BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

AARON SCHONER, Claimant, vs. GENUINE PARTS COMPANY D/B/A APACHE, INC., Employer, and SAFETY NATIONAL CASUALTY CORP., Insurance Carrier, Defendants.	:	File No. 20008596.01 ARBITRATION DECISION Headnotes: 1100; 1108; 1400; 1701; 1800; 1801; 1803; 2500; 2600; 2700

STATEMENT OF THE CASE

The claimant, Aaron Schoner, filed a petition for arbitration seeking workers' compensation benefits from employer Genuine Parts Company d/b/a Apache, Inc. ("Apache"), and their insurer, Safety National Casualty Corp. Dillon Besser appeared on behalf of the claimant. Aaron Oliver appeared on behalf of the defendants. Also present was Katie Appleby and Lance Wilshusen, Apache employees.

The matter came on for hearing on April 11, 2023, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner, the hearing occurred electronically via Zoom. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-14, Claimant's Exhibits 1-8, and Defendants' Exhibits A-L. All of the exhibits were received into evidence without objection.

The claimant testified on his own behalf. Katie Appleby and Lance Wilshusen testified on behalf of the defendants.

Lucinda Winslow-Haidsiak was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted after the parties submitted post-hearing briefs on May 19, 2023.

STIPULATIONS

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

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

2. That, at the time of the injury, the claimant's gross earnings were seven hundred sixty-nine and 99/100 dollars ($769.99) per week and the claimant was married and entitled to two exemptions, resulting in a weekly compensation rate of five hundred fourteen and 10/100 dollars ($514.10).

3. That, prior to the hearing, the claimant was not paid any compensation.

4. That, if any indemnity benefits are awarded, the defendants are entitled to a credit for any short-term disability and/or long-term disability benefits paid to the claimant since June 2, 2020.

5. That the costs listed in Claimant's Exhibit 7 have been paid.

The defendants waived all of their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. Whether the claimant sustained an injury which arose out of and in the course of employment on June 2, 2020. The hearing report noted that the defendants admitted a work incident on the date in question, but denied that it caused an injury.

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

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

4. Whether the claimant is entitled to temporary total disability, temporary partial disability, or healing period benefits from July 13, 2020, to December 16, 2021, for a total of 74.429 weeks.

5. Whether the claimant was off work from July 13, 2020, to December 16, 2021.

6. The extent of claimant's permanent disability, should any be awarded.

7. If the injury is found to be a cause of permanent disability, whether the disability should be evaluated as a scheduled member disability or an industrial disability.

8. Whether the commencement date for permanent disability benefits, should any be awarded, is June 2, 2020, or December 17, 2021.

9. Whether the claimant is entitled to payment of certain medical expenses as itemized in Claimant's Exhibit 8.

10. With regard to the disputed medical expenses:

    a. Whether the fees or prices charged by the providers were fair and reasonable.

    b. Whether the treatment was reasonable and necessary.

    c. Whether the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses.

    d. Whether the listed expenses were causally connected to the work injury.

    e. Whether the listed expenses are at least causally connected to the medical condition upon which the claim of injury is based.

    f. Whether the requested expenses were authorized by the defendants.

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

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

13. Whether imposition of a penalty pursuant to Iowa Code chapter 86 is appropriate.

14. Whether an imposition of a specific taxation of costs against the defendants is appropriate.

FINDINGS OF FACT

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

Aaron Schoner, the claimant, lives in Cedar Rapids, Iowa with his wife and at the time of the hearing, he was 47 years old. (Testimony).

Mr. Schoner attended high school in Cedar Rapids, Iowa, and Jacksonville, Florida. (Testimony). He did not graduate from high school, as he "went to work." (Testimony). He never completed his GED, or had any additional education following his leaving high school. (Testimony).

Of note, Mr. Schoner was born with a cleft palate. (Testimony). He underwent 14 surgeries to repair his cleft palate and remove teeth from his nose. (Testimony). Included in the record are medical records dating back to 1993 outlining the claimant's treatment for his cleft palate issues. (Joint Exhibit 1:1). These surgeries occurred "…about once a summer…" until the claimant turned 14 years old. (Testimony). He testified that these surgeries were incredibly painful and required months for recovery. (Testimony). As a result of his cleft palate and resulting surgeries, Mr. Schoner also had speech therapy. (Testimony).

Mr. Schoner testified in his deposition that he also has lupus, which makes him "allergic to the sun." (Defendants' Exhibit L). He used a topical ointment to treat his symptoms. (DE L). These symptoms included rashes and itchiness. (DE L). Mr. Schoner also had a previous unexplained MRSA infection, in his knee. (DE L). It required debridement and medication to stop the infection. (DE L).

During the hearing, Mr. Schoner outlined some of his prior employment. (Testimony). At one time, he worked in the parts department at Cedar Rapids Honda where he unloaded parts from trucks and worked at the parts counter. (Testimony). He then worked as a pipe layer for Bowker Mechanical. (Testimony). He moved into a flooring installation job for Eberle's Floor Covering. (Testimony). Immediately prior to working at Apache, the claimant worked for 10 years at House of Carpets. (Testimony). For a time, he worked as a subcontractor and installed flooring. (Testimony). He eventually became an employee and fixed complaints or handled quality control issues. (Testimony). All of the aforementioned jobs required the claimant to complete physical and/or manual labor. (Testimony).

There were some medical records entered into the record that pre-date the alleged work injury. In particular, there was a record from January of 2017, wherein the claimant indicates issues "losing small print." (JE 3:72-75). He had 20/25 vision noted. (JE 3:75). Mr. Schoner later returned to the optometrist with complaints of "losing small print." (JE 3:76-79). His vision was 20/20. (JE 3:79).

In June of 2020, the claimant had been employed as a press operator with Apache for about three years. (Testimony). He would take "a stock flat conveyor belt and prep the belt for putting either cleats or sidewalls on it, or… a guide on the bottom to help move product, to keep product on the belt." (Testimony). He had to use molds with the assembly line. (Testimony).

On June 2, 2020, Mr. Schoner was attempting to remove a spool of metal banding from a cart. (Testimony). He described the metal as sharp. (Testimony). He pushed on the bottom of the cart, and the metal banding "came out of the crimpers and came across from right to left and hit [him] at the base of the lip or top of the lip…and went…to the left tip of [his] nose." (Testimony). Mr. Schoner described the experience as feeling as though he was punched in the face. (Testimony). He testified that the band did not hit him in the eye. (DE L). Mr. Schoner described throbbing pain in his nose. (Testimony). When he moved his hand away from his face, Mr. Schoner saw blood. (Testimony). Mr. Schoner testified that Kyle Codran witnessed the incident and called over his supervisor, Ken Kanellis. (Testimony). At that time, first responders employed by Apache took the claimant to the bathroom and began attempting to stop the bleeding. (Testimony). Eventually, the bleeding stopped, and Apache told the claimant to "take it easy for a little bit," before returning to work. (Testimony).

Katie Appleby, the shop safety coordinator at Apache, testified as to her recollection of the incident. (Testimony). She recalled the metal banding hitting Mr. Schoner in the face, and cutting the flesh of the nose between Mr. Schoner's nostrils. (Testimony). She did not note any cut or damage to any other part of the claimant's face. (Testimony). Production supervisor Ken Kanellis filled out an incident investigation form following the incident. (DE B:4-5). He noted that Mr. Schoner cut his nose when a metal banding hit his face. (DE B:4). Apache made note of certain remedial measures recommended as part of a corrective action plan. (DE B:5).

Lance Wilshusen testified that the claimant did not request treatment between June 2, 2020 and July 10, 2020. (Testimony). He also indicated that the claimant continued working his normal job during this time. (Testimony). He made some mention on July 8, 2020, during a COVID temperature check that he had some tenderness, but declined care, as he wanted to speak to his wife. (Testimony).

In the weeks after returning to work, Mr. Schoner noticed that his left eye became red and puffy. (Testimony). Initially, he thought it was due to allergies, but his symptoms continued to worsen. (Testimony). He initially sought care with his family doctor. (Testimony). She prescribed antibiotics, which did not provide any relief. (Testimony).

On July 10, 2020, Mr. Schoner went to an optometrist's office with complaints of a red and puffy left eye. (JE 3:80-82). He told the optometrist that he had the same symptoms in his right eye during the prior week, but it was now only present on the left side. (JE 3:80). The optometrist found Mr. Schoner to have edema and erythema to the lower eyelid. (JE 3:81). He was diagnosed with pre-septal cellulitis and provided Bactrim. (JE 3:82).

Mr. Schoner reported to CRS Emergency Department on July 13, 2020. (JE 5:140-152). Mr. Schoner recounted the cut to his nose about three weeks prior. (JE 5:140). Mr. Schoner indicated that afterward he had swelling and redness on his entire face, along with increased redness around his left eye about one week prior. (JE 5:140). He attempted Bactrim as previously prescribed, but it did not improve his symptoms. (JE

5:140). The doctor noted a well-healed scar to the anterior inferior aspect of the nose, along with post-surgical changes from his cleft palate surgeries. (JE 5:142). The doctor also noted moderate edema around the left orbit. (JE 5:142). Photos included with the record show redness and swelling around the claimant's left eye. (JE 5:145). The ER prescribed several types of antibiotics to the claimant. (JE 5:146). A CT showed diffuse skin thickening and inflammatory stranding in the left periorbital and premaxillary soft tissues, which was compatible with a diagnosis of cellulitis. (JE 5:151). The ER doctor excused Mr. Schoner from work on July 13, 2020 and July 14, 2020. (JE 5:152).

Ann Soenen, D.O. saw the claimant on July 15, 2020. (JE 4:105-111). Mr. Schoner recounted being struck under his nose by a metal band at work. (JE 4:105). He recalled suffering a laceration, but stopped the bleeding after one and a half hours. (JE 4:105). He complained of continued soreness in his nose, and found that his eyes started to swell about one and a half weeks later. (JE 4:105). Initially, he was treated for cellulitis. (JE 4:106). A CT scan showed findings compatible with cellulitis. (JE 4:106). He was noted to be a user of chewing tobacco, and Dr. Soenen found Mr. Schoner to have tenderness over the left maxillary sinus. (JE 4:107). Dr. Soenen also observed the claimant to have preseptal orbital cellulitis with "some brawny erythema and swelling of the upper and lower eyelids." (JE 4:107). Dr. Soenen told Mr. Schoner to continue taking antibiotics, and to go to the emergency room if his swelling worsened. (JE 4:110). Dr. Soenen then issued a letter keeping the claimant off work until re-evaluated by a physician in one week. (JE 4:111).

Once Mr. Schoner indicated he sought some care in July of 2020, and Apache sent him to Work Well on July 17, 2020. (Testimony; JE 7:164-167). Cindy Hanawalt, M.D., Ph.D. examined the claimant. (JE 7:164-167). Mr. Schoner recounted being struck in the face with "a very high-tension metal band…" which "came under his nose causing a laceration to the area of tissue separating his nostrils under the tip of his nose…" and then striking the left side of his face. (JE 7:164). Since the time of the incident, he experienced progressively worsening facial swelling. (JE 7:164). Dr. Hanawalt observed that Mr. Schoner performed poorly on his near vision screening, but this was apparently due to Mr. Schoner not having his glasses. (JE 7:164). Dr. Hanawalt diagnosed the claimant with facial trauma with a healing laceration to the nose, along with periorbital cellulitis. (JE 7:165). Dr. Hanawalt recommended that the claimant consult with an ear, nose, and throat doctor, regarding the findings of the CT scan. (JE 7:165). Dr. Hanawalt assigned work restrictions on July 17, 2020 that the claimant to work in a sedentary or clerical-type setting in a "clean environment". (JE 7:166-167). He also was told to avoid exposure to extreme temperatures. (JE 7:167).

On July 20, 2020, Mr. Schoner returned to Dr. Soenen's office. (JE 4:112-117). Dr. Soenen noted that the claimant had cellulitis caused by a laceration. (JE 4:112). Mr. Schoner requested PICC line antibiotics due to swelling, redness, and warmth in this left eye. (JE 4:112). Dr. Soenen found the claimant to have normal speech. (JE 4:115). Dr. Soenen decided to admit the claimant to St. Luke's for provision of a PICC line due to periorbital cellulitis and diarrhea. (JE 4:117). She also recommended an alcohol

withdrawal protocol at the hospital due to the claimant's history of heavy drinking. (JE 4:117).

The PICC line was inserted into Mr. Schoner's chest so that IV antibiotics could be administered. (Testimony). Mr. Schoner had to go to the hospital twice per day for the administration of these new antibiotics. (Testimony). The harsh antibiotics administered through the PICC line caused Mr. Schoner to experience digestive and intestinal issues. (Testimony).

Shirley Pospisil, M.D., M.P.H. documented a call from Dr. Soenen on July 20, 2020. (JE 7:168). Mr. Schoner's wife is a nurse practitioner and "became alarmed when it appeared that his cellulitis around his eye had worsened." (JE 7:168). Dr. Pospisil agreed with Dr. Soenen's recommendation of admission to the hospital for Mr. Schoner "[b]ecause periorbital cellulitis can spread to the sinuses and brain…" (JE 7:168).

Dr. Soenen saw Mr. Schoner again on July 21, 2020. (JE 4:118-120). Mr. Schoner told Dr. Soenen that he had no eye pain, and felt like his cellulitis was improving. (JE 4:118). He previously had a PICC line placed, and requested discharge for antibiotic provision by an infusion center. (JE 4:118). Dr. Soenen observed that the claimant was slowly improving with less swelling. (JE 4:119).

Dr. Pospisil followed-up with Mr. Schoner via phone on July 21, 2020. (JE 7:169-170). Dr. Pospisil noted Mr. Schoner's prior history of a MRSA infection. (JE 7:170). She opined that given the timing of the symptoms, and his history of MRSA, it was "plausible" that the trauma to his face caused him to develop periorbital cellulitis. (JE 7:170). She also recommended a consultation with an infectious disease doctor. (JE 7:170).

Heather Dunn of Gallagher Bassett issued a letter to Mr. Schoner dated July 22, 2020. (DE E:19). The letter indicated that Gallagher Bassett completed their investigation and "found no medical evidence to support that your current condition is related to the work incident…" (DE E:19). Ms. Dunn suggested that Mr. Schoner submit any medical bills to his group health carrier, and advised him of his right to file a claim with the Agency. (DE E:19). She also advised him of the Agency's contact information. (DE E:19).

On July 27, 2020, Dr. Soenen saw the claimant again for his left eye complaints. (JE 4:121-125). He complained that his left eye began to worsen on the previous Friday. (JE 4:121). He had an upcoming appointment at the University of Iowa based upon the request of his wife. (JE 4:121). Dr. Soenen ordered a CT of the maxillofacial area. (JE 4:125). Dr. Soenen kept Mr. Schoner off work until August 3, 2020. (JE 4:127).

The CT scan performed at Mercy Medical Center in Cedar Rapids, Iowa on July 27, 2020 showed left periorbital, preseptal, and alar cellulitis. (JE 4:126). It also showed a metallic foreign body within the inferior nasal cavity, and sinus disease. (JE 4:126). The radiologist identified it as a "two pronged metallic density foreign body in the anterior inferior nasal cavity along the anterior maxilla and nasal septum." (JE 4:126).

David Barnes, M.D. saw Mr. Schoner at the Mercy Ear Nose & Throat Clinic on July 27, 2020. (JE 8:173-182). Mr. Schoner continued to have left eye swelling and redness. (JE 8:173). He recounted the cut and development of tenderness and swelling which he initially thought were related to allergies. (JE 8:174). Mr. Schoner noted improvement while on Clindamycin, which then worsened to the extent that it closed the left eye. (JE 8:174). The plan was to "expand" antibiotic therapy. (JE 8:174). Dr. Barnes performed an aerobic culture swab of the left nasal cavity. (JE 8:174). Dr. Barnes reviewed the CT scan and observed a wire in the septum protruding into the right nasal cavity through a septal perforation. (JE 8:174). The wire could be removed according to Dr. Barnes. (JE 8:174). Dr. Barnes found the claimant to have a scar from the work injury "at the columellar of the nose, coursing superiorly to the dome of the nose," which remained red and swollen. (JE 8:176). It was also immediately adjacent to the cellulitis of the lower lid "confluent with the upper lid cellulitis." (JE 8:176). Dr. Barnes also related the preseptal cellulitis to the work injury. (JE 8:176).

On July 31, 2020, Ahmed Abu Al-Foul, M.D. examined the claimant. (JE 9:183-187). Mr. Schoner again recounted the trauma to his nose and development of left periorbital swelling. (JE 9:183). He also noted his treatment history, including that the cultures from the nasal cavity taken by Dr. Barnes showed development of Pseudomonas aeruginosa pansensitive. (JE 9:183). Dr. Al-Foul diagnosed Mr. Schoner with pre-septal cellulitis, positive nasal cultures for pseudomonas aeruginosa, nasal septal perforation, and visible hardware following cleft lip and palate repair. (JE 9:186). Dr. Al-Foul recommended that Mr. Schoner be started on IV antibiotics, stop certain other antibiotics, and monitor antimicrobial therapy for toxicity. (JE 9:187).

Dr. Al-Foul saw Mr. Schoner again on August 6, 2020. (JE 9:188). Mr. Schoner noted initial improvement after taking intravenous cefepime, but then worsening swelling and pain during the previous two days. (JE 9:188). Dr. Al-Foul diagnosed Mr. Schoner with left eye preseptal cellulitis. (JE 9:188). He recommended that the claimant continue with intravenous cefepime, monitor antimicrobial therapy, and follow-up in one week. (JE 9:188).

On August 10, 2020, Dr. Soenen referred Mr. Schoner to either Wolfe Eye or Iowa Eye for ophthalmologic follow-up care due to his recurrent left periorbital edema. (JE 10:191). She noted he was unable to have an MRI due to suspected metal in his nose. (JE 10:191).

Dr. Soenen saw Mr. Schoner via telemedicine on August 17, 2020. (JE 10:192-194). Due to a major storm, parts of Cedar Rapids lacked power, and Mr. Schoner had been unable to arrange a visit with an ophthalmologist. (JE 10:193). Mr. Schoner indicated that the swelling in his left eye is returning now that he was off antibiotics. (JE 10:193). He also complained of pain in the orbital bones and in the TMJ area. (JE 10:193). Mr. Schoner asked Dr. Soenen to keep him off work "because he says [it] is extremely hot and he is worried that this will get inflamed." (JE 10:193). Dr. Soenen acceded to his request and kept him off work for another two weeks. (JE 10:194).

On August 20, 2020, Mr. Schoner returned to Dr. Al-Foul's office. (JE 9:189). As of that visit, Dr. Al-Foul took Mr. Schoner off antimicrobial therapy, and told him to contact his office if he had worsening swelling, redness, or pain. (JE 9:189).

Mr. Schoner also saw Cory Bower, O.D. at Wolfe Eye Clinic on August 20, 2020. (JE 11:195-196). Mr. Schoner recounted the work incident, and told Dr. Bower that ever since the incident "there was always a 'sac of fluid' under that [left] eye." (JE 11:195). The eye improved following placement of the PICC line, and then worsened following its removal. (JE 11:195). Mr. Schoner told Dr. Bower that there were no changes to his vision. (JE 11:195). Dr. Bower opined that the claimant's ocular examination was stable. (JE 11:196). Dr. Bower diagnosed the claimant with orbital cellulitis and recommended continued care with an ear, nose, and throat doctor, and an infectious disease doctor. (JE 11:196).

On August 25, 2020, Mr. Schoner reported to Keith Carter, M.D. at the University of Iowa Oculoplastics Service Clinic, upon the referral of Dr. Bower. (JE 1:2-5). Mr. Schoner recollected being struck in the face by the metal bander and subsequent development of facial rash and swelling around and under the left eye. (JE 1:2). Dr. Carter also recounted the claimant's medical treatment to date. (JE 1:2). Mr. Schoner told Dr. Carter that his antibiotic therapy via the PICC line helped improve his symptoms. (JE 1:2). Mr. Schoner told Dr. Carter that he had swelling, redness, and constant dull pain around his left eye. (JE 1:2). The pain generally was located around Mr. Schoner's left jaw, but it recently started radiating towards his jaw. (JE 1:2). Mr. Schoner also told Dr. Carter that his vision in his left eye became blurrier with items near him. (JE 1:2). Dr. Carter found the claimant to have 20/30 vision in both of his eyes with full visual field and full extraocular movement. (JE 1:3). Upon examining the claimant's left eye, Dr. Carter found mild erythema with point tenderness along the inferior and lateral superior rim of the eyelid. (JE 1:3). Dr. Carter diagnosed the claimant with preseptal cellulitis of the left eye secondary to a soft tissue injury. (JE 1:4). Dr. Carter recommended observation and requested that Mr. Schoner send him photos in one to two weeks. (JE 1:4).

Elyse Hanly, M.D. examined the claimant on September 4, 2020, for his continued complaints of intermittent left periorbital swelling. (JE 1:6-7). Dr. Hanly noted the incident, which injured Mr. Schoner, including that he suffered a laceration of his columellar, which healed on its own. (JE 1:6). Mr. Schoner indicated that his eye swelling would worsen for one week and then improve for a week. (JE 1:6). Mr. Schoner denied any nasal pain, drainage, or other sinonasal symptoms. (JE 1:6). He also complained of pressure behind his left eye and blurriness in the left eye. (JE 1:6). Dr. Hanly noted the metal seen in the claimant's nose on the CT scan and speculated that it was metal or wire retained from childhood surgeries. (JE 1:6). Dr. Hanly did not see any metal on a nasal endoscopy, but opined it was possible that crusting covered any exposed hardware. (JE 1:7). Dr. Hanly opined that it was "possible" that the metal was disrupted by the work incident, and recommended that the claimant should return to Dr. Owen's office for potential surgical removal of the hardware. (JE 1:7).

On September 17, 2020, the claimant returned to Dr. Carter's office for additional follow-up on his complaints of swelling and redness around his left eye. (JE 1:8-12). Mr. Schoner indicated that his vision began worsening in his left eye two weeks prior to the visit. (JE 1:8). Mr. Schoner told the doctor that he injured the base of his nose at work, "but all of this started after the injury and he is certain it is related." (JE 1:8). The physician found Mr. Schoner to have good visual acuity with no evidence of optic nerve dysfunction. (JE 1:10). He had mild periorbital swelling with erythema and mild point tenderness along the left lateral brow. (JE 1:10). The physician further opined that Mr. Schoner's left eye issues "could be a result of a forceful injury affecting facial innervation or lymphatic drainage, which would require time to heal." (JE 1:10). Dr. Carter recommended continued observation and a follow-up with oculoplastics in two months. (JE 1:12).

Scott Owen, M.D. examined Mr. Schoner on September 22, 2020, regarding complaints of "[e]xposed nasal hardware and periorbital swelling." (JE 1:13-17). During this initial visit, Dr. Owen reviewed Mr. Schoner's medical treatment. (JE 1:13). Dr. Owen observed that the claimant sustained a "significant laceration to the columella." (JE 1:17). Mr. Schoner presented for "possible surgical evaluation of the exposed metal." (JE 1:13). Mr. Schoner found no improvement to his swelling. (JE 1:13). Dr. Owen reviewed imaging and performed a nasal endoscopy, which revealed septal perforation. (JE 1:15). He also observed an exposed wire on the right side with moderate dried mucous obstructing the origin of the metal. (JE 1:15). The doctor stated, "[i]t is clear and obvious that this metal should not be present in the nasal passage and likely presented from post-traumatic work accident on June 2…" (JE 1:15). The provider continued, "[h]e will require surgical intervention for this sequelae of work related injury", which could also include a nasal scar revision. (JE 1:16).

Mr. Schoner testified that the surgery would include "split[ting] [him] from the bridge of [his] nose down to… the bottom part of [his] lip." (Testimony). Mr. Schoner elected to proceed with the surgery despite hesitation due to his previous surgical history. (Testimony).

On October 1, 2020 Dr. Soenen issued a work release for Mr. Schoner. (JE 4:128). The work release kept Mr. Schoner off work until his scheduled surgery on December 19, 2020. (JE 4:128).

On November 20, 2020 Dr. Owen saw Mr. Schoner for a pre-operative appointment. (JE 1:18-22). Mr. Schoner complained of "a lot of tenderness where the wire is." (JE 1:18). The plan was to proceed with surgery to remove the wire and revise his cleft palate scarring. (JE 1:21). Dr. Owen also planned to perform an inferior turbinate reduction. (JE 1:21).

Dr. Owen proceeded with a cleft lip scar revision, open septorhinoplasty, and intranasal hardware removal on December 17, 2020. (JE 1:24-33). Mr. Schoner was discharged on the same day with post-operative instructions. (JE 1:24-33).

On December 21, 2020, Dr. Owen issued a generic letter. (JE 1:34). He recounted what he described as an "extensive reconstructive surgery" performed on the claimant on December 17, 2020. (JE 1:34). Dr. Owen opined that the claimant required adequate time to properly heal before he could be exposed to temperatures above 100 degrees Fahrenheit, lift in excess of 20 pounds, or work in a dirty/dusty environment. (JE 1:34). In order to accomplish the foregoing, Dr. Owen concluded that Mr. Schoner should remain off work until February 1, 2021. (JE 1:34).

Dr. Owen saw Mr. Schoner again on December 29, 2020 for his first post-operative visit. (JE 1:35-38). Mr. Schoner told the doctor that he was doing well with improving pain. (JE 1:35). He still experienced random sharp pain in his nose, but the frequency of this pain was decreasing. (JE 1:35). He also noted decreased nasal drainage. (JE 1:35). The doctor removed certain sutures and splints and recommended Kenalog injections at his next appointment. (JE 1:37). Dr. Owen also briefly discussed a "gentle lip revision to improve his whistle deformity." (JE 1:38). Dr. Owen noted that procedure would likely include a fat or fascial graft. (JE 1:38). Dr. Owen requested that Mr. Schoner return in six to eight weeks. (JE 1:38).

After having the surgery, the symptoms in Mr. Schoner's nose resolved. (Testimony). However, he began to experience pain in his upper lip and a feeling as though there was numbness or concrete in his upper lip. (Testimony). He also experienced drainage from both nostrils and the incision sites. (Testimony).

Apache sent Mr. Schoner a letter on January 7, 2021, informing him that he exhausted his Family and Medical Leave Act ("FMLA") and that he was no longer on non-job protected leave effective October 8, 2020. (Claimant's Exhibit 5:22). The letter goes on to indicate that his job may be filled if business needs required it. (CE 5:22). Finally, the letter indicates that, should Mr. Schoner return from his leave of absence, he would need to provide a fitness for duty certification. (CE 5:22). Apache noted that they could accommodate Mr. Schoner's restrictions should he be a qualified individual with a disability. (CE 5:22).

Apache then sent another January 7, 2021 letter to the claimant. (CE 5:23-24). The letter noted that Apache was in possession of paperwork from Mr. Schoner's December 21, 2020 visit with Dr. Owen. (CE 5:23). The paperwork indicated that Mr. Schoner could not return to work until February 1, 2020, and Apache wrote that Mr. Schoner no longer had any FMLA leave time available. (CE 5:23). Apache indicated that Mr. Schoner could be eligible for long-term disability benefits, as he previously exhausted his short-term disability benefits. (CE 5:23).

On January 12, 2021, Adam Schwalje, M.D., an otolaryngologist, examined Mr. Schoner. (JE 1:39). Mr. Schoner complained of clear/slightly bloody drainage from "inferior of incision q3 [sic]." (JE 1:39). Mr. Schoner described his lip swelling and then draining through the incision site. (JE 1:39). Dr. Schwalje diagnosed the claimant with a lip seroma and recommended that he massage his lip to remove as much fluid as possible when drainage occurred. (JE 1:39).

Dr. Owen saw the claimant again on January 22, 2021 for continued post-operative follow-up. (JE 1:40-43). Mr. Schoner indicated that his lip was worse with swelling and hardness. (JE 1:40). Dr. Owen recounted the claimant's follow-up with Dr. Schwalje. (JE 1:40). Dr. Owen aspirated both sides of the upper lip, but found no fluid. (JE 1:42). Dr. Owen opined that the claimant was recovering well and told Mr. Schoner to massage the upper lip. (JE 1:42). Dr. Owen requested that the claimant return in one week for the previously planned Kenalog injection. (JE 1:42).

On January 29, 2021, Mr. Schoner returned to Dr. Owen's office. (JE 1:44-48). Mr. Schoner told Dr. Owen that his nose still felt very "hard," and that he had "tightness" in his upper lip area. (JE 1:44). He also told Dr. Owen that he had "a lot of heat sensitivity with his upper lip…" (JE 1:44). Dr. Owen provided Mr. Schoner with a Kenalog injection. (JE 1:46). Upon conclusion of the procedure, Dr. Owen opined that the claimant required no physical restrictions; however, he provided the claimant with a note keeping him off work until his appointment in one month. (JE 1:46, 48).

CIGNA sent a letter to Mr. Schoner dated March 1, 2021, informing him that he was approved for long-term disability benefits. (CE 6:25-26). The long-term disability benefits were back dated to a date of disability of July 15, 2020. (CE 6:25). His disability benefits were to be 60 percent of his covered earnings, and were calculated to be one thousand nine hundred forty five and 00/100 dollars ($1,945.00) per month. (CE 6:25).

Dr. Schwalje saw Mr. Schoner again on March 2, 2021, for continued pain in his lip. (JE 1:49-52). Mr. Schoner expressed concern about returning to work "due to heavy lifting and extreme environment (heat)." (JE 1:49). The doctor provided Mr. Schoner with a note keeping him off work until May 2, 2021. (JE 1:52). He also provided Mr. Schoner with restrictions of "[n]o heavy lifting." (JE 1:52).

On April 27, 2021, Dr. Owen examined Mr. Schoner again following his surgery. (JE 1:53-56). Mr. Schoner told the doctor that he was "very happy with the results" of the surgical procedure, and felt that he breathed better through his nose. (JE 1:53). However, Mr. Schoner still complained of lip symptoms, including a feeling of stiffness and immobility. (JE 1:53). He also had pain with bending over. (JE 1:53). Dr. Owen provided the claimant with another injection of Kenalog in an attempt to clear up a granulomatous reaction in the claimant's upper lip. (JE 1:55-56). Dr. Owen also discussed a potential revision for the scar. (JE 1:56). Dr. Owen issued a letter on May 4, 2021, again excusing the claimant from work until July 13, 2021. (JE 1:57).

On July 13, 2021, Mr. Schoner returned to Dr. Owen's office. (JE 1:58-61). Mr. Schoner told Dr. Owen that he was "doing significantly better than last time." (JE 1:61). Dr. Owen opined that there was a "significant reduction in the fullness of [the] upper lip and a significant softening of [the] tissue." (JE 1:61). Dr. Owen injected the claimant with more Kenalog. (JE 1:60).

On March 7, 2022, Mr. Schoner followed-up with his optometrist with a complaint of “losing small print.” (JE 3:83-86). His vision was 20/25. (JE 3:84).

Elizabeth Mangrich-Hickman, M.D. examined Mr. Schoner on July 29, 2022. (JE 12:198-203). Mr. Schoner complained of balance and gait issues over the previous six months. (JE 12:198). At times, he fell without warning with a complete loss of motor skills. (JE 12:198). He also complained of numbness in his extremities, and daily headaches over the prior year. (JE 12:198). Dr. Mangrich-Hickman noted Mr. Schoner’s previous diagnosis of cutaneous lupus, but Mr. Schoner told her that this was not causing his issues. (JE 12:198). At the time of the examination, Mr. Schoner was drinking nine beers per day. (JE 12:198). Dr. Mangrich-Hickman opined that Mr. Schoner was a “chronically ill appearing man” with “thin extremities” and has “difficulty rising from a chair” without using his hands. (JE 12:201). He also had to use his hands to balance himself on the exam table once he stood. (JE 12:201). Dr. Mangrich-Hickman referred Mr. Schoner to a hepatology clinic for his elevated liver enzymes and encouraged him to reduce his drinking, as “this is very likely playing a significant role in his health conditions…” (JE 12:202). She also referred the claimant to neurology. (JE 12:202). Of note, there is no mention of his work injury during this visit.

On May 25, 2022, counsel for the defendants sent a letter to Dr. Owen requesting certain opinions following a phone conference. (DE I:29-31). Dr. Owen responded to the letter with an undated letter of his own. (DE I:32-35). Dr. Owen is the director of facial plastic and reconstructive surgery, and the residency program director at the University of Iowa Hospitals and Clinics. (DE I:35). Dr. Owen recounted his interactions with Mr. Schoner, including his history of a bilateral cleft lip and palate. (DE I:32). Dr. Owen indicated that Mr. Schoner would have had “multiple staged surgeries throughout his childhood to correct all the sequelae that accompany this congenital deformity.” (DE I:32). Dr. Owen noted his first encounter with Mr. Schoner for treatment following a laceration to his columella. (DE I:32). Mr. Schoner then developed periorbital swelling around his eye. (DE I:32). Dr. Owen outlined Mr. Schoner’s treatment. (DE I:32-33). He notes the CT scan and subsequent endoscopic examination by Dr. Barnes in Cedar Rapids. (DE I:33). Dr. Owen agreed with Dr. Barnes that the wire did not cause Mr. Schoner’s periorbital swelling. (DE I:33). He also opined that there was not a causal relationship between Mr. Schoner’s injury and the periorbital swelling. (DE I:33). Dr. Owen stated, “[t]hese seem to be separated temporally as well as anatomically as far as I am able to tell.” (DE I:33). Given Mr. Schoner’s history, Dr. Owen concluded that Mr. Schoner’s hardware needed to be removed, and that the “most likely explanation” for the hardware’s exposure was “that it shifted during his work-related injury.” (DE I:33). Dr. Owen acknowledges the possibility that the hardware shifted over time, but dismisses this to conclude that “the most likely explanation” is that the hardware “shifted with impact.” (DE I:33). Dr. Owen related the subsequent nasal surgery to the work injury, while the “lip repair was related in part to the laceration he sustained, [and] in part due to a congenital cleft lip deformity.” (DE I:33).

Dr. Owen continued by noting, “Mr. Schoner has a very complex medical picture. In addition to his anatomic issues, his medical picture appears to be complicated by a

possible rheumatologic condition that is still in the process of being fully characterized." (DE I:34). Dr. Owen opined that "…it is reasonable to conclude that a wire used to repair his congenital deformities was exposed during the blow he sustained during his injury while at work." (DE I:34). The location of the wire, according to Dr. Owen was odd, which lead him to believe that the wire was likely displaced by a traumatic event "such as his work injury." (DE I:34). Dr. Owen found that the issue in Mr. Schoner's lip was caused by a granuloma, because no fluid was aspirated during an attempted drainage procedure. (DE I:34). According to Dr. Owen, formation of a granuloma is "not a common occurrence," especially when it is over a month after a surgery. (DE I:34). Dr. Owen also noted that Mr. Schoner had "heroically thick nasal skin," which he noted is usually seen in people with a history of rosacea or "other chronic skin inflammation," and is not common among people of Mr. Schoner's age. (DE I:34). Dr. Owen opined that Mr. Schoner's physiology reacted "unusually" to surgery by forming a granuloma. (DE I:34).

The doctor felt that the more recent dermatologic and rheumatologic findings pointed toward an "undiagnosed abnormality" being the cause of Mr. Schoner's eye swelling. (DE I:34). Specifically, Dr. Owen opined that Mr. Schoner's tissue "is prone to inflammation and swelling for some reason." (DE I:34). Dr. Owen could not definitively relate the eye swelling and related issues to Mr. Schoner's work injury, and opined that it seemed unlikely to be related thereto. (DE I:34).

Dr. Owen concluded that Mr. Schoner had been "adequately repaired following his nasal injury," and that he required no further medical care. (DE I:34). According to Dr. Owen, Mr. Schoner required no permanent restrictions from his nasal surgery, and had no permanent impairment. (DE I:34).

Mr. Schoner saw the optometrist again on August 30, 2022, for complaints of pain in his eye sockets. (JE 3:87-89). His left eye hurt more than his right. (JE 3:87). The optometrist diagnosed Mr. Schoner with tension headaches and referred him to a neurologist. (JE 3:89).

On October 19, 2022, the claimant saw Todd Ajax, M.D., at Washington County Hospital and Clinics, based upon a referral from Dr. Mangrich-Hickman. (JE 13:204-209). Mr. Schoner complained of weakness, poor coordination, and numbness that have progressively worsened since getting hurt at work. (JE 13:204). Mr. Schoner complained of neuropathy from his feet to the mid-calf, and hands to the elbows. (JE 13:204). He also complained of a loss of balance, falls, a decrease of depth perception, sudden emesis, an involuntary tremor in his bilateral feet and legs, frequent headaches, and a number of loose bowel movements. (JE 13:204). He could not have an MRI due to the metal present in his nose. (JE 13:204). Dr. Ajax observed that Mr. Schoner walked with an antalgic narrow based gait with feet inversion due to pain in his feet. (JE 13:206). Dr. Ajax diagnosed the claimant with headache, imbalance, tremor, and neuropathy. (JE 13:206). He recommended labs and imaging to the cervical spine and head. (JE 13:206). Dr. Ajax could not relate the neurologic symptoms to the work incident. (JE 13:207).

Dr. Ajax saw Mr. Schoner on November 3, 2022, as a follow-up to a CT scan. (JE 13:210-212). Mr. Schoner tolerated increases in medications well. (JE 13:210). Dr. Ajax did not detect any metal on the head CT, and otherwise found it unremarkable. (JE 13:211). Dr. Ajax noted no new diagnoses. (JE 13:211-212).

On November 9, 2022, Dr. Carter replied to a check-box letter from defendants' counsel. (DE J:36-37). Dr. Carter checked "no" to the question: "[c]an you causally relate the eye swelling, pain, and redness (for which you saw Mr. Schoner) to the 6/02/20 work incident?" (DE J:36). He also checked "no" to the question: [i]f not, would any eye treatment starting in July 2020 be causally related to the 6/02/20 work-injury claim?" (DE J:36).

At the arrangement of claimant's counsel, Mr. Schoner reported for an IME with Robin Sassman, M.D., M.P.H., M.B.A., M.C.I.M.E., C.L.C.P. on January 17, 2023. (CE 1:1-15). Dr. Sassman is board certified in occupational and environmental medicine, and is a master certified independent medical examiner. (CE 1:1). Following the examination, Dr. Sassman issued an IME report on February 17, 2023. (CE 1:1). Dr. Sassman indicated that the evaluation lasted about one hour and fifteen minutes. (CE 1:1). Mr. Schoner recollected his IME with Dr. Sassman. (Testimony). He noted that Dr. Sassman spent two hours with him for an interview, physical examination, and a speech examination. (Testimony). There is no explanation for these differences in the length of the examination.

Dr. Sassman began the report by outlining a number of medical records. (CE 1:1-9). Mr. Schoner also outlined the alleged work injury and immediate symptoms for Dr. Sassman. (CE 1:3). At the time of the IME, Mr. Schoner complained of numbness in his upper lip from the top of the lip to the nose. (CE 1:10). This altered sensation caused issues with eating for Mr. Schoner. (CE 1:10). He also claimed to Dr. Sassman that his voice was "raspier" and that he spoke differently insofar as he had to deliberately enunciate or pronounce his words. (CE 1:10). He also noted that his facial expressions were different since he could not move his upper lip as well. (CE 1:10). He claimed to have been prescribed glasses since the injury and noted blurriness. (CE 1:10). He continued by claiming he had headaches in the back of his neck that started nine months after his surgery. (CE 1:10).

Dr. Sassman performed a physical examination on Mr. Schoner. (CE 1:11-12). Dr. Sassman began the examination by assessing Mr. Schoner's speaking ability as noted on page 263 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. Dr. Sassman asked Mr. Schoner to read a paragraph. (CE 1:11). Mr. Schoner exhibited difficulty enunciating words beginning with "F", "P", or "S", such as fourteen, fish, and shore. (CE 1:11). Dr. Sassman also observed that Mr. Schoner had limited movement in his upper lip when speaking. (CE 1:11). Mr. Schoner exhibited numbness across the upper lip "from the marionette lines on each side of the nose to the top lip…" along with numbness over the roof of his mouth. (CE 1:11). Dr. Sassman performed a vision screening and found 20/30 OSS, 20/30 OD, and 20/30 OU; however, Mr. Schoner admitted to using prescription glasses on a daily basis and that he simply forgot to bring

them to the appointment. (CE 1:11). Dr. Sassman observed no issues with sensation or range of motion in the cervical or lumbar spine. (CE 1:11-12). Based upon the results of the examination, Dr. Sassman diagnosed the claimant as follows:

1. Facial trauma resulting in cellulitis and the dislodging of previous surgical hardware from prior cleft palate surgeries.

    a. Status post cleft lip scar revision, open septorhinoplasty, dermal fat graft to the upper lip and intra-nasal hardware removal on 12/17/2020 by Scott Owen, MD with residual numbness in the distribution of the facial nerve with speech deficits.

(CE 1:12).

Dr. Sassman then undertook answering a litany of questions seemingly posed by claimant's counsel. (CE 1:12-14). Dr. Sassman noted that Mr. Schoner did not experience issues with numbness above his top lip or his speech until after his June 2, 2020 work injury. (CE 1:12-13). Dr. Sassman also noted that the June 2, 2020 injury resulted in cellulitis of the face and dislodging of surgical hardware. (CE 1:13). Dr. Sassman further concluded that the injury necessitated the December 17, 2020 hardware removal surgery, and caused the claimant's residual symptoms. (CE 1:13). Dr. Sassman stated, "[g]iven that the mechanism is consistent with the injury, it is my opinion that the injury that occurred on 06/02/2020 was a direct and causal factor of the diagnosis stated above." (CE 1:13).

The doctor placed Mr. Schoner as a Class 1 impairment based upon Table 11-5 on page 256 of the Guides. (CE 1:13). This provided the claimant with a five percent whole person impairment due to the facial scarring and numbness above his mouth. (CE 1:13). Dr. Sassman turned to Table 13-12 on page 332 of the Guides to assign a four percent whole person impairment due to the claimant's numbness and weakness of a branch of the facial nerve affecting speech, eating, and facial expressions. (CE 1:13). Dr. Sassman then used the Combined Values Chart on page 604 of the Guides to combine the five percent and four percent ratings to arrive at a nine percent whole person impairment that the doctor attributed to the June 2, 2020 injury. (CE 1:13).

Dr. Sassman placed Mr. Schoner at maximum medical improvement ("MMI") as of December 17, 2021, as this was one year after his surgery. (CE 1:14). The doctor opined the claimant would require no further medical treatment. (CE 1:13). Dr. Sassman provided a restriction for the claimant in that he should not use a respirator, as there was a danger of it not fitting properly due to the numbness above Mr. Schoner's lip. (CE 1:14).

On March 7, 2023, Dr. Pospisil responded to a letter from defendants' counsel. (DE K:38). She deferred to the opinions of Dr. Owen and Dr. Carter, as she never physically treated the claimant. (DE K:38).

Mr. Schoner never returned to work with Apache after his admission to the hospital on July 13, 2020. (Testimony). He testified that he was never offered light-duty work. (Testimony). During a time, he was paid long-term disability benefits while off work. (Testimony). Eventually, he exhausted his FMLA and was released from his employment as of January 7, 2021. (Testimony). The claimant opined that he would no longer be able to successfully work at any of his previous jobs due to the physical demands imposed upon him by the work. (Testimony).

At the time of the hearing, Mr. Schoner testified that he still experienced numbness or non-movement of his upper lip. (Testimony). The numbness caused him to not feel food in his mouth and altered the way he eats. (Testimony). He also noted difficulty with hot foods burning his mouth due to the numbness. (Testimony). Mr. Schoner testified that he had speech issues, especially with certain letters. (Testimony).

Mr. Schoner confirmed that he was released to return to work as of the time of the hearing. (Testimony). He contradicted earlier testimony insofar as he opined that he would be able to work, despite the lack of an offer to return to work from Apache. (Testimony). At the time of his deposition, he was not looking for work due to some personal health conditions. (DE L). He was not actively looking for work at the time of the hearing, as he intended to move to Alaska with his wife. (Testimony). Once he moved to Alaska, he planned to look for a job. (Testimony).

CONCLUSIONS OF LAW

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

Arising Out Of and In the Course Of…

While the defendants have asserted an affirmative defense, the first question to examine is whether the claimant's alleged injuries arose out of, and in the course of, his employment with Apache.

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, that the employee's injuries arose out of, and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place and circumstances of the injury. Id. An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held that an injury occurs "in the course of employment" when:

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

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

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 medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

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

workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

The claimant alleges that injuries to three distinct areas of his body arose out of, and in the course of, his employment with Apache. Specifically, the claimant alleges an injury to his face, nose, and eye.

The question of whether the claimant suffered an injury to the various parts of his body, as noted above, is complicated by several of the claimant's pre-existing health conditions. Mr. Schoner was born with a cleft palate. In order to treat this condition, he underwent 14 different surgeries through his teenage years. These surgeries left him with permanent metal hardware in his head, and scarring to his upper lip. Mr. Schoner also was diagnosed with lupus, and was exploring potential other rheumatologic diagnoses at the time of the hearing. Regarding his lupus, Mr. Schoner testified in his deposition that it caused him to be "allergic to the sun." Mr. Schoner also had a rare formation of a granuloma in his finger, and appeared to be predisposed to development of the same, as will be discussed further herein. Finally, Mr. Schoner developed an unexplained MRSA infection in his knee. The infection required debridement and antibiotic treatment.

The claimant was injured at work on June 2, 2020 when a spool of metal banding came out of a crimper and struck him in the base of the nose on the columella. The columella is best described as the small area of skin between an individual's nostrils. (JE 14). The metal banding cut his columella and caused bleeding initially. The metal banding never struck him in the eye. Once the bleeding was controlled, Mr. Schoner returned to work. He initially felt throbbing, and as though he was punched in the face. He made no further complaints about issues with his face until July 8, 2020, when he mentioned tenderness to his supervisor.

On July 10, 2020, Mr. Schoner went to an optometrist with complaints of redness and swelling to his left eye. He told the optometrist that he had the same symptoms around his right eye the week prior, but that they dissipated. The optometrist diagnosed the claimant with pre-septal cellulitis and provided him with Bactrim.

Mr. Schoner then reported to an emergency room for his complaints of swelling and redness. The provider noted moderate edema around the left eye, and prescribed antibiotics. The provider also ordered a CT scan, which confirmed the diagnosis of cellulitis. Based upon these issues, the doctor excused Mr. Schoner from work on July 13, 2020, and July 14, 2020. Mr. Schoner followed up his emergency room visit with a visit to his primary care physician, Dr. Soenen on July 15, 2020. Dr. Soenen confirmed and concurred with previous diagnoses of preseptal orbital cellulitis with "some brawny erythema and swelling of the upper and lower eyelids." She prescribed additional antibiotics and provided a work excuse for another week.

Once Apache found out about Mr. Schoner's eye issues, they sent him to Work Well, where Dr. Hanawalt diagnosed Mr. Schoner with facial trauma with a healing laceration to the nose, and periorbital cellulitis. Dr. Hanawalt recommended an ENT

consult and restricted the claimant to sedentary or clerical work in a clean environment through July 17, 2020.

Following this visit, Mr. Schoner continued follow up visits for his cellulitis around his left eye. This included a hospital admission for placement of a PICC line. Following some improvement with use of PICC line administered antibiotics, Mr. Schoner had another CT scan on July 27, 2020. The CT scan showed evidence of left periorbital, preseptal, and alar cellulitis. This is the first time that a scan also showed a "two pronged metallic density foreign body in the anterior inferior nasal cavity along the anterior maxilla and nasal septum."

An ENT then recommended expansion of antibiotic therapy, and took a culture swab of the claimant's left nasal cavity. The same ENT observed that the claimant had a scar from his work injury running from the columella to the "dome of the nose." Mr. Schoner also treated with an infection disease specialist, who recommended continued antibiotic therapy for the diagnosis of preseptal cellulitis. Following these visits, Dr. Soenen kept Mr. Schoner off work again based upon the claimant's request.

By late August, Mr. Schoner followed up with an optometrist who noted a stable ocular examination. However, the claimant continued to have orbital cellulitis. To continue treatment for his eye issues, Mr. Schoner went to Dr. Carter at the University of Iowa. Dr. Carter noted Mr. Schoner to have mild erythema with point tenderness along the inferior and lateral superior rim of the left eye, and diagnosed him with preseptal cellulitis of the left eye.

Mr. Schoner then had some follow-up visits for the metal in his nose. During a visit with Dr. Hanly on September 4, 2020, he noted no nasal pain, drainage, or sinonasal symptoms. Dr. Hanly performed a nasal endoscopy and could not find the metal in the claimant's nose. She speculated that this was likely crusted over with mucus. The doctor opined that it was possible that the metal was disrupted by the work incident, and returned the claimant to Dr. Owen's care.

Dr. Carter saw the claimant again in mid-September and opined that the claimant's injury to his left eye "could be a result of a forceful injury affecting facial innervation or lymphatic drainage, which would require time to heal." Of note, it is not immediately apparent whether Dr. Carter was aware of the claimant's lupus diagnosis.

On September 22, 2020, Dr. Owen again examined Mr. Schoner. Dr. Owen reviewed previous CT and imaging results, and performed a nasal endoscopy on the claimant. The endoscopy showed a septal perforation with an exposed wire on the right side. Dr. Owen opined that the metal should not be present, and that it was "likely presented" by the June 2, 2020, work incident. Dr. Owen recommended surgical intervention and included a revision for Mr. Schoner's previously present cleft palate scarring. This was confirmed by a November 20, 2020 pre-surgical visit in which Dr. Owen discussed with Mr. Schoner removing the wire, along with an inferior turbinate reduction performed, and a revision of the pre-existing cleft palate scarring.

Dr. Owen performed the surgery on the claimant on December 17, 2020. He noted the procedure as a scar revision, cleft lip repair, hardware removal, and septorhinoplasty with costal or chonal cartilage. Mr. Schoner followed up with Dr. Owen after the surgery, and had several Kenalog injections. Dr. Owen also kept Mr. Schoner off work for some time. The surgery resolved Mr. Schoner's nasal complaints.

Mr. Schoner began complaining of lip pain and numbness following the surgery. Dr. Owen aspirated both sides of the upper lip on January 22, 2021, but found no fluid. Dr. Schwalje opined that the claimant had a lip seroma, and recommended that Mr. Schoner massage his upper lip. On January 29, 2021, Dr. Owen opined that Mr. Schoner needed no physical restrictions.

By April 27, 2021, Mr. Schoner told Dr. Owen that he was "very happy with the results" of the surgery and felt that he breathed better through his nose. During this appointment, he continued to complain of lip symptoms including a feeling of stiffness and immobility. Dr. Owen provided the claimant with another Kenalog injection and noted that Mr. Schoner appeared to have a granulomatous reaction in his upper lip. Dr. Owen discussed a potential revision for the upper lip scarring. Dr. Owen issued another letter excusing the claimant from work through July of 2021.

On or about May 25, 2022, Dr. Owen provided a letter in response to certain questions posed by the defendants. Dr. Owen opined that the exposed nasal wire did not cause Mr. Schoner's eye swelling. He further opined that Mr. Schoner's work injury did not cause his eye to swell, in stating "[t]hese seem to be separated temporally as well as anatomically as far as I am able to tell." Dr. Owen noted that the hardware removal was necessary, and that the most likely explanation was that the hardware or wire shifted during the work injury or impact. Dr. Owen thus related the nasal surgery to the work injury, while relating the lip repair to both the laceration suffered and the congenital cleft lip deformity. As to the claimant's ongoing lip issues, Dr. Owen concluded that Mr. Schoner had a unique physiology, which caused a granuloma to form in the upper lip. Dr. Owen indicated that this was a rare reaction to surgery. Dr. Owen pointed to certain dermatologic and rheumatologic finings as the "undiagnosed abnormality" that caused the eye swelling. Dr. Owen concluded his letter by opining that the claimant required no further medical care or permanent restrictions, and that the claimant had no permanent impairment from the nasal surgery.

Dr. Carter later responded to a check-box letter from defendants' counsel and indicated that the claimant's left eye swelling, pain, and redness, were not causally related to the June 2, 2020 work incident. He also indicated that any eye treatment starting in July of 2020 would not be related to the June 2, 2020 work incident.

Claimant's counsel arranged for an IME with Dr. Sassman. Dr. Sassman opined that the June 2, 2020 work injury caused the claimant's surgical hardware to become dislodged. She further opined that the injury resulted in cellulitis of the face. She continued by opining that the June 2, 2020 injury necessitated the December 17, 2020 surgery, and

thus caused the claimant's residual lip symptoms. She provided permanent impairment ratings, and opined that the claimant required no further medical treatment.

The claimant sustained an injury on June 2, 2020. It is undisputed from the medical records and testimony that metal banding struck Mr. Schoner in the face. Based upon the information in the record, it appears that the metal banding struck Mr. Schoner specifically on the nose. This caused a cut to the columella, or the piece of skin or flesh that divides the nostrils and connects to the face above the upper lip. This cut caused a small scar. The medical opinions of Dr. Owen and Dr. Sassman are consistent insofar as they agree that the blow from the metal banding appears to have dislodged some prior surgical hardware. There is no strong or convincing evidence that contradicts these medical opinions. Therefore, I find that the injury to the claimant's nose, including dislodging of the hardware, arose out of, and in the course of his employment with Apache.

The claimant urges that I find that his left eye issues arose out of, and in the course of his employment with Apache. He points to their occurrence, the argument that the banding struck the claimant in the face, and the report of Dr. Sassman in support of his argument. The defendants point to the opinions of treating physicians Dr. Owen and Dr. Carter. I find the opinions of Dr. Owen and Dr. Carter to be more persuasive than those of Dr. Sassman with regard to left eye swelling issues. Dr. Owen noted, most prominently, that the issues with the claimant's left eye were relatively distinct both temporally and anatomically from his nasal issues. Dr. Carter agreed with Dr. Owen in responding via a check-box letter. Additionally, the claimant's explanation that he has lupus, which caused him to break out in rashes and effectively be allergic to the sun, casts doubt on the possibility that left eye cellulitis arose out of, and in the course of his employment with Apache. Dr. Sassman opines that the left eye cellulitis was related to, or caused by, the work incident, but does not provide a persuasive explanation as to how she arrived at that opinion. Based upon the foregoing, I conclude that the claimant's left eye cellulitis and swelling issues, did not arise out of, and in the course of his employment with Apache.

The trickier issue here is whether the claimant's lip issues arose out of, and in the course of his employment with Apache, as a result of the June 2, 2020 work injury. Mr. Schoner has a lengthy history of congenital cleft palate. As a result of his cleft palate, he underwent upwards of 14 surgeries during his youth. The surgeries resulted in scarring to the claimant's upper lip. On several photos of the claimant's face included in the record attempting to show his left eye swelling, one can see scarring to the upper lip area.

The claimant testified that the metal banding hit him on the top of his lip. Ms. Appleby, who provided initial first aid to the claimant, recalled that the banding cut the flesh of the nose between Mr. Schoner's nostrils. This is an area known as the columella. During his emergency room visit on July 13, 2020, the provider observed a well healed scar in the area of the anterior inferior aspect of the nose, as well as the pre-existing cleft palate surgery scarring. The initial incident on June 2, 2020 did not damage Mr. Schoner's upper lip. However, I previously determined that the initial impact and incident on June 2, 2020 damaged the claimant's nose by dislodging a wire in the claimant's nose. As a result of this, Dr. Owen performed a surgery to remove part of the wire. As part of this surgical

procedure, Dr. Owen also performed a scar revision of the scar from the initial cut and performed a scar revision on the remaining cleft palate surgical scars. Dr. Owen opined that the surgery was related both to the laceration and to the congenital cleft lip scarring. Dr. Sassman opined that "[g]iven that the mechanism is consistent with the injury, it is [her] opinion that the injury that occurred on June 2, 2022 was a direct and casual factor…" of the claimant's lip issues.

I disagree with Dr. Sassman's assessment due to the evidence in the record. There is inadequate evidence in the record to support the claimant's contention that he was struck in the lip with the metal banding. For example, there are not photos or detailed descriptions of the size of the metal banding. The record does show that the claimant sustained a cut to the columella. The parties filed a joint exhibit, which showed that the columella is best described as the flesh between the nostrils. This is not part of the upper lip in the strictest interpretation.

However, the question becomes whether the claimant's lip issues arose out of and in the course of his employment. The claimant suffered a scar to his columella. He also suffered a dislodging of the hardware in his nasal cavity. As such, Dr. Owen undertook a surgery to reduce the scarring and remove what he could of the hardware. The evidence supports that the cut to the columella and the dislodged hardware were caused by the June 2, 2020, work incident. The columella is in close proximity to the upper lip. It is reasonable to conclude that, in order to repair scarring of that area, a surgeon may need to operate in close proximity, or even directly on what one would consider their upper lip. Therefore, I find that the evidence supports that the claimant's upper lip injury arose out of, and in the course of, his employment. However, this does not mean that the necessity to repair the claimant's cleft palate scarring arose out of and in the course of his employment, as I find inadequate evidence to support this in the record.

Causation

The claimant alleges that the June 2, 2020, work injury was a cause of temporary disability, and permanent disability.

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 medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the

weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

Iowa employers take an employee subject to any active or dormant health problems, and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is "proximate" when it is a substantial factor, or even the primary or most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

I previously found that the claimant's left eye issues did not arise out of, or in the course of, his employment with Apache. Therefore, there is no need for me to discuss whether or not these issues were a cause of either temporary disability, and/or permanent disability.

Turning then to the claimant's nasal issues, I find that they were a cause of temporary disability. Multiple doctors took the claimant off of work at times due to his pending nasal surgery to remove dislodged hardware, and then after the completion of said surgery. The extent of that disability will be discussed in more detail in another section of this decision.

The claimant also alleges permanent disability. Dr. Owen indicated that the claimant recovered well from his hardware removal surgery. He concluded that Mr. Schoner sustained no permanent impairment as a result of the hardware removal surgery or other nose issues. Dr. Sassman opined that the dislodging of the surgical hardware, and its subsequent removal resulted in the claimant's residual symptoms. Based upon this, she opined that the claimant sustained a permanent disability due to ongoing numbness, weakness, and facial scarring.

Dr. Sassman's opinion is insufficiently detailed enough to provide the undersigned her reasoning as to how the nasal hardware removal itself caused issues to the upper lip, and therefore, permanent disability. I find the opinions of treating physician Dr. Owen to be more persuasive as to this issue. Therefore, I conclude that the nasal hardware removal and nasal issues were not a cause of permanent disability.

The claimant alleges that he suffers from numbness in his upper lip. He also testified that his upper lip does not move. The numbness in his upper lip causes him to

not feel food in his mouth, and alters the way that the he eats. He also testified that he had speech issues, especially with certain letters. Dr. Sassman explored this more during her evaluation of the claimant. She determined that the claimant's upper lip numbness and speech issues were caused by issues with the facial nerve that were residual symptoms from the hardware removal surgery.

On the other hand, Dr. Owen opined that the claimant had no permanent disability as a result of the hardware removal surgery.

As I noted above when discussing whether the lip injury arose out of, and in the course of his employment, Dr. Owen performed surgery for two issues that were caused by the June 2, 2020, work incident. Namely, the removal of the dislodged nasal hardware, and the revision or repair to a scar in the area of the columella. Dr. Owen also performed a scar revision surgery on the claimant's residual cleft palate scar tissue. As a result of the lip surgery, Mr. Schoner developed a granuloma in his upper lip. Dr. Owen's discussion of the formation of a granuloma does not differentiate between its formation in an area that would have been strictly related to the cleft palate scar revision or the columella scar revision. Dr. Owen simply notes that formation of a granuloma was an uncommon occurrence, and that Mr. Schoner previously suffered a similar formation due to a finger injury. There is no indication from Dr. Owen's records, or the records of any other treating physician that Mr. Schoner suffered an injury to his facial nerve.

The claimant points to the opinions of Dr. Sassman, who opined that the claimant suffered a permanent impairment due to the facial scarring and numbness above his mouth. She also opined that the claimant had permanent impairment due to numbness and weakness of a branch of the facial nerve affecting speech, eating, and facial expressions.

The claimant had surgery to his nose, and to repair a scar to his columella. Dr. Owen described the laceration resulting in the scarring to the columella as "significant." It is difficult from the photos provided in evidence, my observation of the claimant during the hearing, and the medical records, to determine where the scarring from the laceration to the columella began and where the scars from the claimant's previous cleft palate surgeries began when discussing the claimant's upper lip. As noted above, it is entirely reasonable that a surgery to repair scarring to the columella would result in operating on tissue in the area of the cleft palate scarring. However, as noted by Dr. Owen, and tacitly acknowledged by the claimant in his need to contemplate further scar repair surgery before agreeing to the same, the revision to the cleft palate scarring was elective and not related to the injury of June 2, 2020. There is not sufficient evidence to prove, by a preponderance of the evidence, that the work injury, and not the elective scar tissue repair caused the upper lip issues claimed by the claimant. Thus, the claimant did not prove that the June 2, 2020, work injury caused temporary or permanent disability due to his upper lip issues.

Temporary Disability

The claimant alleges that he was off work due to his left eye issues for a time. I previously determined that the eye issues did not arise out of, and in the course of, his employment with Apache. I also determined that the only injury for which the claimant proved entitlement to temporary disability benefits by a preponderance of the evidence was the issue with surgical hardware, and removal thereof.

As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. The appropriate type of benefits depends on whether or not the employee has a permanent disability. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012).

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury.

Iowa Code 85.33(1) provides:

> ...the employer shall pay to an employee for injury producing temporary total disability weekly compensation benefits, as provided in section 85.32, until the employee has returned to work or is medically capable of returning to employment substantially similar to the first employment in which the employee was engaged at the time of injury, whichever occurs first.

Temporary total disability benefits cease when the employee returns to work, or is medically capable of returning to substantially similar employment.

Iowa Code 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 first of the three items to occur ends a healing period. *See* Waldinger Corp. v. Mettler, 817 N.W.2d 1 (Iowa 2012); Evenson v. Winnebago Indus., 881 N.W.2d 360 (Iowa 2012); Crabtree v. Tri-City Elec. Co., File No. 5059572 (App., Mar. 20, 2020). 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). Compensation for permanent partial disability shall begin at the termination of the healing period. Id.

The claimant is entitled to temporary total disability benefits due to his nasal hardware removal surgery. Dr. Soenen kept Mr. Schoner off work from October 1, 2020,

until his scheduled surgery on December 19, 2020. Mr. Schoner had the surgery on December 17, 2020, and then saw Dr. Owen again on December 20, 2020, for a post-operative visit. Following the post-operative visit, Dr. Owen kept Mr. Schoner off work until February 1, 2021, and provided him with certain work restrictions. On January 29, 2021, Dr. Owen opined that the claimant required no physical restrictions, yet he provided the claimant with a note excusing him from work for another month. Dr. Schwalje provided a work excuse through May 2, 2021; however, this appears to have been for the claimant's lip issues. In early May of 2021, Dr. Owen excused Mr. Schoner from work until July 13, 2021, despite the claimant reporting being “very happy” with the results of the surgical procedure to his nose. Dr. Sassman opined, on the other hand, that the claimant did not achieve MMI until December 17, 2021, or one year following the surgical procedure.

Dr. Owen’s opinions on this issue are more convincing. While he indicated the claimant needed no work restrictions in late January of 2021, he continued to recommend that the claimant remain off work through July 13, 2021. It is unclear as to why Dr. Soenen took Mr. Schoner off work from October 1, 2020, through December 17, 2020. It appears that this was due to the claimant’s left eye issues. Therefore, I find that the claimant is entitled to temporary total disability benefits from December 17, 2020, through July 13, 2021.

Payment of Medical Expenses and Credit

The claimant requests payment for certain medical expenses incurred in Claimant’s Exhibit 8.

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. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 1975).

Pursuant to Iowa Code 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Claimant is entitled to an order of reimbursement if he/she has paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. *See* Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

In cases where the employer’s medical plan covers the medical expenses, claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, the defendants are ordered to make payments directly to the provider. *See* Krohn, 420 N.W.2d at 463. Where medical payments are made from a plan to which the employer did not contribute, the claimant is entitled to a direct payment. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 867-68 (Iowa 2008) (“We therefore hold

that the commissioner did not err in ordering direct payment to the claimant for past medical expenses paid through insurance coverage obtained by the claimant independent of any employer contribution."). *See also* Carl A. Nelson & Co. v. Sloan, 873 N.W.2d 552 (Iowa App. 2015)(Table) 2015 WL 7574232 15-0323.

The employee has the burden of proof to show medical charges are reasonable and necessary, and must produce evidence to that effect. Poindexter v. Grant's Carpet Service, I Iowa Industrial Commissioner Decisions, No. 1, at 195 (1984); McClellan v. Iowa S. Util., 91-92, IAWC, 266-272 (App. 1992).

The employee has the burden of proof in showing that treatment is related to the injury. Auxier v. Woodard State Hospital School, 266 N.W.2d 139 (Iowa 1978); Watson v. Hanes Border Company, No. 1 Industrial Comm'r report 356, 358 (1980) (claimant failed to prove medical charges were related to the injury where medical records contained nothing related to that injury). *See also* Bass v. Vieth Construction Corp., File No 5044430 (App. May 27, 2016) (Claimant failed to prove causal connection between injury and claimed medical expenses); Becirevic v Trinity Health, File No. 5063498 (Arb. December 28, 2018) (Claimant failed to recover on unsupported medical bills).

Nothing in Iowa Code section 85.27 prohibits an injured employee from selecting his or her own medical care at his or her own expense following an injury. Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 205 (Iowa 2010). In order to recover the reasonable expenses of the care, the employee must still prove by a preponderance of the evidence that unauthorized care was reasonable and beneficial. Id. The Court in Bell Bros. concluded that unauthorized medical care is beneficial if it provides a "more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id.

I previously found that the issues with the claimant's left eye did not arise out of, or in the course of, his employment with Apache. Therefore, the claimant is not entitled to reimbursement for medical care pertaining to his left eye issues. I found the care provided by Dr. Owen to be reasonable. Therefore, I find that the claimant, the provider, or his health insurance should be reimbursed for the following dates of service:

September 4, 2020
September 22, 2020
December 16, 2020
December 17, 2020
January 22, 2021
January 29, 2021
April 27, 2021
July 13, 2021

Alternate Medical Care

The claimant indicated that they are seeking an order for alternate medical care pursuant to Iowa Code section 85.27. The claimant notes in a footnote to their post-hearing brief that, while no future treatment is recommended, they seek an order that the defendants are responsible for "any ongoing medical care…" including any necessary return visits to Dr. Owen.

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

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

Iowa Code 85.27(4).

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

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

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical

care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that care was unduly inconvenient for the claimant. Id. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," and injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id. Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgement of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision, June 17, 1986).

There is currently no care recommended. I cannot issue an order that requires the defendants provide any care no matter what it is. That would be inappropriate, and not allowed under the law. Additionally, the claimant notes that this would be for potential visits to Dr. Owen. (Emphasis added). However, the claimant is moving to Alaska. A visit to Dr. Owen would be quite a trip from his new home. As such, I decline to order alternate medical care.

Penalty

Iowa Code section 86.13(4) provides the basis for awarding penalties against an employer, and states:

a. If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.
b. The workers' compensation commissioner shall award benefits under this subsection if the commissioner finds both of the following facts:
   (1) The employee has demonstrated a denial, delay in payment, or termination of benefits.
   (2) The employer has failed to provide a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.
c. In order to be considered a reasonable or probable cause or excuse under paragraph "b", an excuse shall satisfy all of the following criteria:
   (1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.
   (2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.

(3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

If weekly compensation benefits are not fully paid when due, Iowa Code 86.13 requires that additional benefits be awarded unless the employer shows reasonable cause or excuse for the delay or denial. Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229 (Iowa 1996). Delay attributable to the time required to perform a reasonable investigation is not unreasonable. Kiesecker v. Webster City Meats, Inc., 528 N.W.2d 109 (Iowa 1995).

It is also not unreasonable to deny a claim when a good faith issue of law or fact makes the employer's liability fairly debatable. An issue of law is fairly debatable if viable arguments exist in favor of each party. Covia v. Robinson, 507 N.W.2d 411 (Iowa 1993). An issue of fact is fairly debatable if substantial evidence exists which would support a finding favorable to the employer. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001). An employer's bare assertion that a claim is fairly debatable is insufficient to avoid imposition of a penalty. The employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

If an employer fails to show reasonable cause or excuse for the delay or denial, the commissioner shall impose a penalty in an amount up to fifty percent of the amount unreasonably delayed or denied. Christensen v. Snap-On Tools Corp., 554 N.W.2d 254 (Iowa 1996). The factors to be considered in determining the amount of the penalty include: the length of the delay, the number of delays, the information available to the employer, and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238. For purposes of determining whether an employer has delayed in making payments, payments are considered "made" either (a) when the check addressed to a claimant is mailed, or (b) when the check is delivered personally to the claimant by the employer or its workers' compensation insurer. Robbennolt, 555 N.W.2d at 235-236; Kiesecker, 528 N.W.2d at 112).

Penalty is not imposed for delayed interest payments. Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 338 (Iowa 2008); Davidson v. Bruce, 593 N.W.2d 833, 840 (Iowa 1999).

Mr. Schoner was injured on June 2, 2020. He suffered a cut to the columella on his nose. He then did not have any treatment until July of 2020, when he complained of swelling to his left eye. He initially reported that he had swelling and redness to his right eye during the prior week. At that time, there was limited, to no, evidence that the claimant was struck on or about the eye.

Mr. Schoner then saw several physicians. By late July of 2020, only one physician even indicated that it was "plausible" that the trauma to the claimant's face, in combination

with his history of MRSA infection caused his periorbital cellulitis. At that time, a follow-up with an infectious disease doctor was recommended.

Then, on July 22, 2020, Gallagher Bassett, on behalf of Apache, issued a letter indicating that they completed their investigation. They told Mr. Schoner that they "found no medical evidence to support that your current condition is related to the work incident…". They advised the claimant of his right to file a claim with the Agency, and provided him with contact information for the Agency. Mr. Schoner continued treating on his own volition for his left eye issues. Eventually, testing done for treatment of this condition revealed a dislodged piece of surgical hardware from his previous cleft palate surgeries.

By late September of 2020, Dr. Owen examined the claimant for his complaints of exposed nasal hardware, and a significant laceration to his columella. Dr. Owen concluded during this visit that the metal should not be present and was likely presented due to the work incident on June 2, 2020. Dr. Owen also opined during this visit that the claimant would require surgery.

Of note, the defendants never paid the claimant any indemnity benefits. There is limited information in the record from the defendant or their insurer that supported their assertion of a denial on July 22, 2020. At the time of the denial, it was not fairly debatable whether claimant's eye condition, or eventual nasal hardware condition was caused by his June 2, 2020, work incident. Therefore, the denial was unreasonable. However, I found that the claimant's left eye injury did not arise out of, or in the course of, his employment with Apache. Therefore, no benefits would be owed to the claimant relating to his left eye injury. The claimant was eventually found to have dislodged surgical hardware in his nasal cavity. This was discovered on July 27, 2020, just five days after the denial. The defendants did not re-evaluate their position following this discovery. At that time, there was not substantial evidence indicating that this condition was unrelated to the claimant's work injury.

The denial beyond July 27, 2020, was unreasonable. I found that the claimant was owed indemnity benefits from December 17, 2020, through July 13, 2021. This is 29.571 weeks of benefits. The defendants' continued denial during this time is unreasonable, and was not fairly debatable. Imposition of a penalty of 25 percent of these benefits at the stipulated weekly rate of five hundred fourteen and 10/100 dollars ($514.10) is reasonable. This equates to three thousand eight hundred and 61/100 dollars ($3,800.61) (0.25 x 29.571 = 7.39275; 7.39275 x $514.10 = $3,800.61) in penalty benefits.

Reimbursement for IME pursuant to Iowa Code section 85.39

Iowa Code 85.39(2) states:

> If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon

> delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination.
>
> . . .
>
> An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

Iowa Code section 85.39(2).

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. *See* Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). An opinion finding a lack of causation is tantamount to a zero percent impairment rating. Kern v. Fenchel, Doster & Buck, P.L.C., 2021 WL 3890603 (Iowa App. 2021).

Dr. Owen provided opinions as to permanency related to the claimant's nose, and opined that the claimant had no permanent restrictions or permanent impairment due to his nasal surgery. I found that the claimant's lip issues were not a cause of permanent disability. I also found that the claimant's eye issues did not arise out of, and in the course of his employment with Apache. Dr. Carter issued opinions as to the causation of the claimant's eye issues.

Subsequent to these opinions, Dr. Sassman performed an IME and issued a report. The claimant seeks reimbursement for the costs of Dr. Sassman's report. Dr. Sassman diagnosed the claimant with facial trauma resulting in cellulitis and the dislodging of previous surgical hardware from prior cleft palate surgeries, along with residual numbness in the distribution of the facial nerve with speech deficits.

While the eye and lip were determined to be not compensable, the same cannot be said for the nose. Therefore, the reasonable costs of the IME should be divided into thirds, and the claimant should be reimbursed for one-third of the reasonable fee. However, the claimant has not proven that Dr. Sassman's fee of six thousand eight hundred forty-five and 00/100 dollars ($6,845.00) is reasonable. The costs include five hundred fifty-five and 00/100 ($555.00) dollars of the report that pertain to the "SIF," which is presumably the Second Injury Fund. The Second Injury Fund is no longer a party to the

case. It would not be reasonable to require the defendants to reimburse the claimant for these costs. After subtracting five hundred fifty-five and 00/100 dollars ($555.00) from the six thousand eight hundred forty-five and 00/100 dollars ($6,845.00), we arrive at six thousand two hundred ninety and 00/100 dollars ($6,290.00). I then divide this by three and arrive at two thousand ninety-six and 67/100 dollars ($2,096.67). For a single injury IME, this is a reasonable fee.

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 7. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code section 86.40. 876 Iowa Administrative Code 4.33(6) provides:

> [c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

Pursuant to the holding in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), only the report of an IME physician, and not the examination itself, can be taxed as a cost according to 876 IAC 4.33(6). The Iowa Supreme Court reasoned, "a physician's report becomes a cost incurred in a hearing because it is used as evidence in lieu of the doctor's testimony," while "[t]he underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." Id. (noting additionally that "[i]n the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition"). The commissioner has found this rationale applicable to expenses incurred by vocational experts. *See* Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App. Dec., December 17, 2018); Voshell v. Compass Group, USA, Inc., File No. 5056857 (App. Dec., September 27, 2019).

Based upon my discretion, and for the reasons included above, I decline to award the claimant the remainder of the costs for Dr. Sassman's IME.

Based upon my discretion, I also award the claimant one hundred and 30/100 dollars ($100.30) for the filing fee.

ORDER

THEREFORE, IT IS ORDERED:

That the claimant's eye injury did not arise out of, and in the course of his employment with Apache.

That the claimant's nasal injury and upper lip injury arose out of, and in the course of his employment with Apache.

That the claimant's nasal injury was a cause of temporary disability during a period of recovery.

That the claimant's lip issues were not a cause of temporary disability during a period of recovery.

That the claimant's nasal injury was not a cause of permanent disability.

That the claimant was off work and is entitled to healing period benefits from December 17, 2020, to July 13, 2021, which equates to 29.571 weeks of healing period benefits at rate of five hundred fourteen and 10/100 dollars ($514.10) per week.

That the defendants shall reimburse medical expenses as noted.

That the claimant is denied alternate care.

That the defendants shall reimburse the claimant two thousand ninety-six and 67/100 dollars ($2,096.67) for Dr. Sassman's IME.

That the defendants shall reimburse the claimant one hundred and 30/100 dollars ($100.30) for costs.

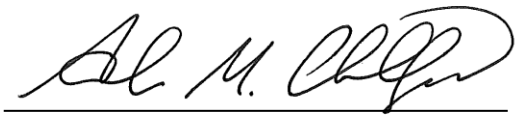
That the defendants are entitled to credit as stipulated.

That the defendants shall pay the claimant three thousand eight hundred and 61/100 dollars ($3,800.61) in penalty benefits.

That the defendants shall pay accrued weekly benefits in a lump sum together with interest. All interest on past due weekly compensation benefits shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. *See* Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

That the defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to 876 Iowa Administrative Code 3.1(2) and 876 Iowa Administrative Code 11.7.

Signed and filed this 15th day of August, 2023.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Dillon Besser (via WCES)

Aaron Oliver (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, 10A) 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.