lehigh and the injury of December 2016 to his back. Drs. Boulden and Beck, both surgeons with experience performing back surgeries, disagree with Dr. Bansal's causation opinion. Dr. Beck's opinion exists as him signing off on statements authored by defense counsel and articulate disagreement with Dr. Bansal and agreement with Dr. Boulden. For the following reasons, the causation opinion of Drs. Boulden and Beck is more persuasive than that of Dr. Bansal.

Dr. Bansal's opinion on causation is founded on the Billy and Lemieux study, which he cites as follows:

In my medical opinion, Mr. Lawson incurred an L4-L5 disc herniation from the cumulative prolonged sitting he performed while working at Lehigh Portland Cement. Studies have shown that prolonged sitting will stress the lumbar spine, most notably at the L4-L5 level, consistent with Mr. Lawson's pathology.

Analysis of the data shows the greatest change in disc height is at the L4-5 level after prolonged sitting without intermittent breaks.

Research has shown multiple reasons including biomechanical forces to account for the increased pressures at these discs. The results of this study support this clinical finding. The largest change in disc height with prolonged sitting was found at the L4-L5 level. Age and hours sitting were found to be significant risk factors for development of disc herniation at the L4-5 level. Our findings are in agreement with such a relationship.

(Jt. Ex. 6, p. 79)

The Billy and Lemieux study found a change in disc height after prolonged sitting without intermittent breaks that was greater at the L4-5 levels. The study did not look at disc herniation. Thus, the statement that "[a]ge and hours sitting were found to be significant risk factors for development of disc herniation at L4-5 level" does not come from the study Dr. Bansal quotes. And Dr. Bansal's report gives no indication from what study this conclusion comes. This assertion about disc herniation in an article about a study of disc height, standing alone without a citation or further explanation, undermines the persuasiveness of Dr. Bansal's opinion.

Dr. Bansal's report also does not include information about the Billy and Lemieux report that is pertinent to considering how much weight to give it as the basis of his causation opinion. This means the citation of the report raises more questions than it answers. For example:

- What is the sample size of the study? As a general rule, the bigger the sample size, the more reliable the study. If the Billy and Lemieux study used a small sample of people to study, its conclusions should be given less weight than if it studied a larger sample of people.
- What is the demographic breakdown of the participants in the study? As Dr. Boulden observed in his report, men and women have physiological differences that make women more susceptible to disc issues at the L4-5 level. If the Billy and Lemieux study used a disproportionate share of women in the sample of people it studied, this could skew the results to a degree. Likewise, the demographic information about the ages of participants might

have a similar effect. It also might give more weight to the study if, for example, they are similar in age to Lawson. But we do not know because Dr. Bansal's report provides no information on the demographics of the participants in the Billy and Lemieux study.

- What constituted an "intermittent break"? The study's finding includes the qualifier "*after prolonged sitting **without intermittent breaks.***" (Jt. Ex. 6, p. 79 (quoting Billy and Lemieux) (italics in the exhibit and bold-faced emphasis added)). Dr. Bansal's report does not explain what constituted an intermittent break for purposes of the Billy and Lemieux study. Nor does it apply that standard to Lawson's sitting and breaks at work. This undermines the persuasiveness of Dr. Bansal's report.

Dr. Boulden zeroed in on the physiological differences between men and women when criticizing Dr. Bansal's opinion, based on the Billy and Lemieux study, that Lawson's herniated disc at L4-5 was caused by prolonged sitting on the job at Lehigh. Dr. Boulden stated that these differences establish that men are more likely to suffer disc herniation of L5-S1 while women are more likely to do so at L4-5. The inference being that without knowing demographic information about the participants in the Billy and Lemieux study, it is difficult to determine how much weight to give its findings. Dr. Boulden's opinion is entitled to additional weight given his more than 40 years of experience treating back injuries. His firsthand observation that the increase in sedentary work has not caused a marked increase in L4-5 disc herniation cuts against Dr. Bansal's opinion on causation.

Lastly, Dr. Beck was Lawson's treating physician for his earlier work-related back injury and the injury that gave rise to this case. This means Dr. Beck has firsthand knowledge of both of Lawson's back injuries and the treatment for them. In this case, Dr. Beck's history with Lawson as the treating physician for his back injuries makes his opinion on causation more persuasive even if it comes by way of a check-box letter authored by defense counsel.

For the reasons contained herein, the opinions on causation issued by Drs. Boulden and Beck are more credible than Dr. Bansal's. Consequently, Lawson has failed to meet his burden of proof on the question of whether his work at Lehigh caused his back injury in December 2016. Because Lawson has not proven by a preponderance of the evidence that his back injury arose out of and in the course of his employment at Lehigh, the other issues in dispute between the parties are moot and the decision does not address them.

CONCLUSION

It is therefore ordered:

- 1) Lawson shall take nothing in this case.

- 2) The parties shall be responsible for paying their own hearing costs. Each party shall pay an equal share of the cost of the transcript.

Signed and filed this 2nd day of March, 2020.


BENJAMIN G. HUMPHREY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jeffrey Lanz (via WCES)

Sarah Baumgartner (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.