BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
JUN 11 2018
WORKERS' COMPENSATION

BOBBY J. WARD, Claimant, vs. CRST VAN EXPEDITED, INC., Employer, Self-Insured, Defendant.	:	File No. 5062581 ARBITRATION DECISION Head Note Nos.: 1402.30, 1402.40, 2501, 2907

STATEMENT OF THE CASE

Bobby J. Ward, claimant, filed a petition for arbitration against CRST Van Expedited, Inc. (hereinafter referred to as "CRST"), as the self-insured employer. An in-person hearing occurred in Des Moines on November 22, 2018.

The parties filed a hearing report at 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 in either file. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 11, which were all received without objection, although claimant noted that Joint Exhibit 1, pages 1 through 3 are not his medical records. Claimant offered Claimant's Exhibits 1 through 11. Defendant objected to Claimant's Exhibits 3 and 11 as late reports. Those objections were overruled, although additional rebuttal time was provided to defendant. Defendant also objected to Claimant's Exhibit 9 as constituting an argument, rather than evidence. That objection was sustained. Claimant's Exhibits 1 through 8, as well as 10-11 were received. Claimant's Exhibit 9 was retained for the agency record and is considered as part of claimant's argument, but not as substantive evidence.

Defendant offered Exhibits A through O. Claimant objected to receipt of Exhibit F. The objection was overruled at the time of hearing. All of defendant's exhibits were received into the evidentiary record.

Claimant testified on his own behalf and called Barbara Jean Seagle to testify. No other witnesses were called to testify.

As noted above, the evidentiary record was suspended at the conclusion of the live hearing on November 22, 2017. Defendant was given until January 22, 2018 to submit additional medical records, if any, and a rebuttal expert report. Defendant timely

filed an amended exhibit list and introduced additional Exhibits P through R. Claimant in his post-hearing brief objects to the introduction of Exhibit P, a supplemental report from Cassim M. Igram, M.D. To the extent that an objection is lodged by claimant, it is overruled. Defendant's Exhibits P through R are now formally received into the evidentiary record and the evidentiary record closed upon the filing of those exhibits.

Counsel also requested an opportunity to file post-hearing briefs. Their request was granted and a filing date for briefs was established to occur on February 23, 2018. Prior to expiration of that deadline, defense counsel requested an extension of the briefing deadline. A one-time extension was granted and briefs were simultaneously filed on March 9, 2018. This case was considered fully submitted to the undersigned as of March 9, 2018.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury on November 24, 2015, which arose out of and in the course of his employment.

2. Whether the alleged injury caused temporary disability, including a claim for a running healing period by claimant since April 7, 2016.

3. Whether the alleged injury caused permanent disability, and if so, the extent of claimant's entitlement to permanent disability benefits.

4. If the claim is ripe for award of permanent disability, the proper commencement date for permanent disability benefits.

5. Whether claimant is entitled to payment of past medical expenses.

6. Whether claimant is entitled to reimbursement of an independent medical evaluation pursuant to Iowa Code section 85.39.

7. Whether claimant is entitled to alternate medical care for his alleged injury.

8. Whether costs should be assessed against either party.

FINDINGS OF FACT

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

Although the hearing report indicates that there is a dispute between the parties about whether claimant, Bobby Ward, sustained an injury arising out of and in the course of his employment, the evidence is clear that claimant sustained a slip and fall on ice at the CRST terminal in Cedar Rapids, Iowa on November 24, 2015. Mr. Ward testified that he does not specifically recall why he was at the CRST terminal. However,

it was likely to pick up a student driver and/or to obtain maintenance on his truck. The fall happened after Mr. Ward parked his truck and was walking toward the terminal. He was clearly within the scope and course of his employment when the fall occurred on the employer's premises.

The real fighting issues in this case revolve around the extent of Mr. Ward's injury. Mr. Ward contends that he sustained a significant injury to his low back and that he has not yet reached maximum medical improvement. Defendant contends that claimant sustained a minor and temporary injury as a result of the November 24, 2015 fall. Defendant contends that claimant required minimal medical treatment, returned to full-duty work and has not proven that the fall of November 24, 2015 resulted in any ongoing disability.

As noted, it is apparent in this evidentiary record that Mr. Ward slipped and fell on November 24, 2015. He was able to get up and continue his employment activities after the fall. He testified that he did not initially report the injury, thinking that he would improve with some time.

However, on his next run, claimant's truck broke down near Salt Lake City. Claimant was essentially stranded in Salt Lake City, waiting for his truck to be repaired. He reported his injury to CRST and requested medical care, which was arranged in Salt Lake City.

Specifically, claimant presented to and was treated at LDS Hospital on November 29, 2015. The emergency room record of that date indicates that claimant reported no tenderness in his cervical spine, but did report "mild diffuse tenderness over the low back, primarily over the sacrum and the bilateral paraspinous musculature." (Joint Exhibit 4, page 44) A lumbar x-ray on that date was negative for any fracture. The physician suspected a lumbar strain or contusion and released claimant from care with a prescription for some prednisone and ibuprofen. Claimant expressed a desire to continue driving and was permitted to do so by the emergency room physician. (Joint Ex. 4, p. 45)

The employer directed claimant to Work Care Utah for follow-up. On December 3, 2015, claimant submitted to evaluation by Mark Anderson, M.D. Dr. Anderson recorded a history that included the November 2015 fall at CRST. Dr. Anderson also recorded that claimant gave a history of a prior back injury "approximately 15 to 20 years ago, though mild and no sequelae." (Joint Ex. 5, p. 53)

Dr. Anderson assessed claimant as having a lumbar strain and contusion. He provided claimant information on how to perform a home exercise program, recommended alternating heat and ice, and released claimant to full-duty work. Claimant apparently agreed with this medical plan. However, Dr. Anderson recommended that claimant "follow up per company and worker's comp insurance when needed." (Joint Ex. 5, p. 54)

After the December 3, 2015 evaluation and medical release, CRST assigned Mr. Ward a new truck and a new student driver. He picked up the new truck in Salt

Lake City, as well as his new student driver. He continued working for CRST making additional deliveries. Claimant continued to drive over-the-road for CRST for approximately another two weeks. (Claimant's testimony)

Defendant's personnel record indicates that claimant last worked for CRST on January 1, 2016. It indicates that claimant gave short notice of his termination. CRST documentation also indicates that claimant desired to move to a new company and drive "solo" because he wanted his girlfriend to ride along with him on a full-time basis. (Defendant's Ex. M)

On January 3, 2016, claimant signed a form for Prime, Inc., reflecting acknowledgment that he could perform the full functions of a job as an over-the-road driver. Specifically, claimant certified that he could operate a commercial vehicle for long periods of time, that he could move freight weighing up to 60 pounds, as well as other required functions. (Defendant's Ex. H)

On January 4, 2016, Mr. Ward submitted to a commercial driver fitness examination for Prime, Inc. Claimant signed the medical examination report, which indicated he had no illnesses or injuries within the past five years and no spinal injuries. The evaluating physician identified no abnormalities with claimant's spine. (Defendant's Ex. G)

Claimant did disclose that he had a slip and fall with CRST. However, he also certified on his pre-employment driver's examination that he could lift and carry up to 100 pounds. He specifically indicated that he did not have current back, neck, or orthopaedic problems as of January 4, 2016. (Defendant's Ex. G, p. 49) Claimant was cleared to drive and began driving for Prime, Inc. in January 2016.

Again, he worked as an over-the-road truck driver for Prime, Inc. Claimant testified that he had difficulties sitting long enough to drive for Prime, Inc., difficulties with the clutch, that bouncing in the truck was hurting his back and leg, and that he was having difficulties completing loads for Prime, Inc. on a timely basis. (Claimant's testimony)

Mr. Ward voluntarily terminated his employment with Prime, Inc. on March 14, 2016. He testified that his symptoms made it impossible for him to continue working for Prime, Inc. However, he had other personal issues, such as jury duty, which made his employment with Prime, Inc. unprofitable.

Since quitting his employment with Prime, Inc., in March 2016, claimant worked for a short time for an auction company. However, he testified in his deposition that he quit that job because his symptoms would not permit him to be on his feet six hours per month. (Defendant's Ex. A, p. 16)

In March 2016, claimant requested that CRST provide additional medical treatment. CRST offered treatment in Orlando, but claimant did not have transportation and requested treatment closer to his residence. On April 7, 2016, claimant presented to Florida Hospital DeLand for evaluation. X-rays of claimant's lumbar spine and pelvis

were unremarkable and claimant was discharged with prescriptions for tramadol, naproxen and prednisone. (Joint Ex. 6-7)

Claimant presented to Halifax Health Emergency Department on May 5, 2016. He reported increasing pain over the past two weeks, but denied any new injury. He denied any ongoing medications and denied a past medical history of low back issues. (Joint Ex. 7, p. 71) Claimant was diagnosed with acute exacerbation of chronic low back pain at the May 5, 2016 emergency room evaluation and discharged. (Joint Ex. 7, p. 73)

On May 6, 2016, claimant submitted to a lumbar MRI and was evaluated at an urgent care. He was diagnosed with lumbar pain and possible sciatica. (Joint Ex. 8, p. 79) Orthopaedic referral was recommended. (Joint Ex. 8, p. 81)

On August 8, 2016, claimant was evaluated by a specialist, Michael Sandborn, M.D. Claimant reported to Dr. Sandborn that he had not been provided an MRI or imaging previously, which is clearly erroneous. Claimant also reported headaches since the fall. Dr. Sandborn's evaluation revealed no cervical abnormalities or tenderness. However, he diagnosed claimant with low back pain with probable radicular component "due to his work-related accident." Dr. Sandborn also diagnosed claimant as having headaches as a result of his work-related accident. (Joint Ex. 9, p. 86)

The lumbar MRI performed on August 18, 2016 demonstrated a diffuse disc bulge at L4-5 and a disc herniation with annular tear at L5-S1. (Joint Ex. 9, p. 88) Dr. Sandborn recommended an epidural injection following the MRI. (Joint Ex. 9, p. 90) In follow-up after the injection, Dr. Sandborn opined that claimant was a surgical candidate and referred him for further surgical consultation. (Joint Ex. 9, p. 93)

At Dr. Sandborn's recommendation, claimant was evaluated by an orthopaedic surgeon, James Manzanares, M.D. on October 17, 2016. Dr. Manzanares noted claimant's past medical history as negative. He recommended a lumbar microdecompression at L5-S1. (Joint Ex. 10, p. 109) Surgery has not been performed on claimant as of the date of the arbitration hearing, however.

Mr. Ward sought an independent medical evaluation, performed by Sunil Bansal, M.D. on June 23, 2017. Dr. Bansal issued a report in which he recorded a curious medical history. In his report, Dr. Bansal notes that claimant "slipped on the ice-covered running board of the truck and fell to the ground." (Claimant's Ex. 1, p. 6) Dr. Bansal then records that claimant was able to get up, started walking to the terminal, when he slipped on the ice again and fell. Dr. Bansal records that the fall from the truck was worse and caused the greatest injury. (Claimant's Ex. 1, p. 6)

Claimant denies that he fell getting out of the truck. No other evidence in this record suggests claimant fell twice on November 24, 2015. Dr. Bansal's history is inaccurate.

Dr. Bansal records that claimant disclosed a previous back injury occurring five or six years prior. According to Dr. Bansal's report, claimant reported that the back injury resolved quickly with pain medications and claimant returned to work after a two to three-month period of recuperation. (Claimant's Ex. 1, p. 6)

Dr. Bansal noted occasional neck pain was reported by claimant that radiated down his left shoulder and occasionally to his fingertips with tingling of all his fingertips. (Claimant's Ex. 1, p. 7) Dr. Bansal's examination of claimant documented tenderness to palpation of claimant's cervical paraspinal musculature, including loss of range of motion of the neck. (Claimant's Ex. 1, p. 8)

Dr. Bansal opined that claimant has myofascial pain syndrome in his neck as well as an L5-S1 disc herniation with annular tear. Dr. Bansal causally related both claimant's neck symptoms and low back symptoms to the November 24, 2015 work injury at CRST. (Claimant's Ex. 1, pp. 10-11) He also assigned a 5 percent whole person impairment rating to claimant's cervical spine and a 12 percent whole person impairment for claimant's lumbar spine. (Claimant's Ex. 1, p. 113)

Dr. Bansal also imposed permanent work restrictions that required claimant to avoid repeated neck motion or putting his neck in a posturally flexed position for any duration greater than 15 minutes. Dr. Bansal limited claimant to lifting no more than 20 pounds occasionally, no frequent bending or twisting, and required sitting, standing and walking as tolerated. Dr. Bansal specifically opined that claimant could not be cleared pursuant to a DOT physical to operate a semi over the road. (Claimant's Ex. 1, p. 15)

Defendant obtained a subsequent independent medical evaluation, performed by Robert Broghammer, M.D. on July 6, 2017. Dr. Broghammer noted some pre-existing low back injuries and treatment. He concluded, however, that claimant did sustain a work injury to his low back on November 24, 2015. However, Dr. Broghammer opined that claimant did not sustain any injury to his neck as a result of the slip and fall on November 24, 2015. (Defendant's Ex. B, p. 15)

Dr. Broghammer opined that claimant's low back injury was only temporary in nature, however. Dr. Broghammer noted that claimant reported no ongoing symptomatology at his January 2016 driver physical before starting work at Prime, Inc. He opined that claimant obtained maximum medical improvement by January 4, 2016 and that he sustained no permanent impairment and required no permanent work restrictions as a result of the November 24, 2015 low back injury. (Defendant's Ex. B, p. 15)

Dr. Broghammer specifically rejected that claimant's MRI findings of a disc herniation are related to the November 24, 2015 work injury. He noted that claimant reported no radicular symptoms when initially evaluated in Salt Lake City. Dr. Broghammer noted that again on December 3, 2015, claimant reported no numbness, tingling, or weakness in his left leg. Dr. Broghammer also noted that claimant's reported radicular symptoms moved from his left leg to his right leg between August 2016 and October 2016 and then shifted back to his left leg by November 15, 2016. (Defendant's

Ex. B, pp. 8-10) Dr. Broghammer opined that the radicular symptoms that started to be reported by claimant after January 4, 2016 are not causally related to the November 24, 2015 work injury. (Defendant's Ex. B, p. 17)

On October 5, 2017, Dr. Sandborn authored a report, offering a permanent impairment rating. Specifically, Dr. Sandborn opines that claimant has achieved maximum medical improvement if he does not pursue low back surgery. He offers a permanent impairment rating of six percent of the whole person pursuant to the AMA Guides, Sixth Edition. Dr. Sandborn opines that claimant sustained a permanent injury and is a surgical candidate. (Claimant's Ex. 11, pp. 49-50)

On November 14, 2017, Dr. Broghammer authored a supplemental report. In that report, Dr. Broghammer noted some inconsistencies between the medical history claimant gave him and the deposition testimony claimant provided, including the precise mechanism of injury or facts of his fall in November 2015. Dr. Broghammer also reviewed video surveillance of claimant obtained in September 2017. Dr. Broghammer provided a detailed description of claimant's activities on the video surveillance. (Defendant's Ex. C, pp. 24-26) In general, I concur with Dr. Broghammer's recitation of the activities depicted on the surveillance video introduced as Defendant's Exhibit N.

Dr. Broghammer also noted some inconsistencies between the activities depicted on the surveillance video and the restrictions recommended by Dr. Bansal. (Defendant's Ex. C, pp. 26-27) Having reviewed the surveillance video, Dr. Broghammer opines:

> [I]t is evident that Mr. Ward is functioning in a normal manner and is able to stand and walk for periods of time exceeding 30 minutes. He is noted to repeatedly bend and twist at the waist to retrieve items at or near ground level and is noted to arise in a normal manner. There is no evidence in any of the video surveillance of any decrement in function or problems with physical activities. Mr. Ward is also seen carrying a tubular TV set with one arm that appears to be an approximately 13" set, which according to an internet search likely weighs approximately 20 pounds. Given his apparent normal functioning on surveillance video, and given my prior physical examination of the worker, I would continue to opine that he does not need any permanent work restrictions.

(Defendant's Ex. C, p. 28)

Dr. Broghammer authored a second supplemental report dated November 17, 2017. In that report, he notes additional pre-existing evidence of low back symptoms and treatment for claimant. Having reviewed those records, Dr. Broghammer opines that claimant has a history of chronic low back pain with radiation dating back to approximately 2005. He confirmed his opinion that claimant's ongoing complaints are not causally related to the November 2015 fall and claimant achieved maximum medical improvement by January 2016 with no permanent impairment, no permanent restrictions, and only a temporary injury. (Defendant's Ex. D)

On November 20, 2017, Dr. Bansal also authored a supplemental report. In his supplemental report, Dr. Bansal notes that he reviewed additional medical records, as well as claimant's deposition taken on June 27, 2017. After reviewing the additional medical records and claimant's deposition, Dr. Bansal retracted his causation opinion pertaining to claimant's neck injury. In his supplemental report, Dr. Bansal noted, "I no longer endorse permanency, an impairment, or restrictions for his cervical spine based on his deposition testimony." (Claimant's Ex. 3, p. 22) Indeed, in claimant's deposition, Mr. Ward conceded that he did not injure his neck as a result of the November 24, 2015 fall. (Defendant's Ex. A, p. 88)

Dr. Bansal also noted that there is pre-existing low back treatment, injuries and symptoms. He, therefore, revised his permanent impairment rating and lowered his permanent impairment rating from 12 percent of the whole person to something ranging from 4 to 7 percent of the whole person. Dr. Bansal acknowledged that claimant had a pre-existing disc herniation, but noted that it has increased in size and opined that the November 24, 2015 fall is an aggravation of that pre-existing condition. (Claimant's Ex. 3, pp. 23-24)

As noted, late evidence was disclosed by claimant and defendant was given additional time to respond after the live hearing. Defendant filed Exhibit P, which is a medical report from an orthopaedic surgeon, Cassim Igram, M.D. Dr. Igram performed a records review before authoring his report.

In his January 15, 2018 report, Dr. Igram opines that claimant sustained a soft tissue strain as a result of the November 24, 2015 fall at CRST. Dr. Igram opines, "the medical records and other history do not support that the incident of November 24, 2015 caused disc herniation at L5-S1 or **that the incident materially aggravated or materially advanced the pre-existing herniation**." (Defendant's Ex. P, pp. 83, 84) (emphasis in original). Dr. Igram also noted that claimant had a negative EMG in November 2016, which cannot be reconciled with his radicular complaints. (Defendant's Ex. P, p. 84) He specifically opines that any current symptoms, or need for surgery, would not be related to the November 24, 2015 work injury. (Defendant's Ex. P, p. 85)

Reviewing the respective medical expert opinions, I have great difficulty accepting the opinions of either Dr. Sandborn or Dr. Bansal. It does not appear from their reports that either Dr. Sandborn or Dr. Bansal had the opportunity to review the surveillance video of claimant. As Dr. Broghammer notes, some of claimant's activities in the surveillance video call into question Dr. Bansal's restrictions.

I also have difficulties accepting the opinions of Dr. Sandborn and Dr. Bansal because the initial medical records do not mention radicular symptoms, and claimant passed a DOT physical in January 2016, while proclaiming he had no spine injury or symptoms. Neither Dr. Sandborn nor Dr. Bansal provide a convincing argument why claimant was able to do this, why the medical records lack mention of radicular symptoms, or how claimant was able to physically continue performing his over-the-road duties as a truck driver with a large disc herniation.

Dr. Bansal also initially records an inaccurate medical history and inaccurately causally connects claimant's neck symptoms to the November 2015 fall at work. Dr. Bansal, after review of additional records, including claimant's deposition, was forced to revise his medical opinions pertaining to causal connection of claimant's neck condition and to revise his lumbar impairment rating due to pre-existing injuries Dr. Bansal was not aware of when he authored his initial report. Dr. Bansal's initial opinions were authored and offered without an accurate or complete medical history. His supplemental report amends his opinions, but no evidence is introduced to satisfactorily explain why claimant would have reported two falls to Dr. Bansal or why he made claims of neck injury to Dr. Bansal at his initial evaluation. I find that Dr. Bansal's reports and opinions are not credible or convincing.

Instead, I find the explanations and medical opinions offered by Dr. Broghammer to be consistent with the other credible medical evidence and surveillance video in this record. Dr. Igram provides a similar analysis and medical opinion. His opinion could be critiqued because he performed only a record review and not a personal evaluation of claimant. Yet, Dr. Igram's opinion is similar to and supports Dr. Broghammer's analysis and opinions. Ultimately, I accept medical opinions of Dr. Broghammer and Dr. Igram as most convincing in this file.

In reaching this finding, I acknowledge that claimant testified and argues that he was not injured in Iraq. I acknowledge that Dr. Broghammer references a medical record in his second supplemental report that talks about an injury occurring in Iraq. Ultimately, I find Dr. Broghammer's initial report and his first supplemental report to be most convincing. I find Dr. Broghammer's analysis of the surveillance video and its ramifications to be convincing. Specifically, I accept Dr. Broghammer's opinion when he opines:

> After my review of the additional medical records as well as the surveillance records and deposition testimony, it is my medical opinion to a reasonable degree of medical certainty that Mr. Ward did not sustain any permanent impairment to his low back as a result of his alleged injury. In this regard, I stand by my original opinions as authored in my July 6, 2017 IME report. I am also of the opinion that Mr. Ward does not need any permanent restrictions.

(Defendant's Ex. C, pp. 27-28)

Similarly, I accept the opinion of Dr. Igram when he stated:

> I would describe Mr. Ward's condition as chronic low back pain that stems from a pre-existing injury and degenerative condition and it is unrelated to a strain injury that resolved as I would have expected it to resolve within three months of the incident without causing permanent change in the pre-existing condition.

(Defendant's Ex. P, p. 84)

Having accepted the opinions of Dr. Broghammer and Dr. Igram as most convincing, I find that claimant achieved maximum medical improvement from his November 24, 2015 work injury on January 4, 2016. I find that claimant has not proven any of his symptoms, medical treatment, restrictions, or impairment arising thereafter are causally related to the November 24, 2015 work injury. Similarly, I find that claimant has not proven any permanent disability arising from the November 24, 2015 work injury.

Mr. Ward asserts a claim for healing period from April 7, 2016 through the date of the arbitration hearing. I find that none of his claimed disability, or inability to work, from April 7, 2016 through the date of the arbitration hearing is causally related to his November 2015 work injury. Similarly, claimant asserts a claim for future medical care, or alternate medical care. I find that none of the ongoing or future recommended medical care is causally related to the November 24, 2015 work injury.

CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The

expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Having found that Mr. Ward did sustain an injury that arose out of and in the course of his employment on November 24, 2015, I must consider claimant's requests for award of weekly and medical benefits.

Mr. Ward initially seeks an award of running healing period benefits from April 7, 2016 through the date of the arbitration hearing. Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Having accepted the medical opinions of Dr. Broghammer and Dr. Igram as most convincing, I found that claimant achieved maximum medical improvement by January 4, 2016. Therefore, I conclude that claimant failed to prove entitlement to any healing period, or temporary total disability, benefits after January 4, 2016. Claimant failed to prove entitlement to an award of any of the claimed healing period benefits.

Mr. Ward also asserted a claim for permanent disability benefits. Again, having accepted the medical opinions of Dr. Broghammer and Dr. Igram as most convincing, I found that claimant failed to prove he sustained any permanent disability that is causally related to the November 2015 work injury. Therefore, I conclude that claimant failed to prove entitlement to an award of any permanent disability benefits. Iowa Code section 85.34(2).

Claimant seeks award of medical expenses. 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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Claimant's medical billing summary is contained at Claimant's Exhibit 10. It was stipulated by the parties that the treating medical providers would testify that the medical care they provided was reasonable and necessary, as well as that the charges

were fair and reasonable. Defendant also stipulated that the charges contained in Claimant's Exhibit 10 resulted from treatment for the condition upon which claimant's claim was asserted.

Review of Claimant's Exhibit 10 demonstrates that claimant seeks payment of outstanding medical expenses from Mountain Medical and InterMountain Medical, all for care rendered on November 29, 2015. Having found that claimant sustained a work injury on November 24, 2015 and that treatment through January 4, 2016 was causally related to that injury, I conclude that claimant has proven entitlement to payment, or reimbursement, for medical expenses from Mountain Medical ($57.35) and InterMountain ($1,597.53).

Having found that claimant sustained no ongoing healing period or permanent disability after January 4, 2016, and having accepted the medical opinions of Dr. Broghammer and Dr. Igram, I conclude that claimant failed to prove entitlement to payment or reimbursement of all of the remaining claimed medical expenses in Claimant's Exhibit 10.

Claimant requests an award of alternate medical care. However, having found that claimant's November 24, 2015 injury resolved on or before January 4, 2016, I conclude that claimant has not proven entitlement to ongoing or future medical care related to the work injury. I conclude that the request for alternate medical care should be denied.

Mr. Ward also seeks an award of his independent medical evaluation expenses. 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).

The statutory framework and the formalities of Iowa Code section 85.39 are construed and applied strictly. See Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015). Claimant must establish the prerequisites of the statute to obtain reimbursement of his independent medical evaluation pursuant to Iowa Code section 85.39. Id.

Claimant selected Dr. Bansal to perform his independent medical evaluation. Dr. Bansal rendered his permanent impairment rating in a report dated September 22,

2017. However, Dr. Bansal performed his evaluation on claimant on June 23, 2017. No prior authorized physician had rendered an impairment rating. Defendant first obtained a permanent impairment rating opinion from Dr. Broghammer, who authored his initial report dated July 6, 2017. Dr. Broghammer evaluated claimant on June 26, 2017.

Therefore, claimant obtained his evaluation with Dr. Bansal three days prior to attending the evaluation with Dr. Broghammer. Claimant has not established that an evaluation with an employer-selected physician occurred prior to Dr. Bansal's evaluation. Instead, the evidence shows that claimant obtained an evaluation with Dr. Bansal prior to submitting to the evaluation by Dr. Broghammer. I conclude that claimant failed to establish the necessary statutory prerequisites to obtain reimbursement of Dr. Bansal's independent medical evaluation pursuant to Iowa Code section 85.39.

Finally, claimant seeks assessment of his costs. Costs are assessed at the discretion of the agency. Iowa Code section 85.40. Exercising the agency's discretion and recognizing that defendant has prevailed on the substantive disputes submitted by the parties, I conclude that claimant's request for assessment of his costs should be denied.

ORDER

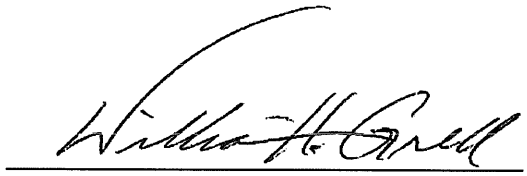
THEREFORE, IT IS ORDERED:

Defendant shall reimburse claimant for any out-of-pocket payments, or pay the medical providers directly for medical expenses incurred at Mountain Medical fifty-seven and 35/100 dollars ($57.35) and InterMountain Medical one thousand five hundred ninety-seven and 53/100 dollars ($1,597.53) on November 29, 2015, as reflected on Claimant's Exhibit 10, page 48.

Claimant takes nothing further.

All parties shall bear their own costs.

Signed and filed this 11th day of June, 2018.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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WHG/sam

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876 4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.