

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JASON MEYER,

Claimant,

vs.

QUALITY MANUFACTURING
CORPORATION,

Employer,

and

EMC INSURANCE,

Insurance Carrier,
Defendants.

File No. 21012793.01

ARBITRATION DECISION

Head Note Nos.: 1108

STATEMENT OF THE CASE

The claimant, Jason Meyer, filed a petition for arbitration on May 20, 2021 against Quality Manufacturing, employer, and EMC Insurance, insurance carrier. The claimant was represented by Nick Platt. The defendants were represented by Brian Scieszinski.

The matter came on for hearing on June 9, 2022, before Deputy Workers' Compensation Commissioner Joe Walsh in Des Moines, Iowa via Zoom videoconferencing. The record in the case consists of Joint Exhibits 1 through 5; Claimant's Exhibits 1 through 10; and Defense Exhibits A through H. There were some objections to exhibits prior to and at hearing. The record was held open to allow the submission of additional pages in Joint Exhibit 5, as well as Joint Exhibit 6, recent treatment records. The claimant testified at hearing, in addition to Nate Cloe, Human Resources manager at Quality Manufacturing. Donna Policicchio served as the court reporter for the proceedings. The matter was fully submitted on July 15, 2022, after helpful briefing by the parties.

ISSUES

The parties submitted the following issues for determination:

1. Whether claimant sustained an injury which arose out of and in the course of his employment, and, if so, whether the alleged injury is a cause of temporary or permanent disability.

2. Whether defendants are responsible for any temporary disability benefits, including suspension of temporary disability benefits under Iowa Code section 85.33(3).
3. Whether defendants are responsible for any permanent disability benefits and, if so, the nature and extent of such disability.
4. The rate of compensation is disputed.
5. Whether defendants are responsible for any past and/or future medical expenses.
6. Penalty.
7. Costs.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship.
2. The claimant was married at the time of the alleged injury.
3. Affirmative defenses have been waived.

FINDINGS OF FACT

Claimant Jason Meyer was 47 years old as of the date of hearing. Mr. Meyer is married and has two children. He graduated from high school and has completed some college coursework at DMACC and BYU Idaho. He also served in the United States Marine Corps for three and a half years. He has worked in food service, home construction and manufacturing (welding) for most of his adult life. (Claimant's Exhibit 4, page 9) Mr. Meyer was a welder at John Deere for approximately 7 years before beginning his work with Quality Manufacturing in June 2018.

Mr. Meyer testified live and under oath during the video hearing. He was not a particularly sophisticated or articulate witness, however, his answers were generally credible. His testimony generally matches other portions of the record. He was a reasonably good historian. There was nothing about his demeanor which caused me any concern for his truthfulness.

Mr. Meyer began working at Quality Manufacturing as a welder. He testified this was a "more aggressive" welding position which was fast-paced and hard on his body. He testified about the raptor-roller position which involved lifting heavy pieces coming down a line with the assistance of a heavy magnet. He described this work in detail at hearing and his testimony is credible. (Transcript, pages 26-32) He wore a helmet and was looking down while welding. He reported no injuries initially while performing this

work at least during his first year of employment. He did testify, however, that he was having some pain in his neck and upper back while performing the raptor-roller job. (Tr., p. 32) He moved to the paint area in approximately May 2020, which he described as significantly less physically demanding. (Tr., p. 33) He testified the neck and upper back pain subsided during this time. He then returned to the raptor-roller job in August 2020, and the pain returned. He testified that the pain gradually became worse and began having pain and numbness into his arm and hand over the next several months until he finally sought treatment.

Mr. Meyer contends that he sustained a cumulative injury which arose out of and in the course of his employment which manifested on or about February 2, 2021. Defendants deny this. He never had any treatment for his neck or upper back prior to that date.

He first sought treatment from a chiropractor Nathaniel Khan, DC, on February 2, 2021. The contemporaneous medical note from this visit documents that he reported "acute, gradual and chronic" pain in the neck and upper back, as well as his low back. His primary goal was to return to work without limitation. (Jt. Ex. 3, p. 1) "He has history of prior multiple episodes, nature of employment, number of exacerbations and severity of initial episode of injury as complicating factor(s) ..." (Jt. Ex. 3, p. 3) There is not much detail in Dr. Khan's notes regarding how the condition developed. Dr. Khan took him off work at that time. February 2, 2021, was Mr. Meyer's first day of restricted or lost work due to his neck and upper back condition. He continued to treat with Dr. Khan throughout February 2021. (Jt. Ex. 3, pp. 4-17) Dr. Khan authored a report on May 6, 2021, outlining the factual circumstances of his treatment. He indicated Mr. Meyer attributed the pain in his neck, upper back and right arm to his work activities and that he ultimately provided 13 chiropractic sessions. (Claimant's Exhibit 2, page 1)

Mr. Meyer testified the chiropractic treatment helped a little but he was unable to return to work due to the pain in his arm and hand. He eventually spoke with Human Resources Manager Nate Cloe, seeking a medical leave of absence. (Tr., p. 118) He testified that he provided notice of the injury to Mr. Cloe at that time. (Tr., p. 36)

On February 15, 2021, Mr. Meyer sought treatment with Brian Mehlhaus, D.O., at Boone Family Medicine. (Jt. Ex. 1, p. 10) He reported pain going down his right hand and symptoms of pain and limited range of motion in his neck. Dr. Mehlhaus diagnosed cervical radiculopathy and physical therapy was recommended. Again, not much specific history of the condition was recorded in this office note.

Mr. Meyer went to the emergency room at Boone County Hospital on February 18, 2021, with light-headedness, nausea and significant neck pain. (Jt. Ex. 1, p. 15) He reported difficulty sleeping with the neck pain and was prescribed Amitriptyline to help him sleep. He reported that he had a pinched nerve in his lower and middle neck. The emergency room physician recommended starting his physical therapy right away. He went to the emergency room a couple of times in February 2021, with anxiety type symptoms related to his neck and arm pain.

After the emergency room visit on February 18-19, he was directed to see the employer's physician at Mercy One Occupational Health on February 25, 2021. He was evaluated by Jeff Henson, M.D., who recorded the following history:

The patient presents to the occupational medicine clinic for evaluation of his upper back neck and arm symptoms. Patient is a somewhat poor historian when it comes to the history of his presenting illness. He reports feeling some pain in his back in several months ago around April or June 2020 when he switched jobs to a more strenuous type of activity at work. At that time he states he began to experience some pain in the neck as well as in middle back. He reports that he switched to a new position and his pain resolved and then when he went back to another position and he states the [sic] experience pain started again. He does report that he reported this to a supervisor around December 2020 and he does report that he sought care with his primary care physician around December or January however there was no mention of any muscular skeletal discomfort at that exam. He continued to work and at one point was lifting a heavy object when he began to experience pain again. He does report he began to seek care with a chiropractor and he did undergo manipulations. He then states that he began to notice numbness and tingling going down the arm to the right hand. He has been evaluated by his primary care physician since that time and has been placed on medication as well as referred to physical therapist by his primary care physician he is being treated with amitriptyline anything some type of muscle relaxer.

(Jt. Ex. 4, p. 1) This is an accurate depiction of the facts to that point in time and highly consistent with Mr. Meyer's sworn testimony. Dr. Henson, however, ultimately provided the following diagnosis: "Initial Strain of musc/fasc/tend at shldr/up arm, right arm, init, acute. No additional work-up required. Radiculopathy, cervical region- not work related." (Jt. Ex. 4, p. 3) It is unclear from his notes how he reached any of these conclusions or what standards he utilized or whether he received any other information which is not contained in his record. It is noted that Dr. Henson actually signed this report a couple weeks later, on March 5, 2021. (Jt. Ex. 4, p. 4)

Mr. Meyer returned to his primary care clinic on March 2, 2021. He was evaluated by Rodney Logan, M.D. A detailed history is recorded in this record.

HPI

Establishing Care:

Details: He has been having difficulties with pain in his right scapular and trapezius areas of his neck and upper back for about 6 months. Symptoms were infrequent at 1st and progressively worsened. There was never a specific injury at work although he has had repetitive work that involves some lifting of relatively heavy objects without the use of a hoist. Symptoms now include loss of neck range of motion primarily on extension. Extension of the neck will cause "pinched nerve symptoms". The symptoms radiate to the right C6 area. Symptoms are intense enough that he will develop

panic/anxiety. Resting and supporting his neck for period of time, approximately 2 hours, will relieve the pinched nerve sensation and with the anxiety. Has not noted any weakness of his upper extremities. There is [sic] been no gait issues or difficulties with bowel bladder sensation. Lying supine requires lots of support because he has lost cervical lordosis.

He saw Dr. Mehlhaus for the 1st time regarding the symptoms last month. Ibuprofen was stopped and cyclobenzaprine and etodolac was started. He states he did not use any significant amount of etodolac. Dr. Mehlhaus suggested physical therapy be substituted for chiropractic manipulations. He has not been to physical therapy.

His visit with Dr. Mehlhaus was 2/15. He went to the emergency room 2/18. He states it was more related to this anxiety and panic. Dr. Scheffler did a CT which did not show any acute pathology of the cervical spine but there was limited visualization of the C7 spinous process.

He was seen again in the emergency room on 2/19 and was found to have some abnormal liver enzymes. Ultrasound has since been done and it was negative for gallstone disease or biliary tract dilatation. Billirubin [sic] was as high as 2.8. He did not take etodolac but had taken ibuprofen. A specific cause to the elevated liver enzymes was not known. He did have some nausea vomiting. Chest x-ray done at the 2nd admission was negative.

The meantime he has not been to work. He has been given FMLA papers. He is [sic] used all his vacation time. Employer did not see any specific association between his symptoms and his work.

He returns for assessment of his problem for diagnosis.

(Jt. Ex. 1, p. 37) Again, this history is entirely consistent with Mr. Meyer's sworn testimony. An MRI was recommended. (Jt. Ex. 1, p. 38)

On March 12, 2021, the workers' compensation carrier formally denied Mr. Meyer's claim. (Cl. Ex. 5, p. 1) "Your employer has indicated that there have been multiple inconsistent accounts as to how your alleged injury occurred and the alleged injury was not timely reported. Further, the alleged injury is not supported by the medical history set forth in some of the medical records we have received." (Cl. Ex. 5, p. 1)

The MRI recommended was quickly obtained and Mr. Meyer was referred to Todd Harbach, M.D., at Iowa Ortho in April 2021. Dr. Harbach also took a generally accurate and consistent history. (Jt. Ex. 5, p. 1) He reviewed the MRI and diagnosed right radicular pain, neural foraminal stenosis and cervical spondylosis. He recommended physical therapy and medications. (Jt. Ex. 5, p. 1) He offered injections and potentially surgery. Mr. Meyer started physical therapy on April 14, 2021, and thereafter continued to follow up with Iowa Ortho, as well as his primary clinic. He was also evaluated by Brett Rosenthal, M.D., at Iowa Ortho on May 28, 2021. Dr. Rosenthal

reviewed the MRI, noting severe bilateral neural foraminal stenosis, but documented that Mr. Meyer reported those symptoms had resolved since being off work. (Jt. Ex. 5, p. 11)

Based upon the records in evidence, it appears his symptoms did improve at least to an extent while he was off work and receiving physical therapy in April and May 2021.

In June 2021, he told his primary clinic that surgery was an option but he wanted to hold off as long as possible. (Jt. Ex. 1, p. 49) Prior to the expiration of his medical leave, Mr. Meyer asked Rodney Logan, M.D., to release him to return to work without restrictions to try to work. Dr. Logan agreed, documenting the following:

He is wanting to return to work but is not sure that he wants to do welding. He perceives that welding may have been responsible for his symptoms. He has retained a lawyer and is working on making this Workmen's Compensation [sic] related. I know of no specific activity with his welding that would worsen the symptoms and to write specific restrictions might only result in what he is allowed to do without necessarily helping. He is interested in following through on some training he started before he became disabled for different type of work. I have suggested he return without restrictions and if specific things are noted that cause recurrence of his symptoms, we can arrange for restrictions. Also, it may be something as simple as sneezing hard that cause recurrences of his symptoms. He may still need surgery and this is an ongoing problem that we will need to monitor.

(Jt. Ex. 1, p. 51)

In June 2021, Mr. Meyer attempted to return to work at his welding job. He testified credibly that his symptoms returned quickly and he could not continue this work. (Tr., pp. 47-48) At some point in mid-June 2021, Mr. Meyer texted Mr. Cloe indicating that he could not continue to work for Quality. (Cl. Ex. 9) He had a conversation with Mr. Cloe that he could not continue this work. His employment ended sometime in June 2021, although the exact date is not clear in this record.

On June 21, 2021, Dr. Logan documented the following:

He returned to work as planned and almost immediately began having pain into the right C5 area. He has the persistent numbness and tingling of the C6 dermatome in the fingertips. He states the symptoms are about the same to slightly worse. He is [sic] decided he is going to find different work that requires less physical demands on his neck.

(Jt. Ex. 1, p. 55) There is nothing documented, however, of Dr. Logan providing specific restrictions for this condition as he documented on June 4, 2021.

Since then, Mr. Meyer has moved a couple of times, first to Montana then to South Haven, Michigan. In Montana, he worked briefly at the front desk of a hotel for \$9.50 per hour. In Michigan, he eventually began working at Lovejoy. He is a CNC operator. Once his health insurance began, he started getting treatment again. (Jt. Ex. 6)

In the meantime, Mr. Meyer continued with physical therapy through August 2021.

Several physicians offered expert medical opinions regarding the injury and medical causation.

Dr. Logan signed a report for claimant's counsel on counsel's letterhead on May 12, 2021. He initialed the opinions that the claimant's medical condition was aggravated by his work activities at Quality Manufacturing. (Cl. Ex. 3, pp. 1-2) He did handwrite in the following explanation for his release of Mr. Meyer to full-duty: "I released Mr. Meyer to return to work with his original employer per Mr. Meyer's request." (Cl. Ex. 3, p. 1) He recommended consultation with another neck surgeon if symptoms persisted.

On June 8, 2021, Dr. Logan signed a supplemental report, again on claimant's counsel's letterhead. He confirmed his causation opinion. He further opined that he would have offered restrictions to prevent Mr. Meyer from engaging in the work activities which were aggravating his condition and that he was unable to perform his welding functions at Quality Manufacturing. (Cl. Ex. 3, p. 3)

Sunil Bansal, M.D., performed an independent medical examination on August 30, 2021. He reviewed appropriate medical records and thoroughly examined Mr. Meyer. (Cl. Ex. 1, pp. 1-8) Dr. Bansal diagnosed an aggravation of cervical spondylosis and facet arthropathy with C5-6 radiculopathy. (Cl. Ex. 1, p. 8)

He aggravated his cervical spondylosis and facet arthropathy as a result of his repetitive and physically demanding work activities at Quality Manufacturing.

He worked as a welder, and his job duties required that he constantly flex his neck while looking down to weld. He also wore a heavy welding helmet, which his neck also had to support while looking down. He was frequently required to work in awkward positions. These activities are consistent with the development of an aggravation of his cervical spondylosis.

(Cl. Ex. 1, pp. 8-9) Dr. Bansal recommended restrictions of lifting no more than 30 pounds or 10 pounds overhead, avoid wearing head gear, and avoid repetitive neck motions. (Cl. Ex. 1, p. 9) He assigned a 7 percent whole body rating pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. Dr. Bansal opined the date of maximum medical improvement was the date of his evaluation. (Cl. Ex. 1, p. 10)

On December 9, 2021, Todd Harbach, M.D., signed off on the following medical opinions presented to him on defense counsel letterhead. He agreed that Mr. Meyer primarily had degenerative findings in his neck and upper back which temporarily exacerbated his condition. Mr. Meyer's condition improved while he was off work. Surgery was not recommended and he was released to work without restrictions. Mr. Meyer did not sustain any permanent impairment as a result of his work activities at Quality Manufacturing. (Def. Ex. A, pp. 1-2)

In addition, defendants secured an evaluation by Joe Hawk, M.D., in May 2022. Dr. Hawk reviewed appropriate medical records and examined Mr. Meyer. Dr. Hawk ultimately diagnosed neck pain and neuritis. (Def. Ex. A, p. 12) He placed Mr. Meyer at MMI on February 25, 2022.

After careful examination of all records available and my examination it is my medical opinion that the claimant did not sustain an injury due to his employment at Quality Manufacturing. The fact that his explanation is believed to be fabricated retro actively [sic] in nature. In addition, his visit with the occupational medicine physician Dr. Henson deemed this not to be work-related. His own personal physician Dr. Logan stated: "there was never a specific injury at work." The treating spine surgeon did not feel this to be permanent injury resulting from work at Quality Manufacturing.

(Def. Ex. C, p. 12)

Nate Cloe, Quality Manufacturing's human resources manager, testified under oath at hearing on behalf of the employer. (Tr., p. 95) He testified that Mr. Meyer alleged a work injury in early February 2021. (Tr., p. 97) He went on to testify that Mr. Meyer filled out an injury report which he investigated. (Tr., pp. 98-100) In essence, Mr. Cloe did not believe Mr. Meyer. He testified that Mr. Meyer's supervisor told him that Mr. Meyer injured his neck away from work. (Tr., p. 100) He further testified that the raptor roller job is not as physically demanding as Mr. Meyer alleged. (Tr., p. 101-103) Mr. Cloe prepared a video which purported to demonstrate that the raptor roller job was not as physical as Mr. Meyer alleged.

In May 2022, Mr. Meyer sought to establish care at Bronson Family Medicine, in Michigan. On May 5, 2022, he was evaluated by Conor Mullin, M.D., for neck pain and cervical degenerative disc disease. (Jt. Ex. 6) Dr. Mullin prescribed Flexeril and physical therapy.

CONCLUSIONS OF LAW

The first question is whether the claimant sustained a cumulative injury which arose out of and in the course of his employment which manifested on or about February 2, 2021.

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.

A personal injury contemplated by the workers’ compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke’s Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavy v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

In this case, the issue of whether an injury occurred is intertwined to the issue of medical causation. In other words, claimant contends his position of welding gradually caused, lit up or aggravated the condition in his cervical spine. Therefore the injury issue substantially overlaps with the medical causation question.

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).

It has long been the law of Iowa that Iowa employers take an employee subject to any active or dormant health problems and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). A material aggravation, worsening, lighting up or acceleration of any prior condition has been viewed as a compensable event ever since initial enactment of our workers' compensation statutes. Ziegler v. United States Gypsum Co., 252 Iowa 613; 106 N.W.2d 591 (1961). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established in Iowa that a cause is "proximate" when it is a substantial factor in bringing about that condition. It need not be the only causative factor, or even the primary or the most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

By a preponderance of evidence, I find that claimant has met his burden of proof that he sustained a cumulative injury to his cervical spine which manifested on or about February 2, 2021. This is based upon Mr. Meyer's credible testimony, the contemporaneous medical documentation, as well as the opinions of Dr. Bansal, Dr. Logan, and Dr. Harbach.¹

My analysis of this issue is that defendants have mounted a highly technical defense, contending that Mr. Meyer's welding job was not quite as heavy as he claimed it to be. I find that his job was, in fact, a fairly heavy welding job and was the type of work which could aggravate someone's cervical spine condition. He wore a heavy welder's helmet and he had to look down with his neck flexed for extended periods. He performed some forceful pushing and pulling and otherwise lifting and manipulating heavy pipes and often worked in awkward positions. Mr. Meyer was likely predisposed to this type of injury due to degenerative disc disease in his cervical spine. For this reason, the medical opinions of Dr. Bansal and Dr. Logan are more convincing than the opinions of Dr. Hawk.

The next issue is whether claimant is entitled to healing period benefits from the date of his injury through August 30, 2021.

¹ In his check box report, Dr. Harbach indicated that Mr. Meyer's neck condition was "temporarily exacerbated" by his work activities at Quality Manufacturing. This implies that there was an injury which arose out of and in the course of his employment. Dr. Harbach did not relate any permanency to the work activities. (Def. Ex. A, pp. 1-2)

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, 312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

I find that claimant is entitled to healing period benefits from February 16, 2021, through August 30, 2021, the date he reached maximum medical improvement. Claimant is seeking benefits beginning on February 2, 2021. I find that the evidence reflects that claimant was provided some light-duty work after he presented with restrictions from his chiropractor. The exact date he went off work is unknown in this record. February 16, 2021, is the first date he requested a leave of absence and, based upon this record, he was clearly off work at this time. I decline to speculate on the exact date he first went off work.

The employer contends that Mr. Meyer refused suitable work during this timeframe. See Iowa Code section 85.33(3) (2021). Mr. Meyer was granted a leave of absence between February 16, 2021, up through the date he quit his employment in mid-June 2021. At the time he quit, his workers' compensation claim had been formally denied by the employer. (Cl. Ex. 5) His personal physician, Dr. Logan had agreed to allow him to attempt to return to work without restrictions. (Jt. Ex. 1, p. 51) Mr. Meyer did return and his symptoms immediately returned even though he was performing lighter welding work. He then quit. The employer did not make any formal offer in writing to the claimant until May 9, 2022. (Def. Ex. E) By that time, Mr. Meyer had moved and had begun new employment. The record reflects that he left his employment due to his work-connected disability upon the advice of his physician. The defendants' refusal of suitable work claim therefore fails.

The next issue is extent of permanency.

The defendants rely upon the medical opinion of Dr. Harbach as evidence that the claimant's work injury was merely a temporary aggravation of his underlying condition. I reject this opinion. The greater weight of evidence supports a finding that the work injury has substantially caused, aggravated or lit up a permanent functional impairment in the claimant's neck and cervical spine.

The greater weight of evidence supports a finding that claimant's disability is industrial and must be assessed under Iowa Code section 85.34(2)(v) (2021). Since I have found that claimant left work due to his disability, I further find that section 85.34(2)(x) is inapplicable. I find claimant's disability should be evaluated as an industrial disability for loss of earning capacity.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City Ry. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the Legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

At the time of hearing, claimant is 47 years old. He is bright and has some college. Most of his working career has been in construction, including welding and assembly. He has found a suitable, lighter position as a CNC operator. His cervical condition is serious, but there has been no surgery. He is technically unrestricted, although Dr. Bansal recommended some restrictions. He is no longer well-suited for welding or heavy industrial work. Dr. Bansal assigned a 7 percent whole body rating per the AMA Guides, Fifth edition. Considering all of the appropriate factors of industrial disability, I find claimant has proven a 25 percent loss of earning capacity in the competitive job market. I conclude this entitles him to one hundred and twenty-five weeks of compensation commencing on September 1, 2021.

The next issue is 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 is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See, Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP, Inc., File No. 1020226 (App., February 27, 1995).

I find that claimant is entitled to the medical expenses set forth in Claimant's Exhibit 7. The defendants are entitled to a credit for any expenses paid through its group policy.

Claimant further seeks alternate medical care.

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).

Since I have found Mr. Meyer's disability to be work-related, he is entitled to medical care in the area he lives now. Since his claim was denied, he has sought out treatment on his own with Conor Mullin, M.D. in Michigan. Treatment through Dr. Mullin or his clinic is now deemed authorized.

Finally, the claimant seeks an award of penalty under Section 86.13. Based upon the foregoing findings of fact, I find that the defendants had contemporaneous, good faith reasons for their handling of this claim. Penalty is denied.

ORDER

THEREFORE IT IS ORDERED

All weekly benefits shall be paid at the rate of seven hundred six and 42/100 (\$706.42).

Defendants shall pay healing period benefits from February 16, 2021, through August 30, 2021.

Defendants shall pay the claimant one hundred and twenty-five (125) weeks of permanent partial disability benefits commencing September 1, 2021.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.


Defendants shall reimburse or pay the medical expenses set forth in Claimant's Exhibit 7.

Defendants shall authorize treatment with Bronson Family Medicine, Dr. Conor Mullin.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs are taxed to defendants.

Signed and filed this 30th day of January, 2023.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nick Platt (via WCES)

David Scieszinski (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.