

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WAYNE RICHARDSON,

Claimant,

vs.

HOLLAND,

Employer,
Self-Insured,
Defendant.

File No. 5068417

ARBITRATION DECISION

Head Notes: 1108.50, 1402.40, 1402.60,
1803, 2501, 2601.10, 2907

STATEMENT OF THE CASE

Wayne Richardson, claimant, filed a petition in arbitration seeking workers' compensation benefits from Holland, self-insured employer as defendant. Hearing was held on November 2, 2020. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via video means, using CourtCall. Accordingly, this case proceeded to a live video hearing via CourtCall with all parties and the court reporter appearing remotely. The hearing proceeded without significant difficulties.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

Wayne Richardson and Sherry Richardson were the only witnesses to testify live at trial. The evidentiary record also includes joint exhibits JE1-JE6, claimant's exhibits 1-5, and defendant's exhibits A-M. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on December 4, 2020, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. The amount of permanent partial disability benefits that claimant is entitled to receive.
2. Whether claimant is entitled to additional medical care.
3. Whether claimant is entitled to medical mileage.
4. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Wayne Richardson, sustained a work-related injury on January 11, 2019. Mr. Richardson has been an over-the-road truck driver for Holland for over twenty-one years. He also worked on the dock where he switched trailers, lifted heavy items, and drove forklifts. At the time of the injury, he was driving a heavy load out of Minneapolis. He hit a very rough spot on Highway 218 in Iowa. He hit a dip pretty hard causing his air seat to go up and slam into the floorboard. He experienced pain in his low back with radiating pain across the back and down his left leg. Mr. Richardson reported the injury when he returned to St. Louis. (Testimony)

On January 15, 2019, Mr. Richardson went to Motion Orthopaedics where he saw Donald Bassman, M.D. He was diagnosed with an acute traumatic lumbar strain, degenerative disc disease, and facet degenerative arthritis of the lumbar spine. He was kept off of work for three weeks. Dr. Bassman recommended physical therapy which began on February 4, 2019. (JE2, pp. 3-9; JE3)

Mr. Richardson underwent an MRI on March 11, 2019. The MRI revealed multilevel spondylosis and stenosis with protrusions at T12-L1, L3-4, L4-5, and L5-S1. Dr. Bassman made a referral to an orthopaedic spine surgeon. (JE4, pp. 47-48; JE2, p. 12)

Daniel L. Kitchens, M.D. saw Mr. Richardson on April 24, 2019. He reported continued low back pain to his left buttock and left leg. Dr. Kitchens noted that Mr. Richardson presented with the diagnosis of multiple-level disc protrusions and lumbar stenosis at L3-L4, L4-L5, and L5-S1. He also presented with symptoms of a left S1 radiculopathy. He recommended continued conservative measures, including pain management treatments. He kept Mr. Richardson off work. He prescribed tramadol and methocarbamol. He was to return in approximately one month. (JE4, pp. 49-52)

Mr. Richardson returned to Dr. Kitchens on May 22, 2019. He had received 2 injections by Dr. Zhu and his symptoms had improved significantly. He was able to stand and walk without much difficulty. He denied pain into his legs or feet. Dr.

Kitchens felt Mr. Richardson was progressing satisfactorily. He was to return to work on May 28, 2019 without restrictions. (JE4, pp. 56-58)

On June 19, 2019, Dr. Kitchens saw Mr. Richardson for the return of pain in his low back with pain radiating to his left buttock and left leg to his calf. He also reported a new onset of pain radiating into his right thigh to his knee. He has more pain with prolonged sitting. He was driving, but has pain at the end of his workday. In the evenings he takes tramadol and Flexeril. Overall, his pain has not improved since the June onset. Dr. Kitchens recommended L3-L4, L4-L5, and L5-S1 decompressive laminectomy and facetectomies for neural foraminal decompression and removal of the disc protrusions. Dr. Kitchens released him to return to work without restrictions until the time of surgery. (JE4, pp. 61-63)

Dr. Kitchens performed L3-L4, L4-L5, and L5-S1 decompressive laminectomy, wide facetectomies for neuroforaminal decompression, discectomy, and posterior lumbar interbody fusions on July 22, 2019. (JE6, pp. 114-115)

Mr. Richardson returned to Dr. Kitchens on July 31, 2019. His numbness had improved since surgery, but he continued to have numbness in his left ankle and right leg. At this appointment he was given a bone growth stimulator. He was also to begin physical therapy. Overall, Dr. Kitchens felt Mr. Richardson was progressing satisfactorily. (JE4, pp. 64-66)

Mr. Richardson continued to follow-up with Dr. Kitchens. On September 5, 2019, Dr. Kitchens released Mr. Richardson to light duty work of no lifting over 20 pounds. (JE4, pp. 68-70)

On October 3, 2019, Dr. Kitchens changed the work restrictions to no lifting over 40 pounds. Mr. Richardson advised Dr. Kitchens that he needed to lift 70 pounds from waist to shoulder and 50 pounds from floor to waist in order to return to work. (JE4, pp. 71-74)

Dr. Kitchens released Mr. Richardson to return to work without restrictions as of November 4, 2019. He was to continue using his bone growth stimulator and conservative measures. Overall, his pain had improved. However, Mr. Richardson continued to experience pain across his low back and numbness into his right foot and occasional tingling into his left foot. (JE4, pp. 75-78)

On December 4, 2019, Dr. Kitchens placed him at maximum medical improvement for the January 11, 2019 work injury. Mr. Richardson was released from care without any restrictions on his activities. (JE4, pp. 79-81) Dr. Kitchens stated that Mr. Richardson has "a partial permanent disability of 7% related to the January 11, 2019, work incident and the need for lumbar spine surgery." Dr. Kitchens does not state how he arrived at his impairment rating. It is unknown whether he utilized the AMA Guides to the Evaluation of Permanent Impairment. If he did utilize the Guides, it is

unknown if he utilized the Fifth Edition or the Sixth Edition or even what section of methods he utilized. (JE4, p. 81)

Dr. Kitchens had a teleconference health visit with Mr. Richardson on March 26, 2020. Mr. Richardson reported increased discomfort in his lower back and into his thighs. He has nearly constant pain, including days that he is not working. He still has numbness into his right foot and leg. He is working 10 to 11 hours a day, five days a week. He drives a shorter bed wheel-based truck without the sleeper compartment. Dr. Kitchens recommended additional workup to include x-rays of the lumbar spine. He was to follow-up in four weeks with x-rays. Mr. Richardson was allowed to continue working without restrictions. (JE4, p. 82)

Mr. Richardson saw Dr. Kitchens on April 30, 2020. He reported that since he talked with Dr. Kitchens on March 26, 2020, he had been experiencing more discomfort across his back and into both thighs with some numbness, tingling, and pain into the soles of both feet. He also has continued numbness and tingling into his right lower extremity. He is only able to sleep a few hours at a time. He also reported increased discomfort in his lower back and into both thighs when he lies down. He rates his pain as 8 to 9/10. Dr. Kitchens reviewed x-rays and saw no evidence of hardware failure. Dr. Kitchens saw no indicated treatment for the work injury. He noted Mr. Richardson had a progression of symptoms related to his lumbar degenerative disc disease. Mr. Richardson also has a condition of morbid obesity that also contributes to his now chronic lower back pain. Dr. Kitchens stated Mr. Richardson had been placed at MMI and released him from his care. He recommended Mr. Richardson discuss his chronic back pain with his primary care physician. He released Mr. Richardson to return to work without restrictions. (JE4, pp. 86-88)

On May 25, 2020, Mr. Richardson went to the emergency room at Missouri Baptist due to pain and swelling in his right leg, right knee, and calf. (JE6, pp. 124-128)

At the request of his attorney, Mr. Richardson saw Sunil Bansal, M.D. for an independent medical examination (IME). Dr. Bansal issued his IME report on September 29, 2020. (Cl. Ex. 1, pp. 6-19) Mr. Richardson reported continued low back pain. His pain increases when he lifts 35-pound bales of hay and when he is weed-eating his yard. Mr. Richardson returned to driving a truck, but developed back pain radiating down both his legs. His right leg is worse and his pain radiates down into his foot and toes. He still has pain in his left leg, with numbness when he lies down in bed. Mr. Richardson has to sit to sleep and only sleeps three to four hours per night. He is able to sit for one hour in his chair, and he reported he is able to drive for two hours before he needs to stop and walk around. He has pain with bending forward. Dr. Bansal diagnosed Mr. Richardson with aggravation of lumbar spondylosis with lumbar disc herniations at L3-L4, L4-L5, and L5-S1. Utilizing the AMA Guides to Permanent Impairment, Fifth Edition, specifically Table 15-3, Dr. Bansal assigned 22 percent whole person impairment as the result of the work injury. Dr. Bansal restricted Mr. Richardson to no lifting greater than 35 pounds occasionally, or 20 pounds frequently. No frequent

bending or twisting. No prolonged sitting greater than one hour at a time. Dr. Bansal stated:

[i]t appears that he does not even have a solid fusion. Over the long term he is especially at risk for adjacent segment disease where the adjacent nonfused segment has additional stress placed on it from the instrumentation. Bending itself increases disc pressure 400%, and that task combined with any mechanical loading does not appear promising over the long term for Mr. Richardson.”

(CL. Ex. 1, p. 18)

On October 15, 2020, Dr. Kitchens authored a missive to the defendant regarding Dr. Bansal’s IME report. Dr. Kitchens reiterated that Mr. Richardson remained at MMI for the work accident which resulted in the need for lumbar surgery which was successful. He stood behind his prior opinions regarding permanent impairment and restrictions. Dr. Kitchens opined that Mr. Richardson’s current ongoing symptoms were not related to the work accident of January 11, 2019. Dr. Kitchens disagreed with Dr. Bansal’s opinion that additional treatment is necessary due to complications of the 2019 surgery. Dr. Kitchens also disagreed with the statement that “[i]t appears that he does not even have a solid fusion.” (JE4, p. 91) Dr. Kitchens said there is no evidence to support that opinion. Dr. Kitchens further believed there is no evidence to support Dr. Bansal’s speculation that Mr. Richardson is at risk for adjacent segment disease due to instrumentation. Dr. Kitchens opined that Mr. Richardson is at risk for adjacent segment disease due to his degenerative disc disease, morbid obesity, and preexisting factors. According to Dr. Kitchens, fusion is not a causative factor. He stated, “[a]djoint segment disease may be correlated with degenerative back conditions and the presence of fusion; however, that does not make the surgery a causative factor. Correlation does not equal causation.” (JE4, p. 92) Further, Dr. Kitchens stated that Dr. Bansal’s opinion that bending increases disc pressure 400% is not supported by medical literature. Dr. Kitchens stated this was especially true because most bending occurs at the hip joints and not at the spine itself. (JE4, pp. 91-92)

Claimant contends his permanent partial disability benefits should commence on November 4, 2019. In their post-hearing brief, defendant agrees that November 4, 2019 is the appropriate date. (Defendant’s brief, p. 10) The parties agree that the permanent partial disability benefits shall commence on November 4, 2019. I find that the permanent partial disability benefits shall commence on November 4, 2019.

The parties have stipulated that he returned to work with the same employer and is receiving earnings that are the same or greater than at the time of the injury and compensation should be based on Mr. Richardson’s permanent impairment resulting from his injury. In this case, Dr. Kitchens and Dr. Bansal have both offered their opinions regarding permanent impairment.

There is no dispute that Mr. Richardson sustained permanent impairment as the result of the work injury. The dispute centers around which impairment rating should be relied on in this case. Dr. Kitchens stated that Mr. Richardson “has a partial permanent disability of 7% related to the January 11, 2019, work incident and the need for lumbar spine surgery.” (JE4, p. 81) Unfortunately, Dr. Kitchens provides no insight into how he determined Mr. Richardson had permanent disability of 7 percent. He makes no mention of the AMA Guides to the Evaluation of Permanent Impairment. It is unknown whether he did or did not utilize The Guides. If he did utilize The Guides, it is not known what edition of The Guides he utilized. The most current edition of The Guides is the Sixth Edition. In Iowa, the Workers’ Compensation Commissioner has adopted the Fifth Edition of The Guides. Dr. Kitchens practices in Missouri. Furthermore, it is not known what methodology or basis Dr. Kitchens used to reach 7 percent. Therefore, I find that there is not sufficient evidence to determine that Dr. Kitchens utilized the Fifth Edition of the AMA Guides.

Dr. Bansal assigned 22 percent whole person impairment as the result of the work injury. In his report he explicitly stated that he utilized the AMA Guides to Permanent Impairment, Fifth Edition, specifically Table 15-3. I find that Dr. Bansal utilized the Fifth Edition of the Guides to assign an impairment rating to Mr. Richardson.

We now turn to the issue of alternate medical care. Mr. Richardson is seeking ongoing medical treatment. He argues that since his surgery, he has experienced ongoing and consistent complaints and symptoms related to the work injury and subsequent surgery. Dr. Bansal is concerned that there is evidence of nonunion as there appears to be lucency around pedicle screws. Mr. Richardson contends alternate care should be granted, allowing him to seek appropriate care to further evaluate his back condition. Mr. Richardson does not believe that care should be with Dr. Kitchens because he has already expressed his opinions denying the need for care.

Defendant argues that Dr. Bansal’s opinion is flawed. Dr. Bansal’s opinion that claimant has a potential nonunion as the result of the fusion surgery is not based on the most recent x-ray taken on April 4, 2020, which indicates there was no evidence of hardware loosening or displacement. (JE4, pp. 84-85) Dr. Kitchens disagrees with Dr. Bansal’s opinion that Mr. Richardson did not have a solid fusion. According to Dr. Kitchens, the surgery he performed on Mr. Richardson was successful and Mr. Richardson does not require any further treatment as the result of the work injury. (JE4, pp. 91-92) Defendant has relied on the opinions of Dr. Kitchens and has not authorized any additional care.

At the hearing Mr. Richardson testified, and the evidentiary records support, that he has experienced ongoing low back pain since the work injury. Following the injury, Mr. Richardson returned to driving in November of 2019. Since that time, he experiences pain in his back while driving for Holland. He also experiences pain in his leg when he sits. He testified that he still experiences a lot of pain in his back, numbness in his leg if he sits in the truck for a period of time, stabbing pain in his leg

and foot, and his left foot continues to be numb. He has been consistently experiencing these symptoms since he returned to work. Mr. Richardson's wife, Sherry Richardson, also testified at hearing. Mrs. Richardson testified about her husband's ongoing symptoms. She also testified about her observations of his physical abilities both before and after the work injury. (Testimony)

I find the opinions of Dr. Bansal regarding Mr. Richardson's ongoing symptoms are more consistent with the record as a whole. I find Dr. Bansal's opinions to be persuasive and to carry greater weight than those of Dr. Kitchens. I find that his ongoing symptoms are related to the work injury.

Mr. Richardson has also made a claim for medical mileage. He provided his round-trip medical mileage for the time period of December 10, 2018 through December 4, 2019 in the amount of \$2,205.66. (Cl. Ex. 4, pp. 30-33) He submitted another mileage reimbursement request for the time period of March 26, 2020 through August 7, 2020 in the amount of \$717.36. (Cl. Ex. 4, p. 35) His total mileage reimbursement request amounted to \$2,923.02. The medical mileage logs that he submitted demonstrate the date, provider, mileage incurred, and the applicable mileage rate. I find that all of the entries are related to treatment for his work injury. On October 5, 2020, defendant advised claimant that the adjuster would pay what she believed was owed to Mr. Richardson. (Cl. Ex. 4, p. 34) One mileage reimbursement payment was issued to Mr. Richardson on October 7, 2020. This payment covered the time period of January 15, 2019 through December 4, 2019 and was in the amount of \$1,939.44. Defendant does not offer evidence of why the remaining mileage was not or should not be their responsibility.

Defendant argues that they should not have to pay the mileage expense for claimant's IME with Dr. Bansal due to the distance he traveled and because Dr. Bansal did not provide any treatment. Defendant contends Mr. Richardson "presumably passed at-least a handful of more qualified lumbar spine experts in his own state." (Def. Br., p. 14) However, under Iowa law, defendants are responsible for the reasonable and necessary transportation expenses for a section 85.39 examination. Defendant does not cite any legal authority for their position. I find defendant is responsible for the remaining outstanding medical mileage submitted by the claimant.

CONCLUSIONS OF LAW

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

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

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(u) or as an unscheduled injury pursuant to the provisions of section 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in section 85.34(2)(a)-(u) are applied. Lauhoff Grain Co. v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943). Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

I conclude that claimant established by the preponderance of the evidence that his injury extends into the body as a whole and should be compensated pursuant to Iowa Code section 85.34(2)(v).

Iowa Code section 85.34(2)(v) provides:

In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs 'a' through 'u' hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred. A determination of the reduction in the employee's earning capacity caused by the disability shall

take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury. If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity.

Iowa Code section 85.34(2)(v).

In this case, the parties stipulated that Mr. Richardson returned to work with the same employer and is receiving earnings that are the same or greater than at the time of the injury and compensation should be based on Mr. Richardson's permanent impairment resulting from his injury. As such, I conclude that his current recovery is limited to his permanent functional impairment rating resulting from the injury. Iowa Code section 85.34(2)(v).

Iowa Code section 85.34(x) permanent disabilities states:

In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment *shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association*, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or *agency expertise shall not be utilized in determining loss or percentage of permanent impairment* pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity.

Iowa Code section 85.34 (x) (emphasis added).

This agency has adopted The Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association for determining the extent of loss or percentage of impairment for permanent partial disabilities. See 876 IAC 2.4.

Based on the above findings of fact, I conclude that there is not sufficient evidence to find that Dr. Kitchens utilized The Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association. Defendant argues that there are flaws with Dr. Bansal's impairment rating. In 2017 the Iowa Code was amended and provides that the percentage of permanent impairment shall be determined solely by utilizing The Guides, agency expertise shall not be utilized. I conclude that Dr. Bansal utilized The Guides to the Evaluation of Permanent

Impairment, Fifth Edition, published by the American Medical Association to assign impairment to Mr. Richardson. Thus, I must rely solely on Dr. Bansal's impairment rating because he is the only physician in this case to render an impairment rating pursuant to the Fifth Edition of The Guides. Therefore, I accepted the impairment rating offered by Dr. Bansal and found that claimant proved a 22 percent permanent functional impairment of the whole person as a result of the January 11, 2019 work injury.

This finding entitles claimant to an award equivalent to 22 percent of the whole person. Pursuant to Iowa Code section 85.34(2)(v), unscheduled injuries are compensated based upon a 500-week schedule. Twenty-two percent of 500 weeks is 110 weeks. Therefore, I conclude that claimant is currently entitled to an award of 110 weeks of permanent partial disability benefits as a result of the January 11, 2019 work injury.

The next issue that must be addressed is the appropriate commencement date for the permanent partial disability benefits. The parties have agreed and I found that the permanent partial disability benefits should commence on November 4, 2019.

We now turn to the issue of future medical treatment. Claimant is seeking additional treatment for his ongoing symptoms. Defendant has relied on the opinions of Dr. Kitchens and has denied that his ongoing symptoms are related to the work injury. I conclude that defendant has denied liability for the ongoing symptoms and has offered no care.

Iowa Code section 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.

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27; Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner, 78 (Review-Reopening 1975).

Based on the above findings of fact, I find the opinions of Dr. Bansal regarding Mr. Richardson's ongoing symptoms to be more persuasive and give his opinions greater weight. I find that his ongoing symptoms are related to the

work injury. Mr. Richardson is entitled to additional treatment for his work injury. Defendant shall authorize reasonable and necessary medical treatment for Mr. Richardson. This care should not be with Dr. Kitchens who has already expressed that Mr. Richardson does not require any additional treatment for the work injury.

Next, we turn to the issue of medical mileage. Iowa Code section 85.27 requires the employer to provide reasonably necessary transportation expenses for work-related medical appointments. Iowa Code section 85.39 requires the employer to provide reasonably necessary transportation expenses for an IME. Based on the above findings of fact, I conclude that claimant is entitled to reimbursement of the medical mileage that he has submitted to the carrier. His total mileage request was in the amount of \$2,923.02. Prior to the hearing defendants paid \$1,939.44. Thus, defendant is ordered to pay the remaining \$983.58.

Finally, claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the Iowa Workers' Compensation Commissioner or at the discretion of the deputy hearing the case. 876 IAC 4.33.

I find that claimant was generally successful in this case and exercise my discretion to assess costs against the defendant. Claimant is seeking costs in the amount of \$200.00 for two filing fees in this case. I find that assessment of one filing fee is appropriate under 876 IAC 4.33(7). Defendant is assessed costs totaling one hundred and no/100 dollars (\$100.00).

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of nine hundred ninety-five and 06/100 dollars (\$995.06).

Defendant shall pay one hundred ten (110) weeks of permanent partial disability benefits commencing on the stipulated commencement date of November 4, 2019.

Defendant shall be entitled to credit for all weekly benefits paid to date.

Defendant shall pay accrued weekly benefits in a lump sum together with interest 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.

Defendant shall provide medical treatment pursuant to Iowa Code 85.27, as set forth above.

Defendant shall reimburse claimant's medical mileage as set forth above.

Defendant shall reimburse claimant costs as set forth above.

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1 (2) and 876 IAC 11.7.

Signed and filed this 12th day of May, 2021.

A handwritten signature in dark ink, appearing to read 'E. Pals', is written over a horizontal line.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)

Stephen Murray (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.