BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LOUIS BRUNK, Claimant, vs. GLENWOOD RESOURCE CENTER, Employer, STATE OF IOWA, Insurance Carrier, Defendants.	File No. 19003535.02 **ARBITRATION DECISION** Headnotes: 1105, 1803, 1402.30, 1702

I. STATEMENT OF THE CASE

Claimant Louis Brunk seeks workers' compensation benefits from the defendants, employer Glenwood Resource Center and insurance carrier the State of Iowa (State), for an alleged work injury to his back. The undersigned presided over an arbitration hearing on March 23, 2022, held using internet-based video by order of the Commissioner.

Brunk participated personally and through attorney Jacob J. Peters. Corey Madison served as legal representative for the defendants. The defendants also participated through attorney Jonathan D. Bergman.

II. ISSUES

Under rule 876 IAC 4.19(3)(*f*), the parties jointly submitted a hearing report defining the claims, defenses, and issues submitted to the presiding deputy commissioner. The hearing report was approved and entered into the record via an order because it is a correct representation of the disputed issues and stipulations in this case. The parties identified the following disputed issues in the hearing report:

1) Did Brunk sustain a back injury on July 22, 2019, arising out of and in the course of his employment with the State?

2) Is Brunk entitled to temporary total disability (TTD) or healing period (HP) benefits from July 22, 2019, through October 13, 2019?

3) If Brunk sustained a work injury on July 22, 2019, what is the nature and extent of permanent disability, if any, caused by the injury?

4) If Brunk is entitled to workers' compensation, what is the weekly rate?

5) Is Brunk entitled to recover the cost of an independent medical examination (IME) under Iowa Code section 85.39?

6) Is Brunk entitled to payment of medical expenses itemized in Joint Exhibit 13?

7) Is Brunk entitled to taxation of the costs against the defendants?

III. STIPULATIONS

In the hearing report, the parties entered into the following stipulations:

1) An employer-employee relationship existed between Brunk and State at the time of the alleged injury.

2) If the State is liable for the alleged injury, Brunk is entitled to TTD or HP benefits from July 22, 2019, through October 13, 2019.

3) The commencement date for permanent partial disability (PPD) benefits, if any are awarded, is October 14, 2019.

4) At the time of the stipulated injury:

    a) Brunk's gross earnings were nine hundred seventy-six and 00/100 dollars ($976.00) per week.

    b) Brunk was married.

    c) Brunk was entitled to three exemptions.

The parties' stipulations in the hearing report are accepted and incorporated into this arbitration decision. The parties are bound by their stipulations. This decision contains no discussion of any factual or legal issues relative to the parties' stipulations except as necessary for clarity with respect to disputed factual and legal issues.

IV. FINDINGS OF FACT

The evidentiary record in this case consists of the following:

- Joint Exhibits (Jt. Ex.) 1 through 14; and
- Hearing testimony by Brunk and Madison, plant operations manager at Glenwood.

After careful consideration of the evidence and the parties' post-hearing briefs, the undersigned enters the following findings of fact.

Brunk was sixty-three years of age at the time of hearing. He attended college for ten years, earning degrees in art. Brunk taught high-school art for one year in between earning his degrees. He worked construction and then had a hog business for fifteen years. (Testimony)

Brunk began working for the State in 2003 and at Glenwood Resource Center in 2006. His first job there was delivering food, which he did for about a year. After that, Glenwood hired Brunk for a job in maintenance. (Testimony)

In 2013, Brunk was working at Glenwood in maintenance when he reached for a tool and injured his right shoulder. The injury required four surgeries and forced him to miss work for a period of time. Brunk and the State ultimately reached a settlement of his workers' compensation claim relating to the injury. (Testimony; Joint Exhibit 10) The parties agreed on a settlement for industrial disability of twenty-two and one-half percent caused by the shoulder injury and to leave medical benefits open. (Jt. Ex. 10)

Madison worked with Brunk for about twelve years at Glenwood. Madison testified that he had no complaints about Brunk's job performance at Glenwood and considers him a good employee. He further testified he could not recall witnessing Brunk attempt to pop another person's back by lifting them into the air. Madison stated popping a coworker's back was not among Brunk's job duties working in maintenance at Glenwood. (Testimony)

In 2019, Madison was Brunk's immediate supervisor at Glenwood, but he did not frequently observe him performing his job duties firsthand. Brunk was working in maintenance at the facility. He performed carpentry work, primarily building and installing cabinets. (Testimony)

Brunk and his coworkers took paid lunch breaks. On July 22, 2019, they were on their lunchbreak at the Glenwood facility. One of his coworkers, Chad Durham, complained about his back hurting. (Testimony; Jt. Ex. 11, p. 117, Depo. pp. 9–11)

Brunk offered to try to help him alleviate the pain by popping his back. He asked with an earnest intent to help alleviate Durham's back pain. Durham agreed to have Brunk pop his back. (Testimony; Jt. Ex. 11, p. 117, Depo. pp. 9–11)

Durham stood in front of Brunk with his arms tucked close to his torso. Brunk wrapped his arms around Durham and attempted to lift him to pop his back. The lifting action caused Brunk's back to pop and him to immediately feel pain. (Testimony; Jt. Ex. 5, pp. 84–92; Jt. Ex. 11, p. 117, Depo. pp. 9–11)

Brunk went to the emergency room because of his back injury. (Jt. Ex. 1, pp. 1–8) Imaging showed a stress fracture of his L1 vertebra. Brunk underwent lumbar kyphoplasty at the L1 level of his spine to repair the fractured vertebra. (Testimony; Jt.

Ex. 1, pp. 9–19) After discharge, Brunk followed up with his personal physicians in Glenwood. (Testimony; Jt. Ex. 2)

Brunk was off work because of his back injury from July 22, 2019, into October. Brunk underwent physical therapy while he was off work due to his injury and surgery. He followed up with his personal physician. Brunk returned to work at Glenwood without restrictions on October 14, 2019. (Testimony; Jt. Ex. 2, p. 59)

Brunk returned to work for the State at Glenwood. Since his return, Brunk has worked in maintenance just as he did before the injury. Brunk's earnings were the same or more at the time of hearing as they were on July 22, 2019. (Testimony)

Brunk saw Sunil Bansal, M.D., for an IME on January 8, 2021. (Jt. Ex. 4, p. 1) Dr. Bansal performed an in-person examination of Brunk and reviewed medical records, which formed the basis of his IME report, dated February 12, 2021. (Jt. Ex. 4) Dr. Bansal utilized the Fifth Edition of American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment when issuing the following opinion on permanent disability:

> With reference to the [Guides], Table 15-3, he meets the criteria for a DRE Category II Impairment as he has had a vertebral compression fracture. He has had a kyphoplasty, and has continued pain. He is assigned an 8% whole person impairment.

(Jt. Ex. 4, p. 82)

Brunk continues to experience low back pain. It does not radiate into his legs. Brunk's pain level has maintained at a fairly constant rate. He has a prescription for hydrocodone, which he takes on an as needed basis. Brunk takes about two hydrocodone per month on average. (Testimony; Jt. Ex. 2, pp. 60–70)

Brunk has not missed work because of his back injury since he returned to work on October 14, 2019. At the time of hearing, he had no scheduled appointments for medical care relating to his back injury. Brunk is planning to retire after his grandson graduates from high school. (Testimony)

V. CONCLUSIONS OF LAW

In 2017, the Iowa legislature amended the Iowa Workers' Compensation Act. See 2017 Iowa Acts, ch. 23. The 2017 amendments apply to cases in which the date of an alleged injury is on or after July 1, 2017. Id. at § 24(1); see also Iowa Code § 3.7(1). Because the injury at issue in this case occurred after July 1, 2017, the Iowa Workers' Compensation Act, as amended in 2017, applies. Smidt v. JKB Restaurants, LC, File No. 5067766 (App. Dec. 11, 2020).

A. Horseplay.

The parties dispute whether Brunk's injury arose out of and in the course of his employment. The State has focused on the mechanism of injury, arguing Brunk's act of lifting up his coworker to pop his back in an effort to alleviate the coworker's pain constitutes disqualifying horseplay. The State has not presented an alternative legal basis for denying the compensability of Brunk's injury.

Horseplay is a form of deviation from employment that removes an employee's activity from the purview of the Iowa Workers' Compensation Act. Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 253–54 (Iowa 2010). The defendants may attack whether an alleged injury is compensable by asserting it is the result of horseplay, but the burden to prove the injury arose out of and in the course of employment remains with the claimant. Id. at 254–55. The horseplay exception to compensability is not found in the text of the Iowa Workers' Compensation Act. See Iowa Code ch. 85. It is a judicial creation stemming from the statutory requirement that an injury must arise out of and in the course of the claimant's employment with the employer in order to fall under the Act's coverage. See Vegors, 786 N.W.2d at 253–54.

The Iowa Supreme Court has articulated the following framework for determining whether the injury is the result of disqualifying horseplay:

1) The extent and seriousness of the deviation;

2) The completeness of the deviation (i.e., whether it was commingled with the performance of duty or involved an abandonment of duty);

3) The extent to which the practice of horseplay had become an accepted part of the employment; and

4) The extent to which the nature of the employment may be expected to include some such horseplay. Id. at 256 (quoting Phillips v. John Morrell & Co., 484 N.W,.2d 527, 530–31 (S.D.1992)).

This test measures whether the horseplay in question "is a deviation sufficient to bar recovery." Id. However, two of the four elements in the test are premised on horseplay having occurred, which means the act in question must constitute horseplay in order for the test to govern. If the facts do not establish that Brunk engaged in horseplay, the four-factor test does not apply.

The Iowa Supreme Court has not articulated a definition of "horseplay." But the agency and court have discussed the scope of the horseplay exception under the Iowa Workers' Compensation Act in its opinions. At the agency level in Wittmer v. Dexter Manufacturing Co., 204 Iowa 180, 214 N.W. 700 (Iowa 1927), the Commissioner used the alternative term "sportive act." Id. at 700 ("'The department, however, has been disposed to hold with decisions elsewhere to the effect that the victim of a sportive act, who has not himself actively or passively participated in disastrous horseplay, is entitled

to recover for disability sustained.'"). The court has described horseplay alternatively as "skylarking" and an act of "levity." Id. (noting "it appears to be conceded by appellee that if he participated with Steel in the horseplay or skylarking, which resulted in his injury, he was not entitled to compensation"); Vegors, 786 N.W.2d at 255 ("Not all acts of horseplay or levity will preclude an injured employee from recovery.").

In common usage, "horseplay" means "rough or boisterous play or pranks." The Random House Dictionary of the English Language, 2nd ed., unabridged, 923 (1983). And the definition of "skylark" is "to frolic; sport." Id. at 1794. The adjective "sportive" has the meaning "playful or frolicsome, jesting, jocose, or merry." Id. at 1844. And "levity" means "lightness of mind, character, or behavior; lack of appropriate seriousness or earnestness." Id. at 1106.

The types of activity discussed in horseplay jurisprudence are in line with these definitional contours. In Wittmer, the claimant and a coworker were wrestling when the injury occurred as part of a contest to see who could clock out first. 214 N.W. at 701. The claimant in Vegors was hurt after he shook his rear end at a coworker, who then struck him with a pickup truck in an act of jest. 786 N.W.2d at 252. The cases the court cites in Vegors address similar horseplay: throwing hog sperm cords, id. at 256 (citing Phillips, 484 N.W.2d at 530–31); a water fight, id. (citing Rex-Pyramid Oil Co. v. Magan, 287 Ky. 459, 153 S.W.2d 895, 899 (1941)); twisting to the ground in fun after a joke, id. at 257 (citing Liberty Nw. Ins. Corp. v. Johnson, 142 Or.App. 21, 919 P.2d 529, 530, 533 (1996)); and a post-joke chase resulting in a collision, id. (citing Mustard v. Indus. Comm'n, 164 Ariz. 320, 792 P.2d 783, 784–85 (1990)).

Here, the evidence shows Brunk sustained the injury at issue when he attempted to help alleviate a coworker's back pain by lifting him up to pop his back. There was no play involved. Neither worker was frolicking in sport or being playful at the time. The weight of the evidence establishes Brunk acted in earnest to help his coworker and did not engage in any sort of prank or play. Therefore, Brunk's actions do not constitute horseplay.

As found above, Brunk and his coworker remained on State property for their lunch break. Brunk acted in earnest to help alleviate his coworker's back pain by lifting him up to pop his back. Doing so caused the injury. The setting (work site) and person with whom Brunk interacted (coworker) were related to his employment as opposed to being personal in nature.

Moreover, the evidence does not support the conclusion the State had a work rule in place prohibiting Brunk from acting in such a way. Nor is there any indication that Brunk acted with evil intent. Brunk was motivated to help reduce his coworker's back pain. The intended result was to allow his coworker to have less pain while working, which had the potential to allow him to better perform his job duties.

Under the circumstances described above, there is an insufficient basis in the evidence from which to conclude Brunk engaged in disqualifying horseplay. Rather, the evidence establishes a sufficient nexus between Brunk's employment with the State and

the act that caused the injury to bring the injury within coverage of the Iowa Workers' Compensation Act. The weight of the evidence establishes Brunk did not engage in horseplay and his back injury arose out of and in the course of his employment with the State.

B. Healing Period.

An injured employee is entitled to temporary total disability (TTD) or healing period (HP) benefits when the employee is unable to work during a period of convalescence caused by a work injury. Iowa Code §§ 85.33(1), 85.34(1); see also Evenson v. Winnebago Indust., 881 N.W.2d 360, 373 (Iowa 2016). Temporary benefits compensate an employee for lost wages until the employee is able to return to work. See id.; see also Mannes v. Fleetguard, Travelers Ins. Co., 770 N.W.2d 826, 830 (Iowa 2009). Whether an employee's injury causes a permanent disability dictates whether the employee's temporary benefits are considered TTD or HP. Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 200 (Iowa 2010) (citing Clark v. Vicorp Rests., Inc., 696 N.W.2d 596, 604–05 (Iowa 2005)). If there is a permanent disability, the benefits are considered HP; if not, they are TTD. See id.

Brunk sustained a compensable work injury. As discussed below, the work injury caused permanent disability. The record shows Brunk missed work from July 22, 2019, through October 13, 2019. He is therefore entitled to HP benefits for this period of time.

C. Permanent Disability.

Workers' compensation is "a creature of statute." Darrow v. Quaker Oats Co., 570 N.W.2d 649, 652 (Iowa 1997). This means an injured employee's "right to workers' compensation is purely statutory." Downs v. A & H Const., Ltd., 481 N.W.2d 520, 527 (Iowa 1992). And "it is the legislature's prerogative to fix the conditions under which the act's benefits may be obtained." Darrow, 570 N.W.2d at 652.

The Iowa Supreme Court has held:

> The legislature enacted the workers' compensation statute primarily for the benefit of the worker and the worker's dependents. Therefore, we apply the statute broadly and liberally in keeping with the humanitarian objective of the statute. We will not defeat the statute's beneficent purpose by reading something into it that is not there, or by a narrow and strained construction.

Gregory v. Second Injury Fund of Iowa, 777 N.W.2d 395, 399 (Iowa 2010) (quoting Holstein Elec. v. Breyfogle, 756 N.W.2d 812, 815–16 (Iowa 2008) (citations omitted)).

"Although the workers' compensation statute is to be liberally construed in favor of the worker, the statute may not be expanded by reading something into it that is not there." Downs v. A & H Const., Ltd., 481 N.W.2d 520, 527 (Iowa 1992) (citing Cedar Rapids Community School v. Cady, 278 N.W.2d 298 (Iowa 1979)). "To determine

legislative intent, we look to the language chosen by the legislature and not what the legislature might have said." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, (Iowa 2016) (citing Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 337 (Iowa 2008)). The "broad purpose of workers' compensation" is "to award compensation (apart from medical benefits), not for the injury itself, but the disability produced by a physical injury." Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, (Iowa 2010) (citing 4 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 80.02, at 80–2 (2009)). With the 2017 amendments, the legislature altered how this is done under the Iowa Workers' Compensation Act.

Brunk's injury constitutes an unscheduled injury under Iowa Code section 85.34(2)(*v*) because the back is not listed in the statutory schedule. See Deaver v. Armstrong Rubber Co., 170 N.W.2d 455, 466 (Iowa 1969). Before the 2017 amendments, unscheduled injuries were compensated based on industrial disability, with the employee's current employment status and earnings factored in the analysis. Mannes v. Fleetguard, Inc., 770 N.W.2d 826, 830 (Iowa 2009) (quoting Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824, 831 (Iowa 1992)); see also Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 158 (Iowa 1996). For injuries on or after July 1, 2017, however, the legislature codified a new requirement:

> If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, not in relation to the employee's earning capacity. Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee's earning capacity caused by the employee's permanent partial disability.

Iowa Code § 85.34(2)(*v*).

The record shows that at the time of hearing, Brunk was still working for the State in the position he held at the time of injury. There is no indication the work injury reduced the salary, wages, or earnings Brunk receives. See McCoy v. Menard, Inc., File No. 1651840.01 (App. April 9, 2021). Therefore, under the statute, Brunk's entitlement to benefits must be determined based only upon the functional impairment resulting from his injuries, not his lost earning capacity. Any determination of industrial disability relating to the work injuries must be pursued using the mandatory bifurcated litigation process in section 85.34(2)(*v*), if the statutory requirements are met. See Ocampo v.

New Fashion Pork, File No. 20012252.01 (Arb., Mar. 4, 2022) aff'd (App., Sep. 16, 2022).

As found above, the evidence shows the work injury Brunk sustained to his back caused an eight percent functional impairment to the whole body. There is no industrial disability analysis for this unscheduled injury resulting in permanent disability under section 85.34(2)(*v*). Eight percent multiplied by five hundred equals forty weeks. At present, Brunk is entitled to forty weeks of permanent partial disability benefits for the permanent functional impairment caused by the work injury he sustained to his back on July 22, 2019, beginning on the stipulated commencement date.

D. Apportionment.

After the 2017 amendments to the Iowa Workers' Compensation Act, Iowa Code section 85.34(7) states:

> An employer is liable for compensating only that portion of an employee's disability that arises out of and in the course of the employee's employment with the employer and that relates to the injury that serves as the basis for the employee's claim for compensation under this chapter, or chapter 85A, 85B, or 86. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment from a prior injury with the employer, to the extent that the employee's preexisting disability has already been compensated under this chapter, or chapter 85A, 85B, or 86. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.

The State contends the settlement the parties reached regarding Brunk's prior work injury to his shoulder limits their liability in this case under section 85.34(7). Brunk disputes this contention. He argues there is no basis in the statute for such apportionment.

Deputy Lunn considered the apportionment provision in Rife v. P.M. Lattner Manufacturing Company, File No. 1652412.02 (Arb. Aug. 20, 2021) aff'd (App. Jan. 21, 2022). Deputy Lunn observed the text of Iowa Code section 85.34 provides no mechanism for apportioning the loss between an industrial disability and the functional impairment to a scheduled member and that the Iowa Supreme Court has held, "If the legislature wanted to require a credit or offset of disability benefits . . . it logically would have prescribed how [the credit or offset of disability benefits] should be determined." Id. (quoting Roberts Dairy v. Billick, 861 N.W.2d 814, 822 (Iowa 2015) (alterations in original)). He then concluded that the legislature's failure to describe how to apportion the loss between an industrial disability and scheduled member functional impairment precludes doing so. Id.

The Commissioner affirmed Deputy Lunn's persuasive reasoning and conclusion on appeal. Rife v. P.M. Lattner Manufacturing Company, File No. 1652412.02 (App. Jan. 21, 2022). The Commissioner added additional analysis to the apportionment section of the decision, reasoning that the additional factors used to determine industrial disability caused an industrial disability greater for the right shoulder injury than the functional impairment for the right shoulder before the agency. Id. The Commissioner then held:

> Thus, if defendants in this case were entitled to a credit for the entirety of their settlement, which was for industrial disability, against claimant's current scheduled member injury, they would receive an unfair excess credit for considerations and factors that are not applicable to claimant's current injury. Put differently, their credit would be for apples against an award for oranges.

Id.

If Rife dealt with permanent disabilities that were apples to oranges, this case is more like a credit for apples against an award for fire trucks. The reasoning in Rife is persuasive here because disabilities caused by injuries to different body parts are at issue. Brunk first sustained a work injury to the shoulder and the parties agreed to a settlement that covers the resulting industrial disability. He then sustained an injury to a different body part, his back, that is the focus here. The parties' settlement agreement regarding industrial disability deals with industrial disability caused by an injury to a different body part than the functional impairment to his shoulder at issue in the current case. There is no basis for giving the State a credit for PPD benefits paid to compensate Brunk for the industrial disability he has due to a prior shoulder injury in order to offset PPD benefits to compensate him for functional impairment caused by the back injury at issue here.

E. Rate.

The parties stipulated that Brunk's gross earnings at the time of the injury were nine hundred seventy-six and 00/100 dollars per week. They also stipulated he was married and entitled to three exemptions. Based on the parties' stipulations, Brunk's workers' compensation rate is six hundred forty-four and 64/100 dollars per week.

F. Medical.

Iowa Code section 85.27(1) requires the employer to "furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services" and "reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one set of permanent prosthetic devices." Here, the State refused to provide care for Brunk's back injury because it believed the injury did not arise out of and in the course of his employment. Because Brunk's back injury did arise

out of and in the course of his employment, the State is responsible for medical expenses relating to the reasonable care he obtained for the injury and itemized in Joint Exhibit 13.

G. IME.

Under Iowa Code section 85.39(2), an injured employee is entitled to an IME with a doctor of the employee's choice after the employer obtains an opinion on permanent disability that the employee believes is too low. The Iowa Court of Appeals has concluded section 85.39(2) gives the injured employee the right to an IME even if the employer obtains an opinion only on causation and not permanent disability. Kern v. Fenchel, Doster & Buck, P.L.C., 966 N.W.2d 326 (Iowa App. 2021) (Table). The court reversed an agency decision denying IME reimbursement because the employer-chosen doctor had opined only on causation and had not addressed what, if any, disability the claimant had sustained. See id. at *3–*5. The court concluded that an employer-chosen doctor's opinion finding that a workers' alleged injury or condition did not arise out of and in the course of the workers' employment is "tantamount to a zero percent impairment rating" and therefore reimbursable under section 85.39. Id. at *3; see also Hines v. Tyson Foods, Inc., File No. 20700462.01 (App. May 13, 2022).

Here, the State obtained no opinion on permanent disability or causation from a doctor. It denied liability based on the belief Brunk's injury was not compensable because horseplay caused it. The denial was not based on medical causation. Brunk then obtained an IME with Dr. Bansal after the State denied compensability.

This case differs from Kern in a fundamental way: There is no opinion from an employer-chosen doctor on medical causation or permanent disability. It could be argued that the denial letter based on the facts surrounding the injury constitutes a zero impairment rating, but it was not authored by a doctor and the text of section 85.39(2) requires disagreement with the opinion of an employer-chosen doctor in order to trigger the right to an IME. Because there is no medical opinion constituting an impairment rating of zero in this case that triggers the right to an IME under the statutory text, Brunk is not entitled to reimbursement for his IME under the statute or the Kern holding.

H. Costs.

"All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commission." Iowa Code § 86.40. "Fee-shifting statutes using 'all costs' language have been construed 'to limit reimbursement for litigation expenses to those allowed as taxable court costs.'" Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 846 (Iowa 2015) (quoting Riverdale v. Diercks, 806 N.W.2d 643, 660 (Iowa 2011)). Statutes and administrative rules providing for recovery of costs are strictly construed. Id. (quoting Hughes v. Burlington N. R.R. Co., 545 N.W.2d 318, 321 (Iowa 1996)).

Because Brunk prevailed on the disputed issues of entitlement to healing period and permanent partial disability benefits, the following costs are taxed against the State:

- One hundred forty-six and 80/100 dollars ($146.80) for deposition transcription costs, 876 IAC 4.33(2);

- One thousand nine hundred twelve and 00/100 dollars ($1,912.00) for the reasonable costs of obtaining Dr. Bansal's report, 876 IAC 4.33(6); and

- One hundred and 00/100 dollars ($100.00) for the filing fee, 876 IAC 4.33(7).

VI. ORDER

Based on the above findings of fact and conclusions of law, it is ordered:

1) The defendants shall pay to Brunk eleven point 86 (11.86) weeks of temporary total disability benefits at the rate of six hundred forty-four and 64/100 dollars ($644.64) for the time period from July 22, 2019, through October 13, 2019.

2) The defendants shall pay to Brunk forty (40) weeks of permanent partial disability benefits at the rate of six hundred forty-four and 64/100 dollars ($644.64) per week from the stipulated commencement date.

3) The defendants shall pay accrued weekly benefits in a lump sum.

4) The defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

5) The defendants shall pay the medical expenses itemized in Joint Exhibit 13.

6) The defendants shall pay to Brunk the following amounts for the following costs:

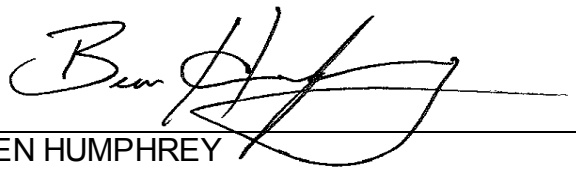
    a) One hundred forty-six and 80/100 dollars ($146.80) for deposition transcription costs;

    b) One hundred and 00/100 dollars ($100.00) for the filing fee; and

    c) One thousand nine hundred twelve and 00/100 dollars ($1,912.00) for the reasonable costs of obtaining Dr. Bansal's report.

7) The defendants shall file subsequent reports of injury as required by Rule 876 IAC 3.1(2).

Signed and filed this 28th day of September, 2022.



BEN HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Jacob J. Peters (via WCES)

Jonathan D. Bergman (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.