BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JESUS HECTOR CHAPARRO,	:	
	:	File No. 5064211.01
Claimant,	:	
	:	
vs.	:	ARBITRATION DECISION
	:	
TYSON FOODS, INC.,	:	
	:	
Employer,	:	
Self-Insured,	:	Head Note Nos.: 1402.40, 1701, 1801,
Defendant.	:	2501, 2502, 2701, 2907

STATEMENT OF THE CASE

Jesus Hector Chaparro, claimant, filed a petition for arbitration against Tyson Foods, Inc., as the self-insured employer. This case came before the undersigned for an arbitration hearing on June 28, 2021.

Pursuant to an order from the Iowa Workers' Compensation Commissioner, this case was heard via videoconference using CourtCall. Claimant appeared remotely via CourtCall, as did all other participants, including the court reporter.

The parties filed a hearing report prior to the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 5, Claimant's Exhibits 1 through 8 and 10, as well as Defendants Exhibits A through J. All exhibits were received without objection. The record was suspended at the conclusion of the arbitration hearing pending receipt of short-term disability payment information from defendants. Defendants timely filed this information as Defendants' Exhibit J. However, defendants filed exhibits A through J at the commencement of hearing. The short-term disability documentation is received as "Defendants' Exhibit K" even though marked inaccurately by defendants when filed.

Claimant testified on his own behalf. No other witnesses testified live at the hearing. The testimonial record closed at the conclusion of the arbitration hearing and the evidentiary record closed completely once defense Exhibit K was filed.

However, counsel for the parties requested an opportunity to file post-hearing briefs. This request was granted and both parties filed briefs simultaneously on August 20, 2021. The case was considered fully submitted to the undersigned on that date.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant is entitled to temporary total disability, or healing period, benefits from March 5, 2018 through April 29, 2018 and/or from September 14, 2018 through December 7, 2018.

2. Whether the work injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent partial disability benefits.

3. The proper commencement date for permanent partial disability benefits.

4. Whether claimant is entitled to payment or reimbursement for past medical expenses.

5. Whether any claim for past medical expenses is barred because claimant sought unauthorized medical care.

6. Whether claimant is entitled to reimbursement of his independent medical evaluation fees.

7. Whether claimant is entitled to alternate medical care into the future.

8. Whether defendant is entitled to a credit for short-term disability benefits and, if so, in what amount.

9. Whether costs should be assessed against either party and, if so, in what amount.

FINDINGS OF FACT

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

Jesus Hector Chaparro, claimant, is a 73-year-old man, who lives in Storm Lake, Iowa. Mr. Chaparro was born in Mexico and came to the United States in 1984. He initially lived in Los Angeles, California and moved to Iowa in 1994. Mr. Chaparro attended four years of schooling in Mexico, but does not possess a high school diploma or equivalent. He understands a little English but is not able to fluently speak, read, or write in English. Claimant testified that he can speak, read, and write in Spanish.

Mr. Chaparro worked in a metal processing job when he moved to California. He left that position and worked for himself selling silver in Los Angeles for a time before moving to Iowa. After moving to Iowa, claimant worked in a pork processing plant building large boxes for the meat.

Claimant subsequently went to work for Sara Lee in a turkey processing plant. He was responsible for hanging the turkey and then he would cut it in half. Eventually, Sara Lee sold this plant to Hillshire, which subsequently sold the plant to Tyson.

Claimant continued working at the turkey processing facility through 2018. He testified that the positions at Tyson were "graded" into "A" grade jobs, which were easiest positions in the plant, "B" grade jobs, which were heavier, and "C" grade jobs, which were the heaviest work in the plant. Mr. Chaparro worked in "B" grade jobs during his entire employment at Tyson.

Claimant worked his regularly scheduled shift at the Tyson turkey processing facility on December 7, 2017. He completed his shift on that day and was walking to his car to leave the plant when he was struck by a co-worker's vehicle. Claimant described the incident as occurring in the employee parking lot at Tyson. He explained that the co-worker turned a corner and struck claimant on the right leg. The impact threw claimant's body onto the hood of the co-worker's car and subsequently onto the ground.

Mr. Chaparro testified that he experienced pain in his right leg, right shoulder, and neck immediately after the accident. Claimant was able to drive himself home after the incident, but testified that he went to the hospital shortly thereafter because of the pain in his right side, particularly in his ribs and right shoulder.

The emergency room records from December 7, 2017 note that an interpreter was available to assist with the medical professionals' interactions with claimant. (Joint Exhibit 1, pages 1-2, 8) The emergency room records detail "an injury to the chest. There is an injury to the right shoulder. There is an injury to the right thigh and right lower leg." (Joint Ex. 1, p. 2) However, the emergency room records from the date of injury do not discuss or detail any complaints about neck symptoms or complaints of injury. In fact, the emergency room records on that date document a neck examination occurred with "Normal range of motion. Neck supple. No spinous process tenderness and no muscular tenderness present." (Joint Ex. 1, p. 4) The emergency room personnel referred claimant for follow-up with his personal physician, W. Scott Wulfekuhler, M.D. (Joint Ex. 1, p. 6)

Claimant presented for evaluation by Dr. Wulfekuhler on December 13, 2017. Dr. Wulfekuhler documented complaints of "pain from shoulder to leg on right side." (Joint Ex. 2, p. 33) Dr. Wulfekuhler did document that claimant had tightness in the trapezius muscle after the accident that was "causing him some discomfort over the superior aspect of his shoulder and neck." (Joint Ex. 2, p. 34) He also documented that "Flexion of the neck with rotation to the right reproduces pain in the trapezius on the right." (Joint Ex. 2, p. 35) However, Dr. Wulfekuhler did not diagnose a specific injury to the neck at his initial evaluation.

On December 22, 2017, claimant followed-up at Dr. Wulfekuhler's office. However, on that date, David M. Crippin, M.D., evaluated claimant. Dr. Crippin documented that claimant was "doing fair overall." He noted that claimant was "wishing to go back to work soon." Claimant reported that "all is resolved ex[cept] for minimal

lower r[ight] leg tenderness." (Joint Ex. 2, p. 40) Dr. Crippin appears to have performed an evaluation of the neck without finding abnormalities on December 22, 2017. (Joint Ex. 2, p. 41)

Claimant returns to Dr. Wulfekuhler's office and is evaluated by Dr. Wulfekuhler on February 5, 2018. At that appointment, Dr. Wulfekuhler documents complaints of back pain and pain in the right shoulder radiating down the right arm. The physician documented or described the pain reported as being in the thoracic area of the spine. (Joint Ex. 2, pp. 44-45) In fact, Dr. Wulfekuhler documented, "No significant pain in his anterior or posterior neck nor at the insertion of the trapezius into the occipital scalp." (Joint Ex. 2, p. 46) The physician documented limited flexion and rotation of the neck, but attributed to arthritis. (Joint Ex. 2, p. 46)

On February 20, 2018, Dr. Wulfekuhler imposed work restrictions on claimant, limiting him to 15 pound occasional lifting, pushing, pulling, and carrying and no overhead reaching or work. (Joint Ex. 2, p. 51) Claimant confirmed during hearing that these were the first work restrictions placed on him after the work injury in December 2017. (Tr., p. 37)

On March 8, 2018, Dr. Wulfekuhler again evaluated claimant. He documented right shoulder pain with range of motion and tenderness over the trapezius muscle distribution of the upper back and posterior shoulders. (Joint Ex. 2, pp. 54-55) However, Dr. Wulfekuhler also documented that claimant had "No significant tenderness over the cervical or thoracic spine" in March 2018. (Joint Ex. 2, p. 55) Nevertheless, Dr. Wulfekuhler recommended claimant "remain off work for a month and then recheck." (Joint Ex. 2, p. 56) In a separate report on March 8, 2018, Dr. Wulfekuhler clarified that claimant "should remain out of work until 4/2/18" as a result of the accident at work. (Joint Ex. 2, p. 57) He also referred claimant for an orthopaedic evaluation. (Joint Ex. 2, p. 56)

On March 23, 2018, claimant sought evaluation with an orthopaedic surgeon, Daniel J. McGuire, M.D. Dr. McGuire references pain in the thoracic area, but found no objective basis for surgical intervention. He recommended claimant continue off work. (Joint Ex. 3, p. 91) On April 4, 2018, Dr. McGuire continued the recommendation that claimant remain off work for an additional three months. (Joint Ex. 3, p. 93)

Claimant returned to Dr. McGuire on June 18, 2018. Dr. McGuire documented that claimant reported his injury was work-related at this visit. Dr. McGuire was unaware this was a work-related injury and requested a copy of claimant's job description. However, he opined that it "is highly unlikely at his age that he will be able to return to his former job." (Joint Ex. 3, p. 94)

Defendant then scheduled claimant to be evaluated by another orthopaedic spine surgeon, Wade K. Jensen, M.D. Dr. Jensen evaluated claimant on July 30, 2018. Dr. Jensen again documented the claimant's symptoms as located within the thoracic spine. Dr. Jensen documented evaluation of claimant's neck but did not document any symptoms in the neck. (Joint Ex. 4, p. 97) He recommended an MRI of the thoracic

spine, but noted, "There is a very small potential chance this could be coming from his cervical spine, there is a chance it is referred pain from the lower cervical discs resulting in upper thoracic back pain and bilateral radiating shoulder pain." (Joint Ex. 4, p. 97)

Upon re-evaluating claimant on August 20, 2018, Dr. Jensen again noted symptoms in the thoracic spine. He recommended against any surgical intervention and did not order further diagnostic testing of the cervical or thoracic spine. Instead, he declared claimant at maximum medical improvement (MMI) for his injuries and recommended a functional capacity evaluation (FCE) to help assess permanent restrictions. (Joint Ex. 4, pp. 99-100)

Claimant submitted to the recommended FCE on August 30, 2018. (Defendants' Ex. H) Neal Wachholtz, DPT, administered the FCE and opined that it returned invalid results because claimant's findings were "not consistent with anatomical and physiological principles." (Defendants' Ex. H, p. 1) The physical therapist indicated that "Strength of upper extremity and lower extremity musculature cannot be assessed accurately secondary to findings of cogwheeling and giveaway weakness during manual muscle testing." (Defendants' Ex. H, p. 2) The therapist opined that claimant's material handling abilities "could not be assessed accurately secondary to limited effort." (Defendants' Ex. H, p. 2) Given claimants' inconsistencies and lack of effort during the FCE, the physical therapist opined, "It may be appropriate to consider release without restrictions in the absence of medical contraindications." (Defendants' Ex. H, p. 3)

On September 6, 2018, Dr. Jensen opined that claimant had not sustained any permanent impairment from his December 7, 2017 injury. Dr. Jensen noted the FCE was invalid and recommended against imposition of any permanent work restrictions. (Joint Ex. 4, p. 103) Claimant was released from care at that time, though claimant was apparently permitted to return as needed (or "prn") if further care was needed. (Joint Ex. 4, p. 102)

Claimant obtained an independent medical evaluation performed by Robin Sassman, M.D. on August 14, 2019. In her evaluation, Dr. Sassman documented that claimant complained of pain going down his right arm and down his mid-back. She also documented complaints of numbness in claimant's right arm and hand. (Claimant's Ex. 7, p. 52) Dr. Sassman further documented that claimant was "tender to palpitation over the cervical spinous processes and over the trapezius musculature bilaterally, greater on the right than left." (Claimant's Ex. 7, p. 54) She also documented a positive Spurling's test on the right and decreased ranges of motion in the neck, again with mention of radiculopathy into the right arm with decreased sensation in the C7 dermatome. (Claimant's Ex. 7, p. 54)

Considering all of Mr. Chaparro's injuries and conditions, Dr. Sassman diagnosed claimant with (1) cervical pain with radicular symptoms; (2) thoracic spine pain; and (3) right-sided rib pain. She opined that claimant also experienced a right lower extremity contusion but declared that injury to be "resolved." (Claimant's Ex. 7, p. 55)

Dr. Sassman opined that claimant's cervical and thoracic injuries and symptoms were causally related to the injury at Tyson. She opined that claimant was not at MMI at the time of her evaluation and recommended a cervical spine MRI. (Claimant's Ex. 7, p. 56. She opined that, if claimant did not obtain additional treatment, he obtained MMI on December 7, 2018.

Dr. Sassman further opined that claimant sustained a 15 percent permanent impairment of the whole person as a result of his cervical spine injury, an additional 8 percent permanent impairment of the whole person as a result of his thoracic spine injury. She opined that claimant sustained no permanent impairment as a result of the rib pain he experienced and did not offer any impairment for claimant's lower extremity injuries or shoulder. She opined that claimant's lower back symptoms were not causally related to the work injury. (Claimant's Ex. 7, p. 57) Dr. Sassman further opined that claimant requires permanent work restrictions that include lifting, pushing, pulling and carrying no more than 10 pounds occasionally, no lifting, pushing, pulling, or carrying above shoulder height or with arms extended. She also recommended against use of vibratory or power tools. (Claimant's Ex. 7, p. 57)

The cervical MRI recommended by Dr. Sassman was requested by claimant's counsel and ordered through Dr. Wulfekuhler, claimant's personal physician. (Joint Ex. 2, p. 80) The MRI occurred on September 30, 2019. The MRI demonstrated multilevel degenerative disc disease, as was previously suggested by Dr. Wulfekuhler. It also demonstrated foraminal stenosis and multiple levels, as well as disc herniation of C7-T1, which the radiologist opined was acute in nature. (Joint Ex. 1, p. 32)

Following receipt of the cervical MRI, claimant sought evaluation with a neurosurgeon of his own choosing, Ric Jensen, M.D. (not to be confused with the previous evaluating surgeon, Wade K., Jensen, M.D.). Dr. Ric Jensen evaluated claimant on March 26, 2020. He identified potential concerns with claimant's right shoulder pathology and recommended an MRI of the right shoulder. However, upon his examination and review of the cervical MRI obtained by claimant, Dr. Ric Jensen opined:

> I am maintaining a conservative approach relative to his upper thoracic kyphosis and lower cervical degenerative spondylosis condition. At this time, Jesus does not harbor a focal radiculopathy in either of his upper extremities. Further, his overall level of paracervical pain is not considered to be severe or intractable at this juncture.

(Joint Ex. 5, p. 106)

Interestingly, Dr. Ric Jensen's physical examination found no radiculopathy and contradicts Dr. Sassman's physical findings in this respect. Dr. Ric Jensen's findings and recommendations focus more on the right shoulder than the neck or thoracic spine. Dr. Sassman recommended nothing further for the right shoulder and offered no diagnosis or impairment for the right shoulder.

Claimant also obtained a functional capacity evaluation, performed by Marlon Gasner, DPT, on February 7, 2020. The physical therapist performing that FCE opined that the testing was valid and that claimant was capable of performing in the light category of physical demand. (Claimant's Ex. 8, p. 66) Claimant's FCE demonstrated the ability to lift up to 29 pounds from floor to waist and 19 pounds from waist to shoulder. The FCE recommended other limitations such as occasional stooping, occasional kneeing, occasional crouching, occasional crawling, all of which may be related to claimant's low back, lower extremities, and may not directly relate to claimant's alleged neck and/or thoracic spine injuries. Nevertheless, the documented abilities in claimant's requested FCE demonstrate abilities above the restrictions offered by Dr. Sassman and suggest that her restrictions and opinions are too cautious and limiting. (Claimant's Ex. 8)

Considering all of the medical opinions and evidence, I find that Mr. Chaparro achieved maximum medical improvement when released to return on an as needed basis by Dr. Wade Jensen on August 20, 2018. After that date, claimant did not seek ongoing, invasive, or even beneficial treatment. Essentially, treatment of his back ended at that time and he achieved MMI on August 20, 2018. While Dr. Sassman opined that claimant was not at MMI or that MMI should be in December 2018 if no further treatment was pursued, I do not find that opinion to be persuasive because claimant really did not pursue additional treatment after August 20, 2018.

With respect to his claim of injury to the right leg and right rib area, claimant has not proven he sustained any permanent injuries to those areas of his body. While both were injured and he experienced symptoms on his right leg and ribs, he did not establish those injuries were permanent in nature. He has no permanent impairment ratings for those body parts and none of the restrictions imposed were attributed to his right leg or ribs injuries.

Mr. Chaparro asserts permanent injuries to his thoracic spine and cervical spine as a result of the work incident. He produced the opinions of Dr. Sassman, which establish permanent injury, permanent impairment, and the need for permanent restrictions related to the thoracic and cervical spines. By contrast, defendants offer the opinion of Dr. Wade Jensen, suggesting claimant does not require permanent restrictions and did not sustain permanent impairment.

Frankly, I am not entirely comfortable with the opinions of Dr. Sassman or Dr. Wade Jensen in this case. Dr. Sassman does not explain why claimant did not report neck symptoms initially at the emergency room after this incident. The December 22, 2017 record from Dr. Crippin suggesting claimant's symptoms had resolved approximately two weeks after the incident does not produce confidence in Dr. Sassman's opinion that claimant sustained a permanent injury to the neck.

Dr. Sassman does not explain why the cervical MRI demonstrates an acute disc herniation when the MRI was performed approximately 21 months after the alleged injury. Again, the MRI findings of an acute injury lessen my confidence in Dr. Sassman's opinions. Finally, Dr. Sassman's physical examination records radiculopathy into

claimant's right arm. The subsequent evaluation by Dr. Wade Jensen, an orthopaedic spine surgeon, finds no radiculopathy. Again, this lessens my confidence in the findings and opinions offered by Dr. Sassman.

Yet, I also have hesitation with Dr. Wade Jensen's opinions. As noted, his physical findings are contrary to Dr. Sassman's radiculopathy findings. Dr. Wade Jensen also notes that the injury could be to the cervical spine. Yet, he orders only a thoracic MRI. When the thoracic MRI does not demonstrate significant pathology, Dr. Jensen essentially releases claimant from his care instead of pursuing and investigating his previous hunch that the injury could be to the cervical spine. Then, when an MRI of the cervical spine is performed after Dr. Jensen's release from care, it demonstrates a disc herniation. This certainly damages Dr. Wade Jensen's credibility and makes me question his full duty release and opinions pertaining to permanent impairment.

Other physicians were involved in this case. Claimant's personal physician, Dr. Wulfekuhler noted arthritis in claimant's neck, which was confirmed by MRI later. The mention of arthritis or degenerative disc disease suggests that the neck symptoms were due to more long-standing issues than an acute injury at work. However, there is no evidence in this record that claimant had neck symptoms or treatment prior to this injury in December 2017.

Dr. McGuire, an orthopaedic spine surgeon, evaluated claimant. He found nothing surgical but also suggested that claimant would require permanent limitations and perhaps be unable to return to his prior work. Dr. McGuire's assessment and opinions suggest that claimant did sustain a permanent injury to his thoracic spine.

Dr. Ric Jensen performed an evaluation of claimant. However, his assessment focused more on claimant's right shoulder than on either his neck or thoracic spine. Dr. Ric Jensen's focus away from the spine tends to suggest that the assessments made by Dr. Wade Jensen were perhaps accurate and that there is perhaps an alternate, though not yet identified or proven, diagnosis and cause of claimant's symptoms. Claimant has not followed-up or produced evidence of additional treatment or opinions pertaining to the cause of his symptoms being either the cervical spine, thoracic spine, or right shoulder since Dr. Ric Jensen's evaluation in March 2020.

Ultimately, I do not find the opinions of Dr. Sassman to be convincing or credible on the issue of claimant's thoracic and cervical spine. Dr. Wade Jensen subsequently contradicted her examination findings. Her diagnoses and assessments were challenged and the focus of further treatment recommendations was moved to the right shoulder by another spine surgeon, Dr. Ric Jensen.

While I do not have full confidence in the opinions offered by Dr. Wade Jensen because claimant continued to express symptoms, I ultimately accept Dr. Wade Jensen's opinions as the most credible in this evidentiary record. I find that claimant has not proven a permanent injury to the thoracic or cervical spine. Accepting Dr. Wade Jensen's opinions that there is no permanent impairment and no permanent work

restrictions, I find that claimant failed to carry his burden of proof to establish that he sustained permanent disability as a result of the December 7, 2017 incident at Tyson.

Mr. Chaparro seeks award of temporary disability benefits from March 5, 2018 through April 29, 2018 and from September 14, 2018 through December 7, 2018. Work restrictions were first imposed taking claimant off work on March 8, 2018. (Joint Ex. 2, p. 56) Defendants' post-hearing brief does not challenge entitlement of temporary disability benefits from March 8, 2018 through April 29, 2018. Instead, the employer argues that claimant was paid short-term disability benefits during this period of time and that its credit for such benefits satisfies any potential award of benefits. I find that claimant established and defendants do not challenge that claimant was not working, was not yet at MMI, and was not capable of substantially similar employment between March 8, 2018 and April 29, 2018.

Having accepted Dr. Wade Jensen's opinions as the most credible, I find that clamant achieved MMI and was released from care on August 20, 2018. Dr. Wade Jensen imposed no work restrictions and I accepted this opinion. Therefore, I find that claimant was capable of performing substantially similar employment between September 14, 2018 and December 7, 2018. I find that claimant failed to prove the requisite requirements of being off work, not yet at MMI, and incapable of performing substantially similar employment, to establish a claim for temporary disability benefits between September 14, 2018 and December 7, 2018.

Additionally and alternately, I find that defendants offered claimant suitable work after Dr. Wade Jensen's full-duty release to work in August 2018. Claimant declined that offer of work, urging it was too physical for him. Ultimately, claimant discontinued coming to work and was terminated by Tyson on September 21, 2018.[1] (Claimant's Ex. 2, p. 8)

Mr. Chaparro also requests alternate medical care through Dr. Ric Jensen. Claimant failed to demonstrate he gave notice of his dissatisfaction with care offered by defendants. Claimant failed to prove the care offered by defendants is unreasonable. In fact, claimant failed to request that defendants provide additional care once released by Dr. Wade Jensen. Having found that claimant failed to prove permanent injury or disability resulting from his injuries; I also find that claimant has not even proven the specific source of his asserted ongoing symptoms. Accordingly, I find that claimant failed to prove that additional care is necessarily required or that it would be related to the work injury of December 7, 2017.

Finally, claimant seeks award of past medical expenses. Claimant details the past medical expenses claimed in Claimant's Exhibit 10. I find that any expenses

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[1] An unemployment decision found that claimant voluntarily left his employment in September 2018 because he believed the employer was not following his work restrictions. Whether the employment termination is labeled as a voluntary quit by claimant or a termination or discharge by Tyson is not relevant or definitive of claimant's entitlement to temporary disability benefits in this worker's compensation proceeding so the potential distinction is not discussed further.

incurred or paid after August 20, 2018 were incurred without requesting further treatment from defendants. Defendants were neither given the opportunity to authorize and provide care nor did they deny further liability. Claimant simply failed to request additional care and sought care with providers of his choosing after August 20, 2018 without authorization or denial of liability from defendants. I find that claimant also failed to prove that the care obtained after August 20, 2018 was beneficial in the sense that it resulted in a better outcome for claimant than care that could have been provided through a physician or medical provider selected by defendants. Claimant simply did not permit any attempts at treatment with a provider selected by defendants and abandoned the statutory scheme for receipt of medical care after August 20, 2018.

For care provided before August 20, 2018, claimant identifies medical charges at Buena Vista Regional Medical Center that were paid by State Farm for dates of service in December 2017, February 2018, and March 2018. To the extent that State Farm ultimately rejects liability or is found not liable for those charges, defendant would be responsible for reimbursing State Farm and holding claimant harmless. However, these payments appear to be likely made by the insurance carrier for the co-worker that struck claimant and likely owed by that carrier. Unless and until liability and reimbursement is required for those payments, defendant should not owe those benefits.

A similar result appears for charges at UP Family Medicine for charges incurred in December 2017, February 2018 and March 2018. Once again, those charges were paid by State Farm and only need be reimbursed to the extent claimant is obligated to reimburse those, at which time defendant should hold claimant harmless. Otherwise, none of those charges should be attributed to or owed by defendant.

Claimant's itemization in Claimant's Exhibit 10 notes charges incurred at Iowa Spine Care for evaluation and treatment by Dr. McGuire. Claimant did not establish that he requested care with Dr. McGuire. It is not clear whether defendant would have provided medical care in June 2018, but it certainly redirected medical care as soon as it learned that claimant sought care with Dr. McGuire.

It does appear that defendants had essentially conceded or permitted medical care through Dr. Wulfekuhler prior to June 2018. Claimant's physician made a referral for orthopaedic consultation on March 14, 2018. No orthopaedic consultation was scheduled or directed by defendant. I find that defendant consented to care with Dr. Wulfekuhler and that his referral to an orthopaedic surgeon makes the care offered by Dr. McGuire reasonable and necessary. Defendant was offering no alternate care at that time.

All other medical care and charges listed in Claimant's Exhibit 10 are for medical care rendered after August 20, 2018. Claimant did not request additional care be provided by defendants after this date and all such care obtained after August 20, 2018 was unauthorized.

Defendant also requests a credit for short-term disability benefits paid to claimant. Defendant introduced Defendants' Exhibit J after the hearing in an effort to

establish the disputed cost. I find that during the weeks for which temporary disability benefits will be awarded in this case, defendant paid short-term disability benefits in three weeks. For the week of April 1, 2018 through April 7, 2018, defendant paid short-term disability benefits totaling $318.08. Claimant paid taxes for this period totaling $174.96 leaving a net benefit to claimant of $143.12. For the week of April 15, 2018 through April 21, 2018, defendant paid claimant short-term disability benefits totaling $397.60. Claimant paid taxes totaling $229.97 for these benefits. The total net benefit to claimant for this week was $167.63. For the week of April 22, 2018 through April 28, 2018, defendant paid short-term disability to claimant totaling $397.60. Claimant paid taxes for this period totaling $42.00, leaving a net benefit to claimant totaling $354.61. Claimant's payroll statements document that claimant did not pay a premium for the short-term disability benefit coverage. (Defendants' Ex. K)

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).

In this case, I found the opinions of Dr. Wade Jensen to be most convincing and credible. While there are certainly potential weaknesses in these opinions and competing evidence, I did not find the opinions of Dr. Sassman to be convincing and credible. Ultimately, I accepted the opinions of Dr. Jensen pertaining to permanent impairment and permanent restrictions to be most credible and convincing. In reaching this finding, I conclude that claimant failed to prove by a preponderance of the evidence that he sustained permanent disability as a result of the December 7, 2017 injury at Tyson. This conclusion renders any further findings and conclusions pertaining to the extent of permanent disability or the commencement date for permanent disability moot.

Mr. Chaparro asserted a claim for temporary disability, or healing period, benefits. Having concluded that claimant failed to prove permanent disability, I analyze claimant's claims as claims for temporary disability benefits pursuant to Iowa Code section 85.33(1). 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. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

In this case, claimant asserts a claim for healing period benefits from March 5, 2018 through April 29, 2018. However, the first restriction and time off work was proven to be March 8, 2018. Accordingly, I conclude that claimant's temporary disability benefit claim commences on March 8, 2018.

Claimant's asserted claim is not well-defined in his post-hearing brief why it continues until April 29, 2018 or why it terminates on that date. However, defendant does not really challenge entitlement to temporary disability benefits for this period of time. Instead, defendant contends that claimant received short-term disability benefits during this period of time and it is entitled to a credit for payment of these short-term disability benefits.

Acknowledging that claimant established he was off work, under medical restrictions, commencing on March 8, 2018 and noting that defendants do not contest the claim for temporary benefits through April 29, 2018, I conclude claimant has established entitlement to temporary disability benefits from March 8, 2018 through April 29, 2018. Iowa Code section 85.33(1).

Defendant seeks a credit against the award of temporary total disability benefits for short-term disability benefits paid to claimant. Iowa Code section 85.38(2) does permit a credit for payment of short-term disability benefits. I found that claimant did not contribute to the short-term disability premiums. In total, I found that claimant received net benefits from the short-term disability policy in three weeks. See Beller v. Iowa State Penitentiary, 91-92 IAWC 34 (Appeal 1991).

Specifically, I found a net benefit to claimant of $143.12 for the week of April 1, 2018 through April 7, 2018. For the week of April 15, 2018 through April 21, 2018, I found a net benefit to claimant totaling $167.63. Finally, for the week of April 22, 2018 through April 28, 2018, I found claimant received a net benefit from short-term disability benefit payments totaling $354.61. Accordingly, I conclude defendant is entitled to a credit totaling $665.36 for these three weeks of short-term disability benefit payments to claimant. Iowa Code section 85.38(2)(a).

Claimant seeks award of past medical expenses in this case. Claimant details the past medical expenses sought in Claimant's Exhibit 10. The only medical expenses I found was either during a period of denial or was authorized is the evaluation with Dr. McGuire at Iowa Spine Care on June 18, 2018. Therefore, I conclude defendant is

responsible for the expense of Dr. McGuire's evaluation ($128.00). Iowa Code section 85.27.

Tyson or State Farm paid other medical expenses incurred prior to August 20, 2018. As noted in the findings of fact, the payments made by State Farm appear to be for a motor vehicle policy for the co-employee that struck claimant. Defendant is only responsible for those charges if claimant is required to reimburse State Farm for those charges.

Claimant seeks other medical charges incurred after August 20, 2018. Having found that claimant did not request additional medical care after August 20, 2018, I found that all medical care and charges incurred after August 20, 2018 were unauthorized by defendant.

Under Iowa's worker's compensation scheme, the employer has the right to select the authorized medical provider. Iowa Code section 85.27. The injured worker is never required to submit to the authorized medical care. Moreover, the system provides a mechanism in which the claimant can seek an order redirecting the authorized medical care to a different provider if the employer fails to provide reasonable medical care. Iowa Code section 85.27(4).

In this case, the claimant did not request additional medical care from the employer. Claimant did not seek an order of this agency authorizing alternate medical care. Instead, claimant selected his own medical care and abandoned the statutory scheme that permits the employer to select care. In so doing, claimant assumes a higher burden of proof to establish liability for unauthorized medical care. Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

If the claimant elects to pursue unauthorized medical care, he can still recover the expenses of that unauthorized care if he proves by a preponderance of the evidence that such care was reasonable and beneficial. Id. at 206. However, there are often times multiple reasonable courses of treatment. Therefore, to recover the cost of unauthorized care, claimant must prove that the unauthorized care was beneficial in that it "provides a more favorable outcome than would likely have been achieved by the care authorized by the employer." Id.

In this case, claimant did not request additional care from the employer. Therefore, the employer did not select or authorized any additional medical care after August 20, 2018. Under this set of facts, claimant offers no evidence to establish that the care he sought and obtained after August 20, 2018 would provide a more favorable outcome than would likely have been achieved by the care authorized by the employer. In fact, this would essentially be impossible because claimant never gave the employer the opportunity to exercise its statutory right to select the care to be provided. I conclude claimant failed to overcome his burden to establish that care provided after August 2018 was reasonable, beneficial, and provided a more favorable outcome than would likely have been achieved through authorized care that could have been offered by the employer. Accordingly, I conclude the employer's authorization defense prevails

and claimant is precluded from recovery of any medical expenses submitted for dates of service after August 20, 2018.

Claimant also seeks reimbursement of the independent medical evaluation charges from Dr. Sassman. Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

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). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

In this case, defendants selected the initial treating surgeon, Dr. Wade Jensen. Dr. Jensen provided an opinion that claimant did not sustain permanent impairment in a report dated September 7, 2018. Claimant obtained an independent medical evaluation and impairment rating performed by Dr. Sassman on August 14, 2019. (Claimant's Ex. 7, p. 49) Claimant clearly sustained an injury and the claimant did not obtain a competing impairment rating until after defendant's authorized or selected physician rendered an impairment rating. Therefore, I conclude claimant has established entitlement to reimbursement of his independent medical evaluation. Iowa Code section 85.39 (2017); Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 843 (Iowa 2015).

Dr. Sassman charged $2,612.50 for her services, which I find is a reasonable fee in the area where Dr. Sassman practices. Having found Dr. Sassman's charges to be reasonable, I conclude claimant is entitled to an order requiring defendants to reimburse Dr. Sassman's fees in the amount of $2,612.50. Iowa Code section 85.39 (2017); Young, 867 N.W.2d at 843.

Mr. Chaparro also asserted a claim for alternate medical care and specifically seeks an order directing care to be provided through Dr. Ric Jensen.

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 the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

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).

Additionally, certain statutory requirements must be met before a claim for alternate medical care can be asserted or granted. Iowa Code section 85.27(4) provides, "If the employee has reason to be dissatisfied with the care offered, the employer should communicate the basis of such dissatisfaction to the employer." In this instance, the employer authorized care through Dr. Wade Jensen. Dr. Jensen released claimant to return for care on an as needed ("prn") basis on August 20, 2018. Claimant never requested that the employer provide additional care thereafter. Claimant did not establish that he expressed a basis for dissatisfaction before making a claim at this arbitration hearing for alternate medical care. Accordingly, claimant did not meet or satisfy the requirements of Iowa Code section 85.27(4) to assert an alternate medical care claim.

Claimant also failed to produce evidence that the care offered by defendants, if it had been requested, was inferior, unreasonable, or unduly inconvenient. Claimant failed to establish that the care offered by defendant was unreasonable. Moreover, having found that claimant failed to prove a permanent injury and disability, claimant failed to prove entitlement to ongoing medical care for the work injury. Iowa Code section 85.27(4).

The final disputed issue is whether costs should be assessed against either party. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. In this case, claimant is not recovering additional benefits beyond his IME fees. Exercising the agency's discretion, I conclude that neither party's costs should be assessed in this case. Rather, all parties should bear their own costs.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay claimant temporary total disability benefits from March 8, 2018 through April 29, 2018.

All weekly benefits shall be payable at the stipulated weekly rate of five hundred twenty-three and 24/100 dollars ($523.24) per week.

Defendant is entitled to the stipulated credit for weekly benefits paid to claimant against the award of temporary total disability benefits.

Defendant is entitled to a credit against the award of temporary total disability benefits for short-term disability benefit payments totaling six hundred sixty-five and 36/100 dollars ($665.36).

If additional weekly benefits are owed after the aforementioned credits are taken and applied, interest 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).

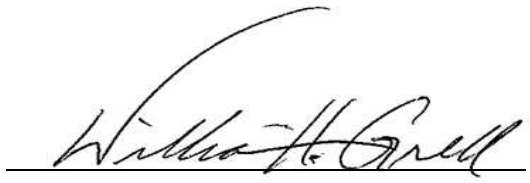
Defendant is responsible for payment, reimbursement, and to hold claimant harmless for the medical expenses incurred for treatment with Dr. McGuire on June 18, 2018 in the amount of one hundred twenty-eight and 00/100 dollars ($128.00).

Defendant shall reimburse claimant's independent medical evaluation fees totaling two thousand six hundred twelve and 50/100 dollars ($2,612.50).

All parties shall pay their own costs.

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 18th day of January, 2022.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Mary Hamilton (via WCES)

Jason Wiltfang (via WCES)

Dillon Carpenter (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.