BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOHN DAVIS,	FILED	
Claimant,	FEB 15 2017	
vs.	WORKERS COMPENSATION	File No. 5047765
FLORILLI TRANSPORTATION, LLC,		ARBITRATION DECISION
Employer,		
and		
NATIONAL INTERSTATE,		
Insurance Carrier, Defendants.		Head Note Nos.: 1402.40, 2502

STATEMENT OF THE CASE

John Davis, claimant, filed a petition for arbitration against Florilli Transportation, L.L.C. (hereinafter referred to as "Florilli"), as the employer and National Interstate as the insurance carrier. The case came on for hearing before the undersigned on August 11, 2016.

Due to submission of untimely evidence, the evidentiary record was suspended at the conclusion of the live hearing. Claimant was permitted to depose and submit the deposition transcript of Jeffrey E. Hazlewood, M.D. after the conclusion of the live hearing. Dr. Hazlewood's deposition transcript was filed with this agency on November 3, 2016 and will be received into the evidentiary record as Claimant's Exhibit 15 pursuant to the rulings entered by the undersigned at the time of hearing.

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.

The evidentiary record includes Claimant's Exhibits 1 through 13 and 15 and Defendants' Exhibits A through Q. Claimant was the only witness that testified live.

Claimant offered a medical report marked as "Exhibit 14." Defendants objected to receipt of that report. Exhibit 14 was excluded as having been disclosed untimely.

Following receipt of Dr. Hazlewood's deposition, counsel requested an opportunity to file post-hearing briefs. Counsel's request was granted and this case was considered fully submitted to the undersigned upon filing of the parties' briefs on December 16, 2016.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained permanent disability as a result of the September 7, 2013 work injury and, if so, the extent of claimant's entitlement to permanent disability benefits, including a claim for permanent total disability.

2. Whether claimant is entitled to an order for alternate medical care.

3. Whether claimant is entitled to reimbursement for his 1,226 miles of travel to attend his independent medical evaluation with Robert W. Milas, M.D.

4. 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:

John Davis was employed by Florilli on September 7, 2013. On that date, Mr. Davis was at a truck stop in Ohio and was filling his truck with diesel. He attempted to walk from the front of his truck to the refrigerated trailer when he stepped on some spilled diesel fuel, slipped, and fell onto his back. (Claimant's testimony)

Claimant was unable to get up after his fall and was transported via ambulance to a local hospital. (Claimant's testimony) Claimant was able to move his legs and feet while in the ambulance. However, after he arrived at the emergency room, he reported an inability to move his left leg. (Exhibit C, page 1) Mr. Davis reports he lacks sensation in the left leg and has not been able to voluntarily move the left leg since the date of injury. Mr. Davis has learned how to use a walker to ambulate since the injury date. At hearing, I observed Mr. Davis move his left leg with his hands and arms. (Claimant's testimony)

While hospitalized after the injury, Mr. Davis was evaluated by a neurosurgeon, Monica W. Loke, M.D. Dr. Loke reviewed claimant's lumbar MRI performed after the fall and concluded that it demonstrated no nerve root compression. Dr. Loke opined that claimant required no surgical intervention because he demonstrated no clear radicular or myelopathic patterns. (Ex. C, p. 2; Ex. D, p. 1)

After the surgical consult ruled out a surgical remedy, a neurologic consultation was requested. Ali S. Almudallal, M.D., evaluated claimant on September 8, 2013. Dr. Almudallal concluded that all of claimant's imaging studies were "unrevealing for an acute pathology." (Ex. D, p. 2) Dr. Almudallal noted a "positive Hoover's sign on lifting the contralateral ankle." (Ex. D, p. 2) Finally, Dr. Almudallal noted that claimant reported and his examination identified no myelopathy symptoms. Dr. Almudallal recommended physical therapy and occupational therapy. (Ex. D, p. 2)

Next, claimant was referred for a physical medicine and rehabilitation consultation with Kurt A. Kuhlman, D.O. Dr. Kuhlman evaluated claimant on September 10, 2013. (Ex. E) Dr. Kuhlman's physical examination revealed some troubling findings. Specifically, Dr. Kuhlman recorded, "when I had him attempt to lift his left leg, I did not feel any downward deflexion of the right heel, indicating lack of effort in lifting the left leg." (Ex. E, p. 1) Dr. Kuhlman noted that his sensory examination did not disclose any specific issues in a dermatomal or peripheral nerve distribution or pattern. Dr. Kuhlman also noted that, "[w]ith distraction test, I was able to get slight movement in the left leg." (Ex. E, p. 1)

After being discharged from the hospital, claimant was referred to Fort Wayne Orthopaedics and an EMG was ordered. On October 1, 2013, claimant returned for consultation with Robert M. Shugart, M.D. Dr. Shugart noted that the EMG testing was normal. He noted that claimant's lumbar MRI was "negative for any neural impingement." (Ex. F, p. 1) Dr. Shugart recommended against any surgical intervention. (Ex. F, p. 1)

Once again, claimant was referred for a physical medicine and rehabilitation evaluation. On October 29, 2013, Mark V. Reecer, M.D., a board certified physical medicine and rehabilitation physician and a board certified pain medicine specialist, evaluated Mr. Davis. (Ex. G) Dr. Reecer noted that the EMG testing of claimant's left leg "showed no significant abnormalities." (Ex. G, p. 1)

Dr. Reecer documented that claimant complained of complete numbness in his left leg from the hip to the foot. Claimant was "unable to move any of the muscles in his leg" when evaluated by Dr. Reecer. (Ex. G, p. 1) Dr. Reecer noted on examination that claimant "does not even have trace movement of any of the muscle groups in his left leg, which is somewhat questionable." (Ex. G, p. 1) Yet, Dr. Reecer noted that claimant had good range of motion in his left hip, knee and ankle. Dr. Reecer also noted no significant atrophy in the left leg. (Ex. G, p. 1) Dr. Reecer recommended additional testing for claimant's abdomen and pelvis. (Ex. G, p. 2)

On follow-up evaluation on November 12, 2013, Dr. Reecer noted that all additional testing of the abdomen and pelvis was negative. Dr. Reecer noted, "I cannot come up with an objective explanation for his complaints." (Ex. G, p. 3) Instead, Dr. Reecer opined, "I am concerned about potential malingering based upon the lack of findings." (Ex. G, p.3)

Nevertheless, Dr. Reecer recommended evaluation by a neurologist. Marlene C. Bultemeyer, M.D., a neurologist at Fort Wayne Neurological Center, evaluated Mr. Davis. Dr. Bultemeyer's physical examination noted that "the patient demonstrates minimal effort in moving the left lower extremity." (Ex. H, p. 2) Dr. Bultemeyer noted claimant reported complete anesthesia below the knee and that he gave no effort in moving his feet or toes. (Ex. H, p .2)

Ultimately, Dr. Bultemeyer concluded that "[t]here are findings on examination that are inconsistent with a neurologic process." (Ex. H, p. 2) Dr. Bultemeyer noted that claimant "has some strength that he is not able to actively demonstrate but is clearly

present. He is able to balance his weight on his left lower extremity despite his inability to move it when asked." (Ex. H, pp. 2-3) Dr. Bultemeyer suggested that claimant had either psychogenic weakness or "potentially even a reason for a secondary gain." (Ex. H, p. 3)

On January 17, 2014, Dr. Reecer noted, "[h]e has no objective findings to support his subjective complaints. To be thorough, we did refer him for a neurologic consult, and the neurologist felt that this was either psychogenic or overt malingering." (Ex. G, p. 4) Dr. Reecer opined that Mr. Davis was at maximum medical improvement and that any ongoing issues were unrelated to the reported work injury. Dr. Reecer assigned a zero percent permanent impairment rating for claimant's reported injury. (Ex. G, p. 4)

Claimant sought no additional treatment for his condition after January 17, 2014. (Claimant's testimony) However, he sought an independent medical evaluation performed by Robert W. Milas, M.D., a neurosurgeon, on March 13, 2015. (Ex. 3) Dr. Milas identified significant reductions in claimant's reflexes, profoundly limited ranges of motion in claimant's back, and noted complete loss of sensation in the lateral aspect of claimant's left leg and plantar aspect of the left foot. (Ex. 3, p. 8)

Dr. Milas reviewed an MRI scan of claimant's lumbar spine and described it as showing a "large herniated disc at the L3-L4 level on the left." Dr. Milas diagnosed claimant with "lumbar radiculopathy, secondary to herniated lumbar disc at the L3-L4 level on the left." (Ex. 3, p. 8) Dr. Milas causally connected the herniated disc to the fall on September 7, 2013 and opined that claimant qualifies for a 13 percent permanent impairment of the whole person as a result of the injury. He also recommended claimant be limited to a sedentary occupation.

Defendants retained John D. Kuhnlein, D.O., an occupational medicine physician, to review claimant's medical records and offer expert opinions. Dr. Kuhnlein authored a report dated November 3, 2015. (Ex. J) Dr. Kuhnlein opined that "[t]here is no physiologic reason that explains Mr. Davis' complaints." (Ex. J, p. 6)

Dr. Kuhnlein specifically commented on the opinions of Dr. Milas, noting:

> Dr. Milas opined that he has a left L3-L4 disc herniation, but Dr. Milas must be referring to MRI scans that were performed *before* the date of injury, as the MRI performed *after* the date of injury specifically do [*sic*] not show disc herniations or disc compressions at the L3-L4 level.

(Ex. J, p. 6) (Emphasis in original.)

Dr. Kuhnlein recommended further evaluation for claimant's complaints, including a physical medicine evaluation and a psychological evaluation of claimant to determine if there are other potential causes of claimant's symptoms. Dr. Kuhnlein opined that, if further work up did not demonstrate specific objective physiologic or psychological causes for claimant's ongoing symptoms, then claimant is at maximum medical

improvement and would not be entitled to any permanent impairment rating as a result of the September 7, 2013 work injury. (Ex. J, p. 7)

Dr. Kuhnlein also reiterated:

> It is clear that Mr. Davis' complaints are inconsistent with the objective testing. Mr. Davis states that he is unable to move the leg, but at the same time is able to stand and walk on the leg, which is not consistent with the stated inability to move it. If he can stand on it and use it when he walks, he ought to be able to move it on request. These inconsistencies are very puzzling and at this point there is no logical or rational explanation for his presentation.

(Ex. J, p. 7)

On February 12, 2016, Dr. Milas provided a supplemental report, which notes that the radiologist performing and reading the September 7, 2013 lumbar MRI reported a left posterior lateral disc protrusion at the L4-L5 level. However, Dr. Milas reviewed the MRI films again and opined that he observed a herniation at the L3-L4 level. Regardless, Dr. Milas opined "there is a disc herniation in the lumbar spine and I do feel that it is responsible for the patient's condition of ill being whether it exists at the L3-L4 or L4-L5 level." (Ex. 4, p. 9)

Dr. Milas also gave a deposition in this case. (Ex. 6) That deposition was only attended by claimant's counsel and no cross-examination was undertaken of Dr. Milas by the defense. However, in that deposition, Dr. Milas opined again that the fall claimant sustained on September 7, 2013 was the direct cause of her lumbar disc herniation and that Dr. Milas would consider an operative approach for treatment. Dr. Milas opined in his deposition that without surgical intervention, claimant should be limited to a light work duty classification and opined that claimant be limited to a 20 pound lifting restriction. He then testified that claimant should be in the sedentary category. (Ex. 6, pp. 16-17)

Interestingly, during his deposition, Dr. Milas also testified that he had reviewed a lumbar MRI dated March 13, 2015. No evidence of such an MRI is contained within the evidentiary record, other than Dr. Milas's reference during his deposition.

On June 4, 2015, Dr. Shugart authored a supplemental report, responding to Dr. Milas's opinions. Dr. Shugart noted that the EMG performed by Dr. Reecer was negative for an L4 radiculopathy. Dr. Shugart also noted that the lumbar MRI performed immediately after the fall in September 2013 was negative for a herniated disc at the L3 level. Therefore, Dr. Shugart opines that any disc herniation now present at the L3-4 level "could not be related to his injury, but to something since that time." (Ex. F, p. 2)

Pursuant to Dr. Kuhnlein's recommendations, defendants scheduled Mr. Davis to be evaluated by Jeffrey E. Hazlewood, M.D., a physician that is double board certified in physical medicine and rehabilitation as well as pain medicine, on April 26, 2016. (Ex. K)

Dr. Hazlewood appears to have had available and to have reviewed extensive prior medical records.

On examination, Dr. Hazlewood noted positive Waddell's signs. (Ex. K, pp. 5-6) He specifically ruled out CRPS as the cause of claimant's symptoms. Dr. Hazlewood noted no atrophy in claimant's calves. He also documented that he checked claimant's shoes and identified no wear over the left toe, where claimant indicated he drags his left foot while ambulating with a walker. (Ex. K, p. 6)

Dr. Hazlewood documented that he observed claimant stand up off his examination table and then get back up on the examination table. In performing these maneuvers, claimant stood at least momentarily with his weight on his left leg and "obviously had strength and did not collapse to the floor." (Ex. K, p. 6) Dr. Hazlewood documented a positive Hoover's sign and specifically noted, "[w]hen I get him to try to lift the left leg, he does not push down with the right leg. When I get him to lift the right leg, I definitely feel a push down/extension in the left foot and leg." (Ex. K, p. 6) Dr. Hazlewood also documents that claimant has no joint contractures in his left leg, no edema, nor any atrophy in the left leg. (Ex. K, p. 6)

Reviewing the MRI report from immediately after the injury, Dr. Hazlewood opines that the MRI demonstrates "a completely normal level at L3-4, degenerative disc changes at L4-5 and L5-S1 with moderate to severe bilateral neural foraminal narrowing at L4-5, and severe bilateral neural foraminal narrowing at L5-S1. There was some left disc protrusion at L4-5." (Ex. K, p. 7) Dr. Hazlewood concluded that claimant's objective diagnostic films do not correlate with claimant's proclaimed symptoms.

Of particular note, Dr. Hazlewood opined:

> Today, he has significant positive Waddell's signs on examination, to include superficial tenderness, regionalization, over reaction, simulation times two, and significant positive distraction tests as noted above with the most significant ones being the positive Hoover's tests as well as the fact that he actually can bear weight, walk with definitely some weight bearing on the left lower extremity, yet has absolutely no movement volitionally of the entire left lower extremity. I agree that this is anatomically impossible.

(Ex. K, p. 7)

Dr. Hazlewood also commented on Dr. Milas's opinions, noting:

> One surgeon mentioned a large disc herniation on the left at L3-4, which he felt was causing the symptoms, but I agree with the reviewer that this would only effect one or two nerve root levels, and not lead to complete paralysis of the left lower extremity. It is also noted the EMG testing was completely negative. The disc herniation at L3-4 apparently seen by the surgeon was not present on the MRI on the date of the injury. There are great inconsistencies in this case, and differential diagnosis would include either frank malingering vs. psychogenic paralysis . . . .

(Ex. K., p. 7) Dr. Hazlewood then opined:

> I am strongly concerned about malingering based on the evaluation today and the entire presentation here. I do not agree that any disc herniation that may now be present, which obviously was not present after his injury, would be causing his presentation now. . . . I am very concerned that there is frank malingering in this case based on the information I have at this point.

(Ex. K, p. 7)

Dr. Hazlewood specifically commented on the fact that he would expect atrophy, joint contractures, and dependent edema, due to disuse if claimant was unable to use his left leg for over two years. Yet, his evaluation disclosed no atrophy, contractures, or dependent edema. (Ex. K, p. 8) Dr. Hazlewood opined that claimant long ago achieved maximum medical improvement and that he sustained no permanent impairment as a result of the September 7, 2013 fall. (Ex. K, p. 8)

Dr. Hazlewood also gave a deposition in this case. (Ex. 15) In his deposition, Dr. Hazlewood provided convincing testimony about the anatomical symptoms that should be experienced depending on the location of an alleged disc herniation in claimant's lumbar spine. Specifically, Dr. Hazlewood testified that claimant would be experiencing different symptoms depending on whether the L4 or the L5 nerve root was affected by a herniation. (Ex. 15, p. 60)

The only evidence of a disk herniation at the L3-4 level, which supports Dr. Milas's opinions, is found in an MRI taken in 2002. (Ex. M, p. 4) An MRI taken in 2005 demonstrated only a disc bulge at the L3-L4 level. (Ex. N, pp. 6, 10) Other than Dr. Milas's reference, there is no evidentiary basis for an MRI taken in 2015.

Dr. Milas clearly relies upon the history provided by Mr. Davis, as well as his interpretation of one or more MRI films. Claimant's presentation at hearing appeared exaggerated, but also consistent with his reports of no feeling or function in his left leg. Claimant's credibility is certainly an issue, given the allegations of malingering.

In his deposition and at hearing, Mr. Davis testified that he struck his head when he fell on September 7, 2013. (Claimant's testimony; Ex. 3, p. 22) However, on the date of the fall, Mr. Davis reported that he did not hit his head in the fall. (Ex. C, p. 1) Mr. Davis described falling on the left side of his body and low back area when evaluated by defendants' independent medical evaluator, Dr. Hazlewood, and denied any other injuries. (Ex. K, p. 1) Claimant's own evaluator, Dr. Milas, describes him as having landed only on his back when he fell in September 2013. (Ex. 3, p. 7)

In his deposition, Mr. Davis denied any loss of consciousness. (Ex. 3, p. 21) At trial, Mr. Davis testified that he may have lost consciousness after the fall. (Claimant's testimony) Claimant specifically denied loss of consciousness on the date of injury. (Ex. C, p. 1)

Numerous medical practitioners, including several treating physicians that were not selected by either party, have expressed concerns about malingering or psychogenic causes of claimant's symptoms. There are no opinions in this record from mental health professionals or any evidence that claimant has been evaluated to determine whether he has a psychological condition that causes his symptoms that might be related to the September 7, 2013 fall. Certainly, claimant has not proven a psychological injury or cause to his September 7, 2013 fall.

Ultimately, I must decide which medical opinion or opinions carry the most weight in this case. On the one hand, Dr. Milas is a board certified neurosurgeon. He has practiced neurosurgery for nearly 40 years. He has been a clinical instructor of neurosurgery and a clinical assistant professor. (Ex. 1) Dr. Milas had access to and reviewed MRI films of claimant's lumbar spine. His opinions are entitled to significant consideration.

On the other hand, numerous other physicians of varying specialties, have offered contrary opinions. Defendants offer the opinions of a treating neurosurgeon (Dr. Loke), a treating neurologist (Dr. Almudallal), a treating physical medicine physician (Dr. Kuhlman), an orthopaedic surgeon (Dr. Shugart), a treating double board certified physical medicine and rehabilitation and pain medicine specialist (Dr. Reecer), another treating neurologist (Dr. Bultemeyer), an occupational medicine physician (Dr. Kuhnlein), and an evaluating physician with double board certification in physical medicine and rehabilitation and pain medicine (Dr. Hazlewood). None of these physicians identified any objective findings that would explain claimant's symptoms. Many, if not most, of these physicians identified inconsistencies in claimant's reported symptoms, clinical evaluation, and/or objective testing.

Mr. Davis has submitted to a post-injury MRI, which did not disclose a disc herniation according to a radiologist, a treating neurosurgeon, a treating neurologist, or a treating orthopaedic surgeon. Similarly, a neurologist performed an EMG, which demonstrated no evidence of radiculopathy. Ultimately, none of the objective testing supports Dr. Milas's opinions. Dr. Milas does not provide a convincing explanation why his opinions are so divergent from those of the other treating and evaluating physicians.

Claimant's credibility specifically suffers when the positive Hoover's signs are demonstrated on multiple examinations. With multiple physicians suggesting either malingering or psychological cause of claimant's symptoms, I have a difficult time accepting claimant's version of events. As noted above, claimant has not proven any psychological injury or cause for his proclaimed symptoms. Ultimately, I accept the opinions of Dr. Hazlewood, Dr. Kuhnlein, Dr. Bultemeyer, Dr. Shugart, Dr. Reecer, Dr. Kuhlman, Dr. Almudallal, and Dr. Loke over those offered by Dr. Milas.

Specifically, I find that claimant's reported ongoing symptoms are not explained by any physiologic condition or injury. Claimant's current symptoms are not justified, explained, or supported by any objective testing. I find that claimant has not proven he sustained a low back or left leg injury sufficient to produce the symptoms he now proclaims.

I accept Dr. Hazlewood's opinion that claimant reached maximum medical improvement no more than four weeks after the September 7, 2013 fall. (Ex. K, p. 8) Similarly, I accept Dr. Hazlewood's impairment rating (0%) and Dr. Reecer's impairment rating (0%) as accurate. (Ex. G, p. 4; Ex. K, p. 8) None of claimant's treatment, symptoms, or asserted disability after four weeks post-injury date is causally related to his fall on September 7, 2013. I specifically find that claimant failed to prove he sustained any permanent disability as a result of the September 7, 2013 fall at work.

Mr. Davis also seeks an award of alternate medical care for treatment of his low back and allegedly resulting symptoms. Having found that none of the care provided more than four weeks after the September 7, 2013 fall and that none of the ongoing symptoms claimant asserts are causally related to the September 7, 2013 fall, I find that no future treatment has been proven to be causally related to the September 7, 2013 fall.

Claimant also seeks reimbursement of mileage expenses to attend an independent medical evaluation with Robert W. Milas, M.D. Specifically, Mr. Davis asserts entitlement to be reimbursed for 1,226 miles roundtrip to attend the evaluation with Dr. Milas. (Hearing Report; Ex. 13) Mr. Davis drove from Ohio to Moline, Illinois to attend this evaluation. Presumably, claimant drove past dozens of duly qualified neurosurgeons' offices from Ohio to Moline, Illinois to attend this evaluation. I do not find it reasonable or necessary to travel 1,226 miles for an evaluation with a board certified neurosurgeon.

Realistically, claimant scheduled and attended the evaluation with Dr. Milas to correspond with his deposition in this case. Claimant essentially seeks to transfer the expense of his travels to Iowa to participate in the prosecution of his case to defendants by scheduling a simultaneous evaluation pursuant to Iowa Code section 85.39. Claimant was realistically obligated to travel to Iowa for his deposition and the "extra" miles he traveled for the independent medical evaluation were from his attorney's office to Dr. Milas's office.

In this factual scenario, I find that a distance of 600 miles roundtrip would be approximately a five to six hour hour trip one way (or a ten to twelve hour trip in a day, plus an evaluation) and would be considered more than reasonable travel distance. In this instance, I find that it was reasonable and necessary for claimant to travel not more than 600 miles roundtrip to obtain an evaluation with a board certified neurosurgeon.

CONCLUSIONS OF LAW

The parties stipulated that claimant sustained a work related low back injury on September 7, 2013. However, defendants disputed whether the reported low back injury resulted in any permanent disability. (Hearing Report)

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 claimant failed to prove a causal connection between his ongoing symptoms and the September 7, 2013 fall at work, I also found that claimant failed to prove he sustained a permanent disability as a result of the September 7, 2013 fall. Having reached the finding that claimant failed to prove he sustained permanent disability as a result of the September 7, 2013 fall, I conclude that claimant failed to prove entitlement to any permanent disability benefits.

Claimant seeks an award of alternate medical care for ongoing and future treatment of his low back, pursuant to the recommendations of Dr. Milas. Having found that claimant failed to prove any of his ongoing symptoms or the future care he seeks is causally related to the September 7, 2013 fall at work, I conclude that claimant failed to prove entitlement to an award of future, or alternate, medical care. Iowa Code section 85.27; R. R. Donnelly & Sons v. Barnett,670 N.W.2d 190 (Iowa 2003).

Mr. Davis seeks reimbursement of his mileage expenses to attend his independent medical evaluation with Dr. Milas. Iowa Code section 85.39 provides that the employer must pay the "reasonably necessary transportation expenses incurred" for the claimant's independent medical evaluation. Claimant seeks reimbursement of 1,226 miles to travel from Ohio to Moline, Illinois to attend the evaluation with Dr. Milas. Having found that it would be, at most, reasonable and necessary to travel up to 600 miles round trip for such an evaluation, I conclude that claimant is entitled to reimbursement of his mileage expenses for 600 miles of his travel.

Dr. Milas's evaluation occurred on March 13, 2015. The applicable medical mileage reimbursement rate on that date was $0.56 per mile. See 876 IAC 8.1; Iowa Workers' Compensation Manual (July 1, 2014-June 30, 2015), page V. Therefore, I conclude claimant is entitled to reimbursement for his mileage to attend Dr. Milas's evaluation in the amount of $336.00 (600 miles x $0.56 per mile).

Claimant also seeks assessment of his costs and specifically his $100.00 filing fee. (Statement of Costs) Costs are assessed at the discretion of the agency. Iowa Code section 85.40. Exercising the agency's discretion and recognizing that claimant has failed to prove any of his substantive claims, I conclude that each party should bear their own costs in this contested case proceeding.

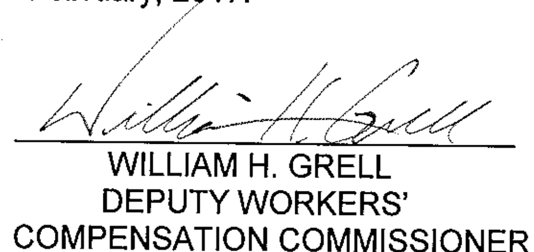
ORDER

THEREFORE, IT IS ORDERED:

Defendants shall reimburse claimant's mileage to attend his independent medical evaluation with Dr. Milas in the amount of three hundred thirty-six and 00/100 dollars ($336.00).

Claimant shall take nothing further.

Signed and filed this 15th day of February, 2017.



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WHG/srs

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.