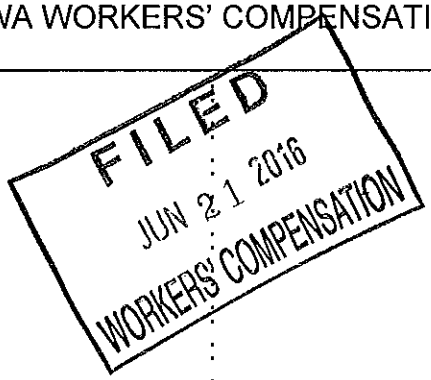
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



WILLIE HEGNA,

Claimant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION,

STATE OF IOWA,

Self-Insured,
Employer,
Defendant.

File No. 5048906

ARBITRATION

DECISION

Head Note Nos.: 1108.10, 1802, 1803, 2202, 2500

STATEMENT OF THE CASE

Willie Hegna, claimant, filed a petition in arbitration seeking workers' compensation benefits from the Iowa Department of Transportation and its insurer, the State of Iowa as a result of an injury he sustained on May 6, 2014, that allegedly arose out of and in the course of his employment. This case was fully submitted on November 15, 2015. The evidence in this case consists of the testimony of claimant, Kenneth Morrow, Jarrod Green and claimant's Exhibits 1 through 6 and defendants' Exhibits A through I. Defendants submitted a brief.

ISSUES

1. Whether claimant sustained an injury on May 6, 2014 which arose out of and in the course of employment;

2. Whether the alleged injury is a cause of temporary disability and, if so, the extent;

3. Whether the alleged injury is a cause of permanent disability and, if so;

4. The extent of claimant's disability.

5. Whether claimant is responsible to pay back sick leave and vacation leave, if he is awarded benefits.

6. Assessment of costs.

The stipulations in the hearing report are accepted including claimant's weekly benefit amount of $739.40.

FINDINGS OF FACT

The deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

Willie Hegna, claimant, was 47 years old at the time of the hearing. He received his high school diploma and an applied science degree through a community college. He completed a four year apprenticeship program for electrical certification and was certified as a master electrician in approximately 2008. (Exhibit H, page 70)

Claimant has been an EMT, a volunteer firefighter and certified open water diver. He has obtained numerous certifications for these roles. (Ex. H, p. 69) Claimant was a volunteer firefighter for the City of Madrid from 1992 until 2013. This position was all volunteer and claimant did not receive pay for his service as a firefighter. He recalled that two to three times a year he would get called to a larger fire that would require two air bottles. (Transcript page 29) When working as a volunteer firefighter claimant would have up to 70 pounds of gear. (Tr. p. 89: Ex. I, p. 75) Claimant let his diver's certificate lapse in 1995 and resigned from the fire department as of December 31, 2012. (Ex. I, pp. 75, 77)

Claimant's primary employment as an adult has been in auto repair and as an electrician, although he worked as a dispatcher, dock man and typesetting. (Tr. pp. 12, 13; Ex. 6, pp. 5, 6)

At the time of the hearing claimant was employed by the Iowa Department of Transportation as an electrician working 40 or more hours per week. He has had this position since March 2008. He has been a licensed master electrician since 2008. (Ex. I, p. 78) Claimant was assigned to work in all areas of the state, except the Des Moines and Ames area. Claimant's normal hours of work are 6:45 a.m. through 5:15 p.m., four days a week.

On May 6, 2014 claimant arrived in Ames, Iowa at the DOT facility to pick up his truck to work on a job on a highway near Davenport, Iowa. He got to the work site at approximately 9:30 a.m. At that time the power company still had work to do, and some co-workers with the Bobcat trencher had not arrived, so claimant and a co-worker waited. Around 10:30 claimant started to work. Claimant unloaded the truck and was taking tools, conduit to the trench. (Ex. I, p. 89) He was walking down and up a hill. He was walking at a quick pace. (Ex. I, p. 89) Claimant described it as "double-time." (Tr. p. 46) Claimant said he made seven to nine trips and started to feel flush warm after the second trip. (Tr. p. 48) In his deposition he said it was on his third trip that he began to sweat. (Ex. I, pp. 88, 89) In his deposition claimant said he had to walk on a hill with a steep incline — 40 to 45 degrees. (Ex. I, p. 87) Claimant felt a pain that he thought was in his rib and went back up the hill. (Ex. I, pp. 76, 77) Claimant recalls that

at least twice his co-worker, Jerrold Green, expressed concern about his health. He tried to get in his truck and was asked by his co-worker to sit outside and 9-1-1 was called. (Tr. p. 55) Claimant was taken to a local hospital and was informed he was having a heart attack. In the hospital a medicated stent was inserted. Claimant was in the hospital for two days. Claimant had a second stent inserted on June 3, 2014. (Ex. 5, p. 5; Ex. D, p. 16) He was returned to light duty work on July 7, 2014. (Tr. p. 60) He had lifting and driving restrictions. (Ex. 2, p. 20) Claimant took sick and vacation time when he was off work. (Tr. p. 91)

At the time of the hearing claimant was back at work without restrictions by his heart doctor, other than no jackhammering. Claimant said jackhammering was something he seldom did on his job. Claimant was evaluated by Sunil Bansal, M.D. who recommended lifting restrictions of lifting occasionally 50 pounds and team lifting up to 75 pounds. (Tr. p.63) At the time of the hearing, claimant was performing all the functions of his job as an electrician for the DOT. (Tr. pp. 67, 69)

Kenneth Morrow, Assistant Director to Central Office Maintenance for DOT testified. He has been claimant's supervisor since July 2014. He stated that claimant had not used a jackhammer in the last year, and it would be rare for claimant to use one. He also said that claimant was currently performing his job and received a favorable evaluation. (Tr. p. 97)

Jarrod Green, a co-worker of claimant testified. He was working with claimant on May 6, 2014, when claimant had his heart attack. Mr. Green was working on a junction box with claimant when he noticed claimant had turned white. He told claimant to go and sit down. He asked claimant if he wanted him to call 9-1-1 and was told no. He asked again about calling 9-1-1, claimant agreed, and Brian Petty called 9-1-1. The EMT and firefighters arrived promptly at the scene. Mr. Green submitted a statement that was consistent with his testimony. He wrote that after claimant clutched his chest and stumbled he was not asked to do anymore work that day. (Ex. F, p. 61)

Kevin Gramlich, a co-worker of claimant, submitted a statement. He believed that they started work on May 6, 2014 at about 9:30 in the morning. He said that claimant was laying conduit. He noted that carrying conduit was a normal job for that crew. While up in a bucket truck he saw that claimant was laying on the ground with Jarrod Green talking to him. He left the bucket truck and saw that claimant's color was not good and he was incoherent. He wrote that he continues to work with claimant, and claimant is able to due his job with no restrictions. (Ex. F, p. 58)

Brian Petty also submitted a statement of what happened at the work site on May 6, 2014. Mr. Petty wrote that claimant had been carrying conduit down a hill and had made maybe three trips. At some point he saw claimant clutch his chest. After claimant sat down and his responses became garbled Mr. Petty called 9-1-1. The EMTs arrived quickly and claimant was taken to the hospital. Claimant did not work anymore after he clutched his chest. (Ex. F, p. 60)

Claimant was admitted to the emergency department around 1:30 on May 6, 2014. (Ex. 1, p. 1) The admission history notes reflect, "The pt arrived by EMS. The pt was walking up and down a hill doing construction work when he felt like he had been punched in the chest". (Ex. 1, p. 6) Claimant had an acute anterolateral wall myocardial infarction. The hospital performed the following procedures,

1. Left heart catheterization.

2. Left ventriculogram.

3. Selective coronary angiogram.

4. A 100% occluded diagonal artery and successful angioplasty and stenting performed utilizing a drug-eluting stent with residual stenosis less than 0%. This is the culprit artery for patient's myocardial infarction.

(Ex.1, p. 12) On May 8, 2014 claimant was discharged from the hospital. On October 3, 2014 claimant requested and his physicians agreed to take him off all restriction. Claimant was authorized to work 10 hours per day. (Ex. 2, p.26; Ex. B, p. 10)

On September 22, 2014, claimant was examined by Suhas Bhat, M.D. of the Iowa Heart Center. Dr. Bhat is the claimant's treating heart doctor. His impression/plan was,

IMPRESSION/PLAN

Willie is a 46-year-old gentleman with a recent diagnoses of coronary artery disease and MI and by most recent stress MPI, mild reduction of LV function at 47%. He is having predominantly some exertional dyspnea and fatigue which likely is due to a combination of MI and LV dysfunction, beta blockade, as well as possibly deconditioning as he was not quite active prior to his MI. He is scheduled for a 2D echo later this week which would help assess his LV function and see if this has improved. In addition, Willie has other issues such as some pain in his wrist area which appears to be neuropathic as he had radial access for a 2nd procedure. His radial pulses are 3+. I do not feel any lumps and he has been working with occupational therapy which has improved his pain.

PLAN:

1. Continue aspirin and Effient. He will be on Effient for 12 months from his most recent PCI. No obvious bleeding issues. He has noticed some bruising.

2. Willie is currently on Crestor. I will switch it over to back to pravastatin 10 mg daily. His lipids were checked recently and his HDL

was 36 and others were all well controlled. I have encouraged him to work on diet, exercise, and lose some weight which will help bring up his HDL cholesterol.

3. Significant fatigue during daytime as well as some shortness of breath. Stop metoprolol and try Bystolic 2.5 mg nightly.

4. Followup up with me in 1 month's time or earlier as needed.

5. In view of Willie's fatigue, he has been scheduled for a sleep study, not unreasonable. Some of his symptoms could be due to sleep apnea.

(Ex. 4, pp. 5, 6) On February 10, 2015 Dr. Bhat recommended that the claimant not use a jackhammer. (Ex. 4, p. 22)

On July 16, 2015 Dr. Bansal performed an independent medical examination of claimant. Dr. Bansal described claimant's work on May 6, 2014 as,

He is a master electrician, responsible for the roadway lights throughout Iowa. He was working at a site near Davenport where a road was being widened, and electrical service needed to be moved in order to connect lighting for this road. He was involved in trenching a two-inch diameter PVC pipe into the ground by carrying several 10-foot pipes up a hill and throwing them to the ground at intervals for the work crew, who were doing the actual trenching of the conduit. Usually the 10-foot pipe lengths are carried by two people for this task, and can weigh up to 30 pounds. He would then run down the hill for another load and repeat the process.

(Ex. 5, pp. 10, 11) Dr. Bansal's opinion about causation was,

Mr. Hegna had a heart attack while performing extremely physically demanding job task, going up and down a hill carrying several pipes with weights up to 30 pounds. This physical exertion served as a trigger for his heart attack. The fact that it occurred while he was working, this trigger makes the association all the more compelling. It is clear that Mr. Hegna had compromised cardiac vasculature prior to this heart attack, predisposing to the above situation. However, it is equally clear that but for the above strenuous activity of carrying heavy weights up and down a hill, he most likely would not have incurred the heart attack at the time that he did.

I have reviewed Dr. Sciorrotta's IME, and cannot understand the logic of denying a work-related link because Mr. Hegna was going up and down the hill more rapidly than was condoned at work. The point is that Mr. Hegna was engaged in very strenuous work for his employer, and had a heart attack while performing it.

> According to a large study published in no less than the prestigious New England Journal of Medicine regarding physical triggers for a heart attack, the following conclusion was reached:
>
> 'We have documented an increased risk of acute myocardial infarction during strenuous physical activity or within the one-hour period after it.'
>
> ***Willich SN et al. Physical exertion as a trigger of acute myocardial infarction. Triggers and Mechanisms of Myocardial Infarction Study Group.***
>
> ***N. Engl J Med. 1993 Dec 2;329(23):1684-90.***
>
> The trigger mechanisms from the acute physical exertion include abrupt changes in heart rate and blood pressure with subsequent hemodynamic stress, disruption of vulnerable atherosclerotic plaques and thrombotic occlusion of a coronary vessel, platelet activation resulting in enhanced thrombogenicity, and increased oxygen demand.

(Ex. 5, p. 14) Dr. Bansal provided a 10 percent whole body impairment rating and placed restrictions of "...no lifting over 75 pounds occasionally, and no lifting over 50 pounds frequently. No jackhammering". (Ex. 5, p. 15)

On July 10, 2014 Anthony Sciorrotta, D.O. provided a medical file review and offered opinions on claimant's heart condition. Dr. Sciorrotta noted in his review of the records that the claimant's employer did not require him to work fast, but claimant personally felt the desire to pick up the pace and go faster. (Ex. D, p. 16) Dr. Sciorrotta's diagnosis was,

> 1. Acute anterolateral myocardial infarction secondary to coronary artery disease status post PCI and stenting of his 100 percent occluded LAD diagonal and secondary PCI and stenting of his 80 percent stenosis of the mid-LAD.
>
> 2. Hyperlipidemia.
>
> 3. Hypertension.
>
> 4. Obesity.

(Ex. D, p. 17) Dr. Sciorrotta was not able to state within a reasonable degree of medical certainty that claimant's work caused his diagnosis of coronary artery disease. He noted claimant's chest pain started after claimant had finished going up and down hills. (Ex. D, p. 18) Dr. Sciorrotta concluded that claimant was not engaged in unusually strenuous exertion while on the job, that was required by the employer. He noted that claimant felt he worked 10 to 15 minutes longer than he should have. He suggested that had claimant walked a little faster mowing his lawn that activity could have brought

on a myocardial infarction. Dr. Sciorrotta also concluded that there was no additional damage to claimant caused by work required by the employer. (Ex. D, p. 19)

Francis Miller, Jr., M.D. submitted a report after reviewing medical records, claimant's deposition and statements of witness. Dr. Miller is board certified in cardiology. (Ex, E. p. 24) Dr. Miller stated that claimant experienced pain performing normal work activity on May 6, 2014. He further stated,

> In his deposition, and as confirmed by his coworkers, Mr. Hegna describes experiencing chest pain while performing his normal work activity on May 6, 2014. It is my opinion, within a reasonable degree of medical certainty, that the described work activities did not precipitate the onset or aggravate the development of myocardial infarction. Due to the preexisting condition of severe coronary atherosclerosis, the medical literature strongly supports that his myocardial infarction could have also been precipitated by normal daily exertion. In individuals with coronary atherosclerosis, such as Mr. Hegna, there is risk that plaque rupture with subsequent myocardial infarction occurs spontaneously, that is, without identifiable precipitating factors or with normal daily activities.

(Ex. E, p. 24) He said that claimant's work activities did not participate in or aggravate the development of coronary atherosclerosis. (Ex. E, p. 25) Dr. Miller wrote that after the onset of chest pain claimant was transported to the emergency room, and as such his work activities did not delay in his medical treatment. (Ex. E, p.25)

CONCLUSIONS OF LAW

The first issue to be determined is if claimant sustained a heart attack on May 6, 2014 that arose out of and in the course of his employment.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

The claimant has the burden of proving by of preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Ciha v. Quaker Oats Co., 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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4)(b); Iowa Code section 85A.8; Iowa Code section 85A.14.

Iowa claimants with preexisting circulatory or heart conditions are permitted, upon proper medical proof, to recover workers' compensation benefits where the employment contributes something substantial to increase the risk of injury or death. The employment contribution must take the form of an exertion greater than nonemployment life. Sondag v. Ferris Hardware, 220 N.W.2d 903 (Iowa 1974). The

comparison, however, is not with the employee's usual exertion in employment, but with exertions of normal nonemployment life of this or any other person. Id., at 905. These exertions may be physical or emotional. Swalwell v. William Knudson & Son, Inc., II Iowa Industrial Commissioner Report 385 (App. Dec. 1982). The Sondag rule is favored by Professor Larson in his treatise on workers' compensation. See 2-46 Larson's Workers' Compensation Law, Section 46.03. According to Professor Larson, the causation test is a two-part analysis. First, medical causation must be established. That is, medical experts must causally relate the alleged stress, whether emotional or physical, to the heart injury. Second, legal causation must be established. That is, the fact-finder must determine whether the medically-related stress is more than the stress of everyday nonemployment life.

In this case I find that the physical stress claimant underwent on May 6, 2014 was greater than the stress of everyday exertions of nonemployment life. Claimant was double-timing up and down a hill carrying conduit and tools. That type of physical activity is not typical in nonemployment life. Defendants point out that claimant was a volunteer firefighter and diver. However, claimant resigned the firefighter position in 2012 and from his diver position in 1995. (Ex. I, pp. 75, 77) There was no evidence to suggest that normal nonemployment life involved double-time up and down an incline or hill.

In this case Dr. Bansal has provided an opinion as to medical causation. The claimant was "double-timing" up and down an incline. Dr. Bansal found medical causation. I find his opinion convincing. While he wrote that claimant carried "...weights up to 30 pounds," which is probably over the amount he carried on each trip, he was carrying conduit and tools that were more likely in the range of 10 to 20 pounds. He was engaged in strenuous physical activity at the time he started to experience symptoms and continued to work until he felt a pain like a punch in the chest. None of his symptoms manifested themselves until after claimant began going up and down the hill. His co-workers did not notice his change in color until he started going up and down the hill.

In P.D.S.I. v. Peterson 685 N.W.2d 627, 630 (Iowa 2004) the court held,

> An employee with a pre-existing heart condition or defect may recover for a heart attack occurring on the job upon a showing of legal and medical causation. Riley v. Oscar Mayer Foods Corp., 532 N.W.2d 489, 492 (Iowa Ct. App.1995). Proving both prongs establishes that the injury arose out of the employment. A claimant establishes legal causation under any one of the following circumstances:
>
> (1) [when] heavy exertions ordinarily required by the job are superimposed on a defective heart, aggravating or accelerating the previous condition; (2) unusually strenuous employment exertion is superimposed on a preexisting diseased condition; or (3) damage results

> from continued exertion required by the employment after the onset of the heart attack symptoms.
>
> Wilson v. Good Will Publishers, 671 N.W.2d 479, 480-81 (Iowa 2003). We have found medical causation when the employee's continued driving after the onset of his symptoms materially aggravated and accelerated the impact of the myocardial infarction. Varied Enterprises v. Sumner, 353 N.W.2d 407, 410 (Iowa 1984).

In this case I find that claimant has proven legal causation by showing both that he was engaged in heavy exertions required by his job superimposed on a defective heart, and that he was engaged in unusually strenuous employment exertion superimposed on a preexisting disease condition.

In Guyon v. Swift & Co. 229 Iowa 625, 295 N.W. 185 (1940) the court upheld an award of workers' compensation benefits to an electrician who had a heart attack at work. He climbed up a ladder about twice and was not running but hurrying. Guyon at page 186. The facts are strikingly similar to the claimant's in this case. The emergency department record of May 6, 2014 states that claimant was walking up and down a hill doing construction work when he felt he was punched in the chest. (Ex. 6, p. 1)

In this case Dr. Bansal did not opine that claimant had additional damage caused by additional work after he first started to have symptoms of feeling flush and sweating. While claimant continued to work these symptoms manifested themselves, and he walked back to the truck after chest pain, there is no medical opinion that it caused additional damage. Under the third item of the P.D.S.I. criteria claimant has not shown sufficient proof.

Dr. Sciorrotta noted that claimant felt chest pains after he had completed going up and down hills. The report of Dr. Bansal found that medical evidence shows there is an increased risk of a myocardial infarction within one hour after exertion. (Ex. 5, p 14) Dr. Sciorratta noted that claimant could have had a heart attack at home if he had engaged in an activity such as walking a little faster mowing his lawn. Dr. Sciorrotta commented in his opinion that the employer did not require the claimant to work hard and strenuously, but it was the claimant's personal choice. The Iowa Supreme Court has held that there is no requirement that a claimant show he felt impelled to continue work after experiencing heart attack symptoms, P.D.S.I. v. Peterson 685 N.W.2d 627 (Iowa 2004). Rather the P.D.S.I. decision held that "damage results from continued exertion required by the employment after the onset of heart attack symptoms" can establish legal causation. P.D.S.I. at 635. Dr. Sciorrotta's opinion is not convincing. He misapprehends the legal test for heart attacks and causation in workers' compensation cases. He also did not examine the claimant.

While the credentials of Dr. Miller are impressive, I do not find his report convincing. Dr. Miller reports that claimant was engaged in normal work activity. While the work assignment was normal, laying conduit for a highway street light, claimant was

performing the work in a faster and more strenuous manner (i.e. double-time up and down the incline). While Dr. Miller wrote there was no delay in treatment due to work activities, the evidence shows there was also some delay before claimant felt his first symptoms—feeling flush and sweating. Dr. Miller does not comment on the New England Journal of Medicine article relied upon by Dr. Bansal that shows a higher risk of myocardial infarction within one hour after physical exertion. Dr. Miller did not examine claimant.

I have found that claimant has proven both medical and legal causation for his heart attack. This is an impairment to the body as a whole. 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 R. Co., 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 the 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.

Claimant has returned to his work and is able to perform the functions of his job. He has few limitations, no jackhammering and should not regularly lift heavy weights. Claimant has limitation in engaging in heavy electrical work. He has significant training as an electrician. I find that a small loss of earning capacity, 15 percent. Considering all of the factors of industrial disability, I find claimant has a 15 percent industrial disability. This entitles claimant to 75 weeks of permanent partial disability benefits. Permanent benefits commence on July 8, 2014.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Claimant was off work from May 6, 2014 through July 7, 2014 due to his heart attack. Claimant is entitled to healing period benefits during this time.

Defendants have requested that claimant be required to pay back his sick and vacation. Defendants' brief stated that claimant stipulated to that issue. A review of the Hearing Report shows that the issue was disputed. Claimant did not agree to "repay" vacation and sick leave. Defendants have not provided any authority for this assertion. This agency has ruled against such an assertion.

In King v. Marion Independent School District, File No. 5036224 pp. 2, 3 (App. June 10, 2003) this agency held in part,

> However, when it comes to vacation leave and sick leave the issue is much different. Vacation leave and sick leave payments are typically paid by an employer when an employee voluntarily elects to use an accrued vacation leave or sick leave benefit for a non-occupational absence from work as a fringe benefit provided to a worker for that worker's past service. Herein, claimant elected to use her accrued vacation leave and sick leave payments to maintain her income when the employer voluntarily denied her workers' compensation claim, choosing not to commence weekly workers' compensation benefits. Allowing an employer to take a credit for such pay would, in effect, shift the cost of paying workers' compensation weekly benefits to the employee in violation of Iowa Code section 85 18 - as such a rule would be a rule to relieve the employer from liability under our workers' compensation law. If the vacation leave or sick leave benefit utilized by an injured worker is restored to the employee, as was ordered in the arbitration decision the cost-shifting prohibition would be relieved, but only in part. An accrued vacation leave or sick leave benefit is in the nature of a property-right of the employee and the election to take that leave or have it restored in order to grant a credit to the employer should be the decision of the employee alone; neither the employer, nor this agency should have a role in that decision.

Defendants' claim requiring claimant to repay sick and vacation pay is denied.

Claimant is awarded filing fee in the amount of $100.00 under 876 IAC 4.33.

ORDER

Defendants shall pay claimant healing period benefits from May 6, 2014 through July 7, 2014 at the weekly rate of seven hundred thirty-nine and 40/100 dollars ($739.40).

Defendants shall pay claimant seventy five (75) weeks of permanent partial disability at the weekly rate of seven hundred thirty-nine and 40/100 dollars ($739.40) commencing July 8, 2014.

Defendants shall pay claimant costs of one hundred dollars ($100.00).

Defendants shall pay any past due amount in a lump sum with interest.

Defendants shall file subsequent reports of injury (SROI) as required by this agency.

Signed and filed this 21st day of June, 2016.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFE/sam

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 in writing and received by the commissioner's office 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 a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.