

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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 RYAN HUTCHCROFT,

Claimant,

vs.

JOHNSON BROTHERS LIQUOR,

Employer,

and

TRAVELERS INDEMNITY CO. OF CT,

Insurance Carrier,  
Defendants.

File No. 5068747

ARBITRATION

DECISION

Head Note 1803

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## STATEMENT OF THE CASE

Ryan Hutchcroft filed a petition for arbitration and seeks workers' compensation benefits from Johnson Brothers Liquor, employer, and Travelers Indemnity Company of Connecticut, insurance carrier. The claimant was represented by Emily Anderson. The defendants were represented by Julie Burger.

The matter came on for hearing on September 18, 2020, before deputy workers' compensation commissioner Joe Walsh. The hearing was conducted through video via Court Call. The record in the case consists of joint exhibits 1 through 8; claimant's exhibits 1 through 10 and defense exhibits A through F. The claimant testified at hearing, in addition to his wife Rachel Collins, and the risk manager for the employer, Kyle Colebeck. Gina Castro was appointed to serve as court reporter for the proceeding. The matter was fully submitted on October 19, 2020, after helpful briefing by the parties.

## ISSUES

The parties submitted the following issues for determination:

1. The nature and extent of permanent disability.
2. Whether the medical expenses set forth in claimant's exhibit 8 are compensable under Section 85.27.

3. Costs.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship.
2. Claimant sustained an injury which arose out of and in the course of employment on June 16, 2017. This injury is a cause of both temporary and permanent disability.
3. Temporary disability/healing period and medical benefits are no longer in dispute.
4. The commencement date for any permanent disability benefits is October 2, 2017, the date claimant returned to work.
5. The weekly rate of compensation is \$862.34.
6. Defendants have paid and are entitled to a credit of 152 weeks of compensation (permanent partial disability).
7. Affirmative defenses have been waived.

FINDINGS OF FACT

Ryan Hutchcroft was born in 1975 and was 45 years old as of the date of hearing. He is married to Rachel Collins. Both Mr. Hutchcroft and Ms. Collins testified live (via Court Call video) at hearing. They are both found to be highly credible witnesses. Mr. Hutchcroft's testimony was straightforward, honest and simple. There was nothing about his demeanor which caused the undersigned concern regarding his truthfulness. He was an excellent historian and his testimony aligned well with the other evidence in the record.

Mr. Hutchcroft joined the U.S. Navy in 1992 after completing his high school coursework. He worked as a plane captain. This work included performing mechanical work on the planes. He served overseas in Desert Storm and in Bosnia. He ultimately received an honorable discharge in 1996. After leaving the Navy, he began working as a merchandiser for Coca-Cola. He drove, delivered and stocked product. He continued in this position until 2000, when he was hired by Johnson Brothers, the employer in the instant case.

Johnson Brothers is a large alcohol distributor. It hired Mr. Hutchcroft as a wine sales consultant. He was responsible for working with customers of the employer, performing sales and merchandising work within his territory. This work involves building and maintaining business sales relationships, in addition to some manual labor

work (i.e., setting up sales promotions). The written job description is in the record. (Claimant's Exhibit 7)

In approximately 2016, Mr. Hutchcroft was promoted to the position of district manager. In this position, he manages four sales representatives in various territories. This job description is in the record. (Defendant's Exhibit C) This position involves high-level sales work, including developing and implementing sales plans, as well as managing and motivating sales professionals. There is still a relatively significant labor component to this position. (Def. Ex. C, p. 2)

It is noted that Mr. Hutchcroft is very active and in excellent physical condition. He is a weightlifter and formerly performed work as a bouncer in the Cedar Rapids area. He had suffered serious injuries to various body parts over the years. In the early 2000's he sustained a serious ATV accident which "resulted in what was thought to be cervical fractures." (Cl. Ex. 1, p. 29) This injury, however, did not require any prolonged treatment, permanent restrictions or loss of work. In July 2008, he sustained a motorcycle accident. This injury resulted in a reconstructive surgery and fusion with his left hand or wrist. Mr. Hutchcroft testified that he missed approximately one year of work from this accident but that he fully recovered. (Tr., pp. 51-52) He had an additional motorcycle accident later, which caused treatment on his right ankle.

Just prior to his work injury, Mr. Hutchcroft had established conservative treatment for his neck, likely related to his old ATV accident. (Jt. Ex. 3, pp. 192) Mr. Hutchcroft testified that none of his pre-injury conservative treatment affected his ability to work in any way. (Tr., p. 52) Nevertheless, it is evident that he was, in fact, under active medical treatment for his neck and low back at the time the stipulated injury occurred. In fact, he had a trigger point injection on the day before the accident, June 15, 2017. (Jt. Ex. 3, p. 195) His condition at that time was causing significant symptoms. An earlier CT scan showed "severe osteoarthritis changes at the left C3/4 facet joint as well as the right C5/6 and C6/7 joints; moderate bony stenosis left C3/4 neural foramen. (Jt. Ex. 3, p. 192)

On June 16, 2017, Mr. Hutchcroft was in a serious automobile accident while working for Johnson Brothers. The accident itself is not in dispute and is well-documented. (See Defendant's Exhibit B) In summary, a driver attempted to turn right across traffic and crashed into Mr. Hutchcroft's vehicle at the driver's side door. Mr. Hutchcroft had to be helped from the vehicle due to his injuries and the damage to his vehicle. At that time, he was primarily experiencing head and arm pain. He was taken to the emergency room. A full work-up was performed for head injury, left elbow and cervical spine. (Jt. Ex. 4, pp. 221-222)

Mr. Hutchcroft had planned to leave for Texas for a family vacation on that day. When he was released from the hospital, he believed he was physically alright despite general soreness. Within a few days on the trip, he realized that he was not alright. After getting nauseous at a waterpark, he decided to return to Iowa for treatment. (Tr., pp. 87-88)

His first medical visit, outside of the emergency room, was on June 23, 2017, with the clinic which was already providing him with conservative medical treatment for his neck prior to the injury, Cedar Rapids Pain Associates. This treatment had been secured through the Veterans' Administration (VA), however, Mr. Hutchcroft testified that his employer authorized him to receive care through this provider. (Tr., p. 23) There is no evidence disputing this in the record.

Ryan presents today for follow up of back pain. He was last seen for cervical and lumbar trigger point injections 6/15/17. He reports that he was in a MVA the next day in which he was hit on the passenger side by another vehicle going 35 miles an hour as he was driving. He went to the hospital where his main focuses were on his head, neck and left elbow (the airbag hit him in these place). Imaging was taken of those areas. However, since he left the hospital he has noticed left anterior shoulder pain as well that was not examined in the ER. He thought that the trigger point injections were possibly helping his pain until his MVA. Since then, his entire back is sore, but especially his neck and left shoulder. Additionally, he has had a headache that radiates from the base of his skull around to his temples that has been constant since the MVA, and he has had what he calls "squinting attacks", where his eyes will twitch. He also reports intermittent numbness and tingling down his left arm to his hand, which sometimes feels like it is falling asleep.

(Jt. Ex. 3, p. 198) X-rays of the left shoulder were performed.

Mr. Hutchcroft was next evaluated at the VA on June 28, 2017 by Arla McVicker, D.O. He reported neck pain, headaches and difficulty focusing his eyes. He also reported difficulties with his left shoulder. He was diagnosed with left shoulder pain, traumatic brain injury with possible concussion, abdominal contusion and chronic neck pain. (Jt. Ex. 1, pp. 5-6) A neurological consultation was recommended for the headaches and traumatic brain injury. An orthopedic consultation was recommended for the left shoulder symptoms. He underwent additional trigger point injections at the Cedar Rapids Pain Clinic on June 29, 2017. (Jt. Ex. 3, p. 201)

Mr. Hutchcroft returned to the VA on July 5, 2017, for his neurological consultation where he was examined by Deema Fattal, M.D., a neurologist who specializes in balance disorders. (Jt. Ex. 1, p. 7; Cl. Ex. 4, p. 44 ) Dr. Fattal diagnosed post concussive migraine, cognitive issues due to concussion. She also noted he may have left C5 radiculopathy. (Jt. Ex. 1, p. 9) She prescribed gabapentin and recommended physical therapy. Mr. Hutchcroft returned to the pain clinic for additional trigger point injections on July 6, 2017. At this time, he reported improvement in his lumbar pain, but not his thoracic or cervical pain. He began physical therapy through the VA on July 12, 2017.

On July 17, 2017, Joseph Buckwalter, M.D. examined Mr. Hutchcroft for his left shoulder symptoms. (Jt. Ex. 1, p. 21) Dr. Buckwalter ordered an MRI which showed a

"SLAP tear with anterior extension to mid anterior glenoid labrum" along with "intrasubstance tear of the supraspinatus and infraspinous tendon junction with proximal intrasubstance extension into the infraspinatus tendon . . ." (Jt. Ex. 4, p. 225) He returned to the pain clinic on July 20, 2017. He reported no improvement with the injections, although the occipital injections helped with his pressure headaches. He reported his headaches were almost completely gone. (Jt. Ex. 3, p. 211) He returned on July 25, 2017, for left cervical medial branch nerve blocks. These did not help much and he was referred back to the VA for further neurological assessment. (Jt. Ex. 3, p. 217)

On August 25, 2017, John Schneider, M.D., evaluated Mr. Hutchcroft. He recommended performing new imaging studies on his cervical spine to see if there is more damage there. Dr. Schneider noted Mr. Hutchcroft's prior neck condition.

In the course of this, he has noted for the last two years quite a bit of focal neck pain into the left trapezium area and into the deltoid and rhomboid muscle groups. It only caused occasional tingling in his proximal left upper extremity. With the traumatic injury to this shoulder, however, the shoulder pain and discomfort with limited range of motion has amplified the difficulty in the left side. He is active as a district manager for a wine and spirits company and is looking to address all of his medical needs in the next 12 weeks in order to limit the time off of his work.

(Jt. Ex. 1, p. 37) He noted that shoulder surgery was scheduled for Mr. Hutchcroft and recommended proceeding conservatively on the cervical spine condition. The plan was to wait until after shoulder surgery for further evaluation of his cervical spine. (Jt. Ex. 1, p. 39)

It certainly is possible that he had a pillar fracture on the left at L3-4 that has gone on to spontaneously arthrodese and completely close the neural foramen. As he has had a motor vehicle accident post MRI scan and currently has increasing symptomatology and has enough damage to require orthopedic surgery, we will repeat imaging studies of his cervical spine, ...

(Jt. Ex. 1, p. 38)

Left shoulder surgery was performed by two shoulder surgeons on September 1, 2017. (Jt. Ex. 1, p. 52) Surgery consisted of arthroscopic labral repair, loose body removal, subacromial decompression and distal clavicle resection. The surgery was apparently successful and he was given a home exercise regimen beginning on September 18, 2017. (Jt. Ex. 1, p. 58)

Mr. Hutchcroft was seen for a psychological evaluation on September 18, 2017. During this visit, it was determined the primary goal was to improve his "coping with his current medical issues". (Jt. Ex. 1, p. 65) He was diagnosed with adjustment disorder

with depressed mood. (Jt. Ex. 1, p. 64) He was provided follow up instructions, however, it does not appear specific treatment was provided.

On September 28, 2017, Dr. Schneider performed left-sided C3-4 hemilaminotomy, partial facetectomy and foraminotomy for nerve root decompression. (Jt. Ex. 1, p. 71)

On October 5, 2017, Mr. Hutchcroft was seen in neurology for concussion symptoms. (Jt. Ex. 1, p. 73) Because of his continued symptoms, a brain MRI was recommended as well as an ophthalmology consult, as well as neuropsychological testing once he was no longer taking opioid pain medications. (Jt. Ex. 1, p. 74)

On October 12, 2017, Mr. Hutchcroft returned to the clinic for a possible infection at the surgical incision site. "Today the incision is swollen, reddened but not open and very tender to touch." (Jt. Ex. 1, p. 78) The following day a procedure was performed to inspect the area for infection. (Jt. Ex. 1, p. 86) No infection was uncovered.

Mr. Hutchcroft testified credibly that the surgery and follow up treatment was beneficial for his condition. (Tr., p. 26)

Mr. Hutchcroft continued with mental health care thereafter. In November 2017, he requested more visits because of his anger issues. (Jt. Ex. 1, p. 95) He was seen by Daniel Orme, Ph.D., on November 29, 2017, for a full neuropsychological evaluation. (Jt. Ex. 1, p. 96)

Mr. Hutchcroft was in MVA 16 June 2017 and sustained likely concussion. Subsequently, he reported concern with HA, nausea (now resolving), memory and multi-tasking, and said he has been told by an eye doctor that his left eye does not track correctly. Regarding memory, he gave as examples: forgot he talked with his cousin on the phone a day earlier; sometimes difficulty recalling standard sales pitch; tasks he is to do.

(Jt. Ex. 1, p. 96) Dr. Orme reached the following findings.

Results of this evaluation are variable, precluding confident interpretation. What seems most noteworthy is a score in the moderate depression range on the Beck Depression Inventory. Symptoms of depression likely are most prohibitive in terms of success in daily living. Whether there are cognitive symptoms in addition is unclear but research is consistent that cognitive sequelae after concussion should remit quickly, certainly by 6 months except when there are psychiatric or forensic issues and the mood issues appear to be a factor here.

(Jt. Ex. 1, p. 98) He referred Mr. Hutchcroft back to his psychologist.

On November 30, 2017, defendants had Mr. Hutchcroft examined by Shirley Pospisil, M.D., an occupational medicine physician at St. Luke's. Dr. Pospisil examined

Mr. Hutchcroft and determined that his left shoulder condition and subsequent treatment were causally connected to the work accident. (Jt. Ex. 5, pp. 230-231, 233) On December 13, 2017, she offered an opinion regarding the neck condition. "Although the motor vehicle accident on 6/16/17 may have made his neck more symptomatic the underlying disease appears to be arthritic in nature and is long-standing, and has been mentioned in the documentation to be present at least 2 years prior to the accident. Therefore I do not believe that his cervical spine injury was related to the accident." (Jt. Ex. 5, p. 234)

Mr. Hutchcroft returned to Dr. Pospisil on December 21, 2017, for further evaluation. Dr. Pospisil provided work restrictions and recommended physical therapy. (Jt. Ex. 5, p. 235) In January, Dr. Pospisil recommended continued occupational therapy for his brain injury and scheduled an ophthalmology referral. (Jt. Ex. 5, p. 237) Dr. Fattal reevaluated Mr. Hutchcroft on January 24, 2018. She diagnosed post concussive migraine headaches and cognitive issues due to concussion and recommended he restart use of gabapentin. (Jt. Ex. 1, p. 118) Mr. Hutchcroft also received an MRI and an eye exam. (Jt. Ex. 8, p. 269; Jt. Ex. 7, pp. 266-268) Dr. McVicker examined Mr. Hutchcroft in April 2018, for his annual checkup. Mr. Hutchcroft reported significant continued symptoms related to his mental health, including the inability to multitask and feelings of being overwhelmed and anxious. She diagnosed "TBI with resulting social anxiety, insomnia and memory problems ..." (Jt. Ex. 1, p. 130) She recommended medications.

Throughout the beginning of 2018, Dr. Pospisil continued to monitor Mr. Hutchcroft's condition. (Jt. Ex. 5, pp. 239-248) She placed him at maximum medical improvement on May 24, 2018. (Jt. Ex. 5, p. 250) She recommended permanent restrictions of no overhead reaching with his left arm and screen time "as tolerated." (Jt. Ex. 5, p. 250) Mr. Hutchcroft's authorized treatment mostly ended at this point.

In addition to the notes of the treating physicians, there are several expert medical opinions in the record. Dr. Pospisil, the authorized treating physician, provided a medical report on July 31, 2018. (Cl. Ex. 5) She provided the following specific opinions. "His primary injuries included his left shoulder, his low back, his cervical spine and diminished mental faculties." (Cl. Ex. 5, p. 45) She assigned a 12 percent impairment of the left upper extremity or 7 percent of the body as a whole, for the left shoulder. (Cl. Ex. 5, p. 45) She assigned a 20 percent whole body rating for "cognitive deficits since this injury." (Cl. Ex. 5, pp. 45-46) In doing so, she provided specific examples of these deficits and explained her rating in full detail. She also assigned a 5 percent whole body impairment for his low back. Finally, after noting that she was "unclear if this injury is claimed by work comp", she went on to assign a 5 percent whole body rating "because of his probable symptoms of increased pain" in the cervical spine. (Cl. Ex. 5, p. 46) She then combined the left shoulder and cognitive deficits (head injury) ratings and assigned a 30 percent whole body rating. Again noting uncertainty as to whether the low back and cervical spine were "compensable" she added those ratings in to reach a 37 percent whole body impairment rating. (Cl. Ex. 5, p. 47)

After Dr. Pospisil provided her opinions, claimant sought an evaluation from Robin Sassman, M.D., in March 2019. She provided a comprehensive report on April 12, 2019. (Cl. Ex. 1) Dr. Sassman reviewed a plethora of records and reviewed the history with Mr. Hutchcroft. She examined him. (Cl. Ex. 1, pp. 9-10) Based upon her review she diagnosed four permanent conditions: (1) traumatic brain injury; (2) cervical spine pain; (3) left shoulder rotator cuff tear and (4) low back pain. (Cl. Ex. 1, pp. 10-11) She opined that the traumatic brain injury and left rotator cuff tear were directly causally connected to the admitted work accident. (Cl. Ex. 1, p. 11) Regarding the cervical spine, she opined that the accident was "a substantial aggravating factor in the cervical pain and the need for the cervical procedure." (Cl. Ex. 1, p. 11) At the time of this evaluation, she essentially deferred opinion on the low back other than to opine that an MRI was needed to reach clear conclusions. (Cl. Ex. 1, p. 11) She provided an updated report on August 18, 2020, after a lumbar MRI, where she confirmed her opinion that the low back pain was directly causally connected to the work injury.

Ultimately, Dr. Sassman assigned impairment ratings of (1) 8 percent whole body for traumatic brain injury; (2) 14 percent whole person for the left shoulder condition; (3) 24 percent whole body impairment for the cervical spine condition; and (4) 10 percent whole body for the low back condition. She concluded that all of his conditions combined have a "detrimental impact on his work and home life. (Cl. Ex. 1, p. 37) She recommended no lifting at all above shoulder height or with his arms extended away from his body, no lifting greater than 75 pounds on a rare basis and 40 pounds occasionally. She recommended he not work on ladders (or at heights) and avoid more than 45 minutes of screen exposure at a time. (Cl. Ex. 1, p. 37) She did recommend further treatment including mental health counseling, neurological follow up visits and pain management treatment for the low back and cervical spine.

On May 15, 2020, Dr. Fattal also provided an expert opinion report. She opined that since the work injury, Mr. Hutchcroft has had symptoms, including constant headaches, eye fatigue and memory problems. (Cl. Ex. 3, p. 43) She further opined that this condition is permanent and causally connected to his work injury.

Both Mr. Hutchcroft and his wife, Rachel Collins provided compelling, credible testimony regarding his condition as of the time of hearing. Mr. Hutchcroft has made numerous, significant changes to his lifestyle to cope with his ongoing disability. Much of this is done in an effort to maintain his employment. For example, he purchased a hot tub for daily use, he has engaged in yoga and meditation, he often has to lie down in darkness for an hour at a time after activity. As of the time of hearing, he continues to take Gabapentin, as well as a muscle relaxer for his low back. He also uses an H-Wave machine on a daily basis for pain management. Mr. Hutchcroft, to his benefit, has remained active. He continues to play volleyball, ride his motorcycle and lift weights. While all of these activities have changed significantly from his pre-injury activities, he does engage in these activities. He is now uncomfortable in large crowds and becomes overstimulated causing anxiety. Ms. Collins testified he still has significant memory difficulties.



Mr. Hutchcroft remains employed with the employer. Kyle Colebeck, risk analyst for Johnson Brothers testified at hearing and his testimony is generally credible. He testified that Mr. Hutchcroft is a valued employee with 20 years of experience in maintaining account relationships. I find that Mr. Hutchcroft is, in fact, a valuable employee who still possesses high-level skills in sales, client relationships and account management. His position does require the use of a computer for various reporting and administrative tasks. There is no question with this record that his ability to use the computer is now significantly limited. He testified that a project which would have taken him 6 hours to complete prior to his injury, may take him a couple of days since the injury. He is no longer able to perform some of the physical work in his position as well. The employer has accommodated these restrictions. To the employer's credit, they have worked with Mr. Hutchcroft and still recognize him as a valued employee. Mr. Hutchcroft did testify that there have been times at work where he has felt significant pressure which have impacted his disability. I find those instances were likely isolated based upon the testimony of Mr. Colebeck. In spite of the apparent stability of Mr. Hutchcroft's work situation, he has explored other sales positions. He testified that he feels limited by his lack of a college degree.

The defendants secured an expert vocational report from Jeff Johnson, prior to hearing. (Def. Ex. E) After reviewing deposition testimony and various work restrictions, Mr. Johnson opined that Mr. Hutchcroft sustained a 24 percent loss of "employment opportunity" as a result of his work injury. (Def. Ex. E, p. 7) His analysis, however, did not assess the potential loss of earnings caused by his work injury, but rather focused nearly exclusively on the volume of jobs which would still be available to him. He also did not adequately assess the manner in which Mr. Hutchcroft's lack of a college degree would impede his ability to secure a higher-level, higher paying sales position.

### CONCLUSIONS OF LAW

The first question submitted is whether the claimant's cervical/neck problems are causally connected to his work injury. In other words, there is no question that claimant sustained a serious motor vehicle injury on June 16, 2017, and that this injury resulted in permanent disability to claimant's left shoulder, low back and head (resulting in headaches and other TBI symptoms). This is stipulated. The defendants contend that claimant's cervical condition, however, is not causally-connected to the accident.

This is an issue of medical causation.

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).

It has long been the law of Iowa that 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). A material aggravation, worsening, lighting up or acceleration of any prior condition has been viewed as a compensable event ever since initial enactment of our workers' compensation statutes. Ziegler v. United States Gypsum Co., 252 Iowa 613; 106 N.W.2d 591 (1960). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established in Iowa that a cause is "proximate" when it is a substantial factor in bringing about that condition. It need not be the only causative factor, or even the primary or the 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).

The medical expert opinions in this record are conflicted. Dr. Pospisil provided an expert opinion in December 2017. She was the physician chosen and designated by the defendants to direct Mr. Hutchcroft's care after his surgery had been completed.

Dr. Pospisil did not provide a strong basis for medical causation of the neck condition or surgery, however, a careful reading of her opinions demonstrates she also did not preclude it. She noted that Mr. Hutchcroft had chronic neck pain diagnosed as cervical spondylosis which was being actively treated just prior to the work injury. (Jt. Ex. 5, p. 234) She reviewed Dr. Schneider's notes and opinions. She concluded the following. "Although the motor vehicle accident on 6/16/17 may have made his neck more symptomatic the underlying disease appears to be arthritic in nature and is long-standing ... Therefore I do not believe that his cervical spine injury was related to the accident." (Jt. Ex. 5, p. 234) No one apparently asked Dr. Pospisil whether the accident was a substantial contributing factor to his need for cervical spine surgery on September 28, 2017. Rather, both parties allowed her to provide a rather vague opinion. In other words, she clearly opined that the injury aggravated the symptoms of the condition, however, provided no opinion as to whether it was a substantial aggravating factor of the condition or whether it was a substantial cause of his need for

cervical surgery. Importantly, her conclusion that she did not believe the “cervical spine injury was related to the accident” does not appear to be connected to any specific standard of medical causation.

Dr. Pospisil reiterated and clarified her opinion to some degree in July 2018, in a “To whom it may concern” letter setting forth Mr. Hutchcroft’s impairment ratings. In this opinion letter she repeated many of the same opinions from her February 2018, letter, and again, reiterated Dr. Schneider’s medical notes.<sup>1</sup> She, however, expressed additional uncertainty about whether this condition should fall under workers’ compensation. “It is unclear if this injury is claimed by work comp.” (Jt. Ex. 5, p. 253) She also reiterated her opinion that the symptoms from his neck condition increased as a result of his work injury. “I do believe however his motor vehicle accident has caused his neck to be more symptomatic than the symptoms from the underlying disease.” (Jt. Ex. 5, p. 253) With this expert statement, Dr. Pospisil stops just short of an opinion supporting medical causation. It is also noted that, in performing her impairment rating, Dr. Pospisil appears to have provided a permanent impairment rating which is related to the stipulated work accident. “When turning to page 392, table 15-5 because of his probable symptoms of increased pain again he will be given a 5% impairment rating of the whole person.” (Jt. Ex. 5, p. 253) Mr. Hutchcroft’s overall impairment rating for the type of neck condition, and resulting surgery he had, would undoubtedly yield a much higher impairment rating. It is my assessment that Dr. Pospisil apportioned out a significant portion of his disability and merely rated the work-related portion of his condition related to increased symptoms and pain.

The appropriate legal standard is whether the stipulated work accident substantially aggravated Mr. Hutchcroft’s cervical spondylosis and/or was a substantial factor in his need for the September 2017 cervical fusion. Dr. Pospisil did not directly answer this question in any of her written opinions in the record.

Claimant’s expert, Dr. Sassman, did. She opined as follows:

Regarding the cervical spine symptoms and the need for the surgery, while it is true that Mr. Hutchcroft had previous complaints of cervical pain, he denies having any radicular symptoms into the left arm prior to the motor vehicle collision on 6/16/17. It was not until this accident occurred that he had these radicular complaints. Therefore, I would consider the motor vehicle accident to be a substantial aggravating factor in the cervical pain and the need for the cervical surgical procedure that

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<sup>1</sup> Dr. Schneider, the treating surgeon, did not specifically provide a medical causation opinion. In their briefs, the parties argue significantly different interpretations of Dr. Schneider’s documentation in his medical notes. Importantly, Dr. Schneider noted Mr. Hutchcroft’s increased neck symptoms following the work injury. (Jt. Ex. 1, p. 38) While Dr. Schneider’s statements do not provide a specific opinion as to medical causation one way or the other, I find that a detailed reading of his notes generally support the claimant’s case.

occurred on 9/28/17 and the subsequent irrigation procedure that occurred on 10/13/17.

(Cl. Ex. 1, p. 11) Overall, I find this opinion to be the most compelling medical causation evidence in the record. It is noted that it does seem somewhat challenging to differentiate his "radicular symptoms" from his left shoulder symptoms which were treated surgically just prior to his shoulder surgery. Mr. Hutchcroft, however, did testify that his neck symptoms were worse and different following the accident. I find this testimony credible.

For all of these reasons, I find that the claimant has met his burden of proof as it relates to medical causation for his cervical/neck condition. The greater weight of evidence supports a finding that, while Mr. Hutchcroft already had active cervical spondylosis, the stipulated work accident substantially aggravated this condition and ultimately caused his need for the surgical procedure on September 28, 2017.

The next issue is the extent of industrial disability.

Mr. Hutchcroft's injury occurred in June 2017, just prior to significant changes to the law in calculating permanent disabilities.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the Legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

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

It is important to note, industrial disability is evaluated without respect to accommodations which are (or are not) made by an employer. The Iowa Supreme Court views "loss of earning capacity in terms of the injured worker's present ability to earn in the competitive job market without regard to the accommodation furnished by one's present employer." Thilges v. Snap-On Tools, 528 N.W.2d 614, 617 (Iowa 1995).

Mr. Hutchcroft is a highly-motivated, highly skilled individual who has remained significantly active in spite of his significant work-connected physical impairments. He is only 45 years old at the time of hearing and he has managed to maintain his employment – an excellent job for a good employer. That is the good news.

As a result of his work injuries, Mr. Hutchcroft has sustained significant permanent impairments to his left shoulder, his cervical spine and his low back, in addition to traumatic brain injury, resulting in headaches and other symptoms which affect his mood. His permanent functional impairments are significant and severe. His combined impairment ratings are between 37 percent of the whole body (assigned by Dr. Pospisil) and 40 percent (assigned by Dr. Sassman). Dr. Pospisil recommended permanent restrictions of no overhead reaching with his left arm and screen time “as tolerated.” (Jt. Ex. 5, p. 250) Dr. Sassman recommended no lifting at all above shoulder height or with his arms extended away from his body, no lifting greater than 75 pounds on a rare basis and 40 pounds occasionally. She recommended he not work on ladders (or at heights) and avoid more than 45 minutes of screen exposure at a time. (Cl. Ex. 1, p. 37) All of these restrictions are generally reasonable, although it is noted that Mr. Hutchcroft’s weightlifting activities sometimes exceed Dr. Sassman’s recommended lifting restrictions.

Mr. Hutchcroft’s brain injury is his most significant barrier to employment at this time. Mr. Hutchcroft is a salesperson. He manages other sales professionals and is responsible for a territory. His job includes preparing reports and maintaining client relationships. He is very talented at this and has an important significant history with his employer, which has helped him to maintain his employment. He has some issues with memory and social anxiety. At the time of hearing, his condition appears stable and it appears that he has been able to maintain client relationships in spite of his significant impairments. Nevertheless, his head injury poses many challenges, particularly if he were to attempt to obtain work in the often harsh, competitive job market. He also has difficulty with screen time and a formal restriction limiting his screen time as tolerated. This has posed challenges in his current position and, undoubtedly would make him a less attractive candidate in the competitive labor market.

There are other significant barriers to Mr. Hutchcroft’s ability to find work in the competitive job market. His inability to perform meaningful overhead work or work on ladders or at heights would be a significant disadvantage. He is able to manage these restrictions in his current position where he manages and oversees other employees with his employer’s current accommodations, however, in the competitive job market, these limitations may preclude him from a number of jobs for which he would otherwise qualify. He had a relatively lengthy healing period and has undergone significant surgeries. His lack of a formal college education would also be a barrier to employment at the level he is at currently.

Considering all of the relevant factors of industrial disability, I find the claimant has sustained a 55 percent loss of earning capacity. I conclude this entitles claimant to 275 weeks of benefits at the stipulated rate commencing on October 2, 2017.

The next issue is medical expenses.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See, Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP, Inc., File No. 1020226 (App., February 27, 1995).

Claimant seeks the medical expenses set forth in Claimant's Exhibit 9. Defendants have denied these expenses on the basis of medical causation and authorization.

I have previously found that the claimant's cervical condition and September 2017 surgery is causally-connected to the work injury. I have reviewed the expenses set forth in Claimant's Exhibit 9 carefully and find that these expenses are all causally connected to the stipulated work injury.

The authorization defense is interesting. The defendants contend the expenses at the VA were never authorized. The claimant testified it was and there is no contrary evidence in this record. Mr. Hutchcroft's care was eventually transferred to Dr. Pospisil, however, the defendants never took any formal action to de-authorize the VA or any of the claimant's other authorized medical providers. Ramirez-Trujillo v. Quality Egg, LLC, 878 N.W.2d 759, 778-79 (Iowa 2016). I find his care was authorized and the defendants have failed to prove the care was de-authorized. Defendants are responsible for all medical expenses set forth in Claimant's Exhibit 9.

#### ORDER

#### THEREFORE IT IS ORDERED

Defendants shall pay the claimant two hundred and seventy-five (275) weeks of permanent partial disability benefits at the rate of eight hundred and sixty-two and 34/100 (\$862.34) per week from October 2, 2017.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.


Defendants shall be given credit for the weeks previously paid.

Defendants are responsible for the medical expenses in Claimant's Exhibit 9 consistent with this decision.

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

Costs are taxed to defendants.

Signed and filed this 19<sup>th</sup> day of May, 2021.

  
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JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served as follows:

Emily Anderson (Via WCES)

Julie Burger (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.