BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ABE CAMP, Claimant, vs. DURHAM SCHOOL SERVICES, Employer, and OLD REPUBLIC INSURANCE CO. Insurance Carrier, Defendants.	:	File No. 5066058.01 ARBITRATION DECISION Head Notes: 1100; 1108; 1402.30; 1402.40; 1804; 2206; 2500; 2504; 2505; 2601

STATEMENT OF THE CASE

Claimant Abe L. Camp filed a petition in arbitration seeking workers' compensation benefits against Durham School Services, employer, and Old Republic Insurance Company, insurer, for an alleged work injury date of November 27, 2017. The case came before the undersigned for an arbitration hearing on October 19, 2020. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via video means, using CourtCall. Accordingly, this case proceeded to a live video hearing via CourtCall with all parties and the court reporter appearing remotely. The hearing proceeded without significant difficulties.

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

The evidentiary record includes Joint Exhibits 1 through 13, Claimant's Exhibits 1 through 10, and Defendants' Exhibits A through D.

Claimant testified on his own behalf. Claimant's wife, Sharon Camp, also testified. Kara Griffiths testified on behalf of the employer. The evidentiary record closed at the conclusion of the evidentiary hearing on October 19, 2020. The parties submitted post-hearing briefs on December 7, 2020, and the case was considered fully submitted on that date.

ISSUES

1. Whether claimant sustained an injury arising out of and in the course of his employment on November 27, 2017;
2. Whether the alleged injury is a cause of temporary disability;
3. Whether the alleged injury is a cause of permanent disability;
4. If the injury caused permanent disability, the nature and extent of that disability, including permanent total disability, and commencement date for benefits;
5. Payment of certain medical expenses;
6. Payment of claimant's independent medical evaluation under Iowa Code section 85.39; and
7. Taxation of costs.

FINDINGS OF FACT

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

Claimant's testimony was consistent as compared to the evidentiary record, and his demeanor at the time of hearing gave the undersigned no reason to doubt his veracity. Claimant is found credible.

At the time of hearing, claimant was 66 years old. (Hearing Transcript, p. 12) Claimant was living in Davenport, Iowa, with his wife, Sharon Camp. (Tr., p. 12) Claimant is a smoker, and has smoked for 45 to 50 years. (Tr., pp. 69-70) Claimant attended high school in Newton, Iowa, but did not graduate. (Tr., p. 61) He obtained a GED a couple of years after leaving school. Claimant's past work experience includes driving a dump truck hauling gravel and dirt at a rock quarry. (Tr., p. 70) Claimant also worked as an assistant manager at a gas station, where he helped manage the employees and balance the books. (Tr., p. 71) In the 1980s, claimant worked for Pinkerton Security as a security guard. (Tr., pp. 72-73)

In approximately 2000, claimant went to work at Safelite Auto Glass. (Tr., p. 62) His job included answering phones and delivering glass windshields to installers. (Tr., pp. 62-63) Claimant worked for Safelite until approximately 2004 or 2005. (Tr., pp. 64-65; 76) Claimant then went to work part-time at Walmart, and part-time at NAPA Auto Parts. (Tr., p. 65) His job at NAPA was delivering parts. His job at Walmart was as a part-time supervisor in the automotive center. (Tr., p. 65) The supervisor position at Walmart included occasionally helping the employees with their work, including changing tires, working underneath cars, and stocking shelves. (Tr., pp. 65-66)

After Walmart, claimant began working for defendant employer, Durham School Services. (Tr., pp. 66-67) Claimant started with Durham in 2017. He was initially hired to work as a school bus monitor, which is a part-time position. (Tr., p. 67) His job as a monitor was to ride the school buses and monitor the children to be sure they were sitting in their seats properly, and not fighting or throwing things. (Tr., p. 15) Shortly after

starting at Durham, claimant was promoted to bus driver. However, on the date of injury, claimant was working as a monitor because they were short-staffed. (Tr., pp. 14-15)

Claimant has a significant preexisting medical history, which is relevant to the instant case. In June of 1986, when claimant was 32 or 33 years old, he slipped and fell while working for Pinkerton. (Joint Exhibit 1, p. 2) Claimant sustained a back injury as a result of that fall, and eventually had a partial laminectomy and partial fusion surgery at L5-S1. (Jt. Ex. 1, p. 2; Tr., pp. 73-74) While claimant was recovering from that surgery, before he had returned to work, he stepped off a curb and felt a pop in his back. (Tr., pp. 74-75) He sought additional treatment, and it was determined that his first fusion surgery had failed. (Jt. Ex. 1, p. 3) Eventually he had a second back surgery consisting of "bone graft, right pelvis, to transverse process, L5-S1. Bilateral fusion." (Jt. Ex. 1, p. 4) That surgery took place on February 16, 1988. (Jt. Ex. 1, p. 4)

Following the second back surgery, claimant continued to suffer with back pain. He was eventually referred to a neurosurgeon for consideration of a dorsal column stimulator. (Jt. Ex. 2, p. 1; Claimant's Exhibit 1, p. 2) The stimulator was not recommended due to his young age, so he was referred for a rehabilitation evaluation at the University of Iowa. (Jt. Ex. 2, pp. 1-2) After the evaluation, the rehabilitation director determined that claimant was not a candidate for the program. (Jt. Ex. 2, pp. 5-6) Claimant had expressed "a great deal of fear" that his back remained unstable, and concerned that he would reinjure himself. (Jt. Ex. 2, p. 5) Due to his "very black and white attitude with no compromise in terms of the potential for his low back," he was not a rehabilitation candidate at that time. (Jt. Ex. 2, p. 6)

Claimant had a functional capacity evaluation on June 22, 1989. (Jt. Ex. 2, pp. 7-9) He was determined to have put forth a fair effort but was "extremely limited" by fear and overall physical deconditioning. (Jt. Ex. 2, p. 8) He was also found to be "quite limited" in terms of his overall cardiovascular situation. Ultimately, it was determined that claimant was capable of full-time employment, and it was recommended that he pursue a home exercise program in order to increase his physical functioning. (Jt. Ex. 2, pp. 8-9) He was assigned a 20 percent permanent impairment rating. (Jt. Ex. 2, p. 9)

In October of 1992, claimant had a heart attack. (Jt. Ex. 4, p. 1) Records indicate he had a second heart attack in December of 1992. (Jt. Ex. 4, p. 18) He underwent cardiac catheterization and had stents placed in 1998 and was diagnosed with coronary artery disease. (Jt. Ex. 3, pp. 1-3) In August of 2001, claimant had another heart attack. (Jt. Ex. 3, p. 4) He had another cardiac catheterization, which lead to angioplasty and stent deployment. (Jt. Ex. 3, pp. 4-5; Jt. Ex. 4, p. 2)

At this time, claimant was working for Safelite. On October 23, 2004, claimant sustained a back injury while working for Safelite. (Defendants' Exhibit A, p. 4) Claimant testified that he was unloading a windshield from the van for an installer when the wind caught it. (Tr., p. 78) Rather than let go, claimant tried to control the glass, and his body twisted, injuring his back again. (Tr., pp. 29; 78) Claimant testified that the windshield weighed approximately 80 pounds. (Tr., p. 29) Claimant eventually had another back surgery following that injury, which extended his prior fusion from L3 to S1, and this time

included instrumentation as opposed to only bone graft. (Jt. Ex. 8, p. 1; Tr., p. 78) Claimant testified that Safelite would not take him back after his injury, so he then went to work for Walmart and NAPA, both part-time. (Tr., pp. 64-65)

Claimant had another heart procedure in June of 2005 consisting of cardiac catheterization, selective coronary angiography, left ventriculography, and attempted percutaneous transluminal coronary angioplasty. (Jt. Ex. 3, pp. 7-8) Claimant continued to have regular follow-up visits for his coronary artery disease, which was noted to be stable for several years. (Jt. Ex. 4, pp. 4-12) Claimant testified that he had another work-related injury in 2009 while working at Walmart, which resulted in a double hernia and surgery. (Tr., pp. 81-82)

In 2012, claimant had been complaining of a cramping pain in his legs, which was eventually determined to be a "gradually progressive course of claudication" related to peripheral vascular disease. (Jt. Ex. 4, p. 13) It was recommended he undergo angiogram with percutaneous revascularization, which procedures took place in August and September of 2012. (Jt. Ex. 3, pp. 9-10; Jt. Ex. 4, p. 15; Cl. Ex. 1, p. 2) By April of 2013, however, he was again complaining of progressive leg pain due to claudication, as well as chronic back pain. There was concern he had occluded the stent in his right leg and had progression of the disease in his left leg. (Jt. Ex. 4, p. 17) Claimant was not interested in repeat revascularization at that time, so the recommendation was to discontinue tobacco use and walk on a daily basis. (Jt. Ex. 4, p. 17)

In March 2015, claimant saw Timothy Kresowik, M.D., at University of Iowa Health Care related to his peripheral vascular disease and carotid stenosis. (Jt. Ex. 2, pp. 10-16) At that time, he was complaining of cramping in his legs after walking about one block. It is noted that after the stents were placed in his legs in 2012, he had significant improvement in his symptoms, but they had since worsened. He acknowledged that his continued smoking worsened his symptoms. (Jt. Ex. 2, p. 10) Dr. Kresowik noted claimant's history of lumbosacral spine disease, and complaints of severe pain in his lower back and right hip region. (Jt. Ex. 2, p. 16) Ultimately, it was decided that claimant would proceed with a right carotid endarterectomy. (Jt. Ex. 2, p. 16)

In August of 2016, claimant had another peripheral catheterization. (Jt. Ex. 3, pp. 11-13) He returned to his cardiologist on November 18, 2016, at which time he denied symptoms of claudication. (Jt. Ex. 4, p. 23) At that time, his cardiac and vascular diseases were stable and well controlled. (Jt. Ex. 4, p. 24) At his next cardiac follow-up visit on July 24, 2017, his conditions were still stable and well controlled. (Jt. Ex. 4, pp. 25-26)

Claimant's alleged injury occurred on November 27, 2017. (Tr., p. 14) On that day, claimant was working as a bus monitor, as opposed to driver, because they were short-staffed. (Tr., pp. 14-15) A coworker named Kara Griffiths was driving the bus. (Tr., p. 119) Claimant testified that they were at the intersection of Kimberly and Marquette in Davenport waiting to turn left. (Tr., p. 15) The bus was at a complete stop at a red light. (Tr., p. 15) Claimant stood up when the bus stopped and was walking toward the front

to speak with the driver, Ms. Griffiths, when the bus was struck from behind by another driver in a pickup truck, which he believed to be a Ford F-150. (Tr., pp. 16; 91) Claimant testified that when the truck hit the bus, his body was "slammed into a seat that was to the right of me," which he grabbed onto. (Tr., p. 16) The police came to the scene, and Ms. Griffiths was not charged with anything related to the accident. (Tr., pp. 16-17) Claimant did not feel any pain immediately after the accident and was able to complete his work that day. (Tr., pp. 17; 92)

Ms. Griffiths testified at hearing. Her demeanor was appropriate, and I find her to be a credible witness. She testified that on the date of injury, she was driving a 40-foot-long Tomas Bullet, which is a standard school bus. (Tr., p. 120) Claimant was working as a monitor on her bus that day. (Tr., p. 119) They were stopped at a red light, waiting to turn, and they were rear-ended by a white Ford pickup. (Tr., p. 120) There were no children on the bus yet. (Tr., p. 121) The speed limit on the road is 40 miles per hour. Ms. Griffiths testified that on impact, the bus did "jerk a little bit," but it was "just kind of soft." She thought the bus moved a few feet. The bus was not damaged. (Tr., p. 121) Ms. Griffith also acknowledged that claimant was walking toward her when the accident occurred. (Tr., p. 123) Ms. Griffiths had worked with claimant on less than a dozen occasions prior to the accident. (Tr., pp. 122-123) She was aware that he had "a rod in his back," but that was the extent of her knowledge regarding his prior back issues. (Tr., pp. 119-120) Prior to the accident, Ms. Griffiths had never noticed claimant using a walker, and he was able to get in and out of the bus without any assistance. (Tr., p. 123)

The morning after the accident, when claimant awoke, he had pain in his low back and numbness in his legs. (Tr., pp. 17-18) He testified that his back felt "loose" and his legs felt weak. (Tr., pp. 17-18) Claimant reported the symptoms to his employer and completed an incident report. (Def. Ex. B, p. 11) On the form, he noted that he was walking to the front of the bus when it was hit, causing his body to "flex forward." (Def. Ex. B, p. 11)

Claimant was sent to Concentra Medical Center, where he saw Naomi Chelli, M.D., on November 28, 2017. (Jt. Ex. 6, p. 2) Dr. Chelli's note indicates that claimant reported constant pain in his low back and feeling like he had a knot in his back. He also reported limited range of motion and leg numbness. (Jt. Ex. 6, p. 3) Preliminary x-rays showed his prior fusion hardware to be intact. (Jt. Ex. 6, p. 4) Claimant was prescribed medications and referred for physical therapy. (Jt. Ex. 6, p. 4) He was also provided with temporary work restrictions. (Jt. Ex. 6, p. 2)

Claimant returned to Dr. Chelli on December 1, 2017. (Jt. Ex. 6, p. 18) At that time, he had completed 3 physical therapy sessions and had an injection. (Jt. Ex. 6, p. 18) Dr. Chelli noted that he was doing somewhat better, but still had constant pain, as well as pain and numbness on the tops of his legs and the inside of his legs that was constant. (Jt. Ex. 6, p. 18) He continued physical therapy, and returned to Dr. Chelli next on December 6, 2017. (Jt. Ex. 6, p. 30) At that time, he reported back pain, tingling, and numbness of the lower back radiating into both hips and femurs. He further reported that physical therapy was not helping, and actually aggravated his pain. (Jt. Ex. 6, p. 30) Dr. Chelli ordered an MRI. (Jt. Ex. 6, p. 31)

Claimant returned to Dr. Chelli on December 20, 2017, after the MRI. (Jt. Ex. 6, p. 38) He reported that prior to the MRI, his pain was a 4 or 5 out of 10, but after the MRI it was 9.5 of 10 because he had to lay flat. (Jt. Ex. 6, p. 38) At that point, Dr. Chelli referred claimant to orthopedics. (Jt. Ex. 6, p. 39)

Claimant was referred to ORA Orthopedics, where he saw Timothy Millea, M.D. (Jt. Ex. 8) His first visit was on January 15, 2018, at which time Dr. Millea noted his history of three prior back surgeries. (Jt. Ex. 8, p. 1) He noted that claimant did "generally and acceptably well" following his most recent back surgery, until the accident in November. (Jt. Ex. 8, p. 1) Dr. Millea reviewed the MRI, and noted postoperative changes from L3 to S1 with segmental pedicle screw instrumentation over those levels. (Jt. Ex. 8, p. 2) Overall canal caliber was acceptable, but there was notable narrowing of the neural canal at the L2-L3 level. Dr. Millea's impression was broad-based disk herniation at L2-L3 with associated adjacent segment stenosis with neurogenic claudication and evidence of right L3 radiculopathy. (Jt. Ex. 8, p. 2)

Dr. Millea noted that given claimant's report of the onset of symptoms, as well as the absence of indications of similar problems prior to the injury, causation of the current problems appears to be associated with the accident in November 2017. (Jt. Ex. 8, p. 2) Dr. Millea discussed surgical treatment, which would essentially extend claimant's decompression and fusion to the L2 level. However, before making that decision, Dr. Millea felt a trial with a single epidural injection would be appropriate. (Jt. Ex. 8, p. 2)

Claimant had the epidural injection on February 5, 2018. (Jt. Ex. 8, p. 4; Jt. Ex. 9, p. 1) He returned to Dr. Millea on February 19, 2018, at which time he reported that the injection did not provide any significant lasting improvement. Dr. Millea again discussed surgery, and claimant "made it quite clear today that his current symptom level is not at all acceptable." (Jt. Ex. 8, p. 4) Claimant expressed frustration with his inability to return to work and noted that even traveling in a vehicle was difficult. It was decided to proceed with surgery following preoperative clearance. (Jt. Ex. 8, p. 4)

Claimant had a preoperative appointment at ORA on March 22, 2018, at which time it was noted his lumbar spine surgery was scheduled for April 3, 2018. (Jt. Ex. 8, p. 7) On March 26, 2018, claimant was seen by his family healthcare provider, Averill Fuhs, M.D., at Genesis Health Family Practice. (Jt. Ex. 7, p. 6) After examination it was noted that he was clear to proceed with surgery from a primary care perspective and had an appointment later that day with his cardiologist for cardiac clearance. (Jt. Ex. 7, p. 7)

Claimant did see his cardiologist, Peter Sharis, M.D., on the same day. (Jt. Ex. 10, p. 1) He reported no cardiac or vascular symptoms. However, given his prior history, Dr. Sharis recommended a preoperative stress test. (Jt. Ex. 10, p. 2) The test took place the following day, March 27, 2018. (Jt. Ex. 10, p. 4) The results of the test were abnormal, and there is a nursing note from ORA that indicates claimant was scheduled for a cardiac catheterization as a result. (Jt. Ex. 10, p. 4; Jt. Ex. 8, p. 9) The note also indicates that the back surgery may need to be cancelled depending on the results. (Jt. Ex. 8, p. 9)

Claimant underwent cardiac catheterization on March 30, 2018. (Jt. Ex. 7, p. 8) Dr. Sharis noted moderately severe left ventricular systolic dysfunction, and severe coronary artery disease including significant left main disease. (Jt. Ex. 7, p. 9) It was determined that claimant would need to undergo coronary bypass graft surgery, and the upcoming back surgery would have to be cancelled. (Jt. Ex. 7, p. 9) At a follow up with his primary care provider on April 2, 2018, it is noted that claimant reported being completely asymptomatic at that time, and only had the cardiac workup because he was scheduled to have back surgery. (Jt. Ex. 7, p. 10) He was frustrated that he was not able to have his back surgery, as he continued to have severe back pain, but "understands that he needs to have his heart taken care of first." (Jt. Ex. 7, p. 10)

On April 9, 2018, claimant underwent double coronary artery bypass surgery. (Jt. Ex. 7, p. 12) He was discharged from the hospital on April 12, 2018. (Jt. Ex. 7, p. 19) Claimant followed up with his primary care physician on May 4, 2018. (Jt. Ex. 7, p. 21) At that point it was noted that a nodule had been found on his right lung, for which he was told to follow up with pulmonology. (Jt. Ex. 7, p. 21)

Claimant continued to have regular follow-up appointments with cardiology and his primary care physician as his condition stabilized. Finally, on August 20, 2018, claimant returned to Dr. Millea. (Jt. Ex. 8, p. 10) At that time claimant was using a walker, which he attributed more to his lower extremity symptoms than any further deconditioning related to his cardiac surgery. Plans were made to move forward with the back surgery. (Jt. Ex. 8, pp. 10-11)

Claimant's back surgery took place on September 4, 2018. (Jt. Ex. 7, p. 32) Surgery consisted of decompressive laminectomy at L2-L3 with bilateral discectomy, followed by extension of his previous L3 to S1 fusion cephalad to the L2 level with pedicle screw instrumentation and interbody fusion cage. (Jt. Ex. 7, p. 35) Claimant was discharged from the hospital following surgery on September 6, 2018. (Jt. Ex. 7, p. 35)

Claimant continued to follow up with Dr. Millea following surgery. On October 1, 2018, he was seen due to a potential infection in his surgical wound. (Jt. Ex. 8, p. 15) Given claimant's medical comorbidities, Dr. Millea did not want to make a "cavalier" decision about surgical debridement of the wound, so claimant was advised to take antibiotics and watch the wound closely. By October 24, 2018, claimant's wound had healed "quite nicely." (Jt. Ex. 8, p. 20) It was recommended that he begin physical therapy, but at his next follow up on November 26, 2018, it had not yet been authorized. (Jt. Ex. 8, p. 21)

Claimant began physical therapy in mid-December. At his follow up on January 3, 2019, he advised that the therapy caused a significant exacerbation of his pain. (Jt. Ex. 8, p. 22) Dr. Millea recommended another MRI, and put physical therapy on hold pending results. (Jt. Ex. 8, p. 22) The MRI took place on February 6, 2019, and claimant followed up with Dr. Millea on February 20. (Jt. Ex. 8, pp. 24-27) At that time, claimant continued to have "significant difficulty" with pain in the mid to low lumbar area, into his bilateral buttock area. (Jt. Ex. 8, p. 26) Dr. Millea noted claimant was having increasing difficulty with not just moderate activity, but even changing from one position to another.

Upon review of the MRI, Dr. Millea noted that there were no new potential surgical problems. As such, Dr. Millea recommended bilateral sacroiliac joint injections to see if that would help claimant's ongoing symptoms. (Jt. Ex. 8, p. 26)

Claimant had bilateral sacroiliac joint injections on April 1, 2019. (Jt. Ex. 9, p. 2) He returned to Dr. Millea on April 8, 2019, at which time he reported no significant improvement following the injections. (Jt. Ex. 8, p. 29) He continued to use a walker while outside of his home and reported a significant increase in symptoms with any activities for more than an hour or so at a time. At that point, Dr. Millea had no further options from a surgical or injection therapy standpoint. He recommended referral to University of Iowa Pain Clinic in order to consider a dorsal column stimulator. (Jt. Ex. 8, pp. 29; 32)

During this time period, claimant was also diagnosed with lung cancer, for which he underwent treatment. (Jt. Ex. 7, pp. 52-88) He returned to Dr. Millea on May 13, 2019, at which time the referral to the pain clinic had not yet been approved. (Jt. Ex. 8, p. 33) He saw Dr. Millea again on June 20, 2019, at which time claimant advised that he had been scheduled for an independent medical evaluation (IME) in Des Moines, but arrived "7 minutes late" and was not able to be seen due to a "surgery schedule conflict." (Jt. Ex. 8, p. 35) As such, the IME had been rescheduled for July 10, 2019. Additionally, claimant was scheduled to be seen at the pain clinic on July 9, 2019. (Jt. Ex. 8, p. 35) There were no changes in claimant's symptoms at that time. Dr. Millea notes that they also discussed his "lack of optimism" for claimant's ability to return to work as a school bus driver. (Jt. Ex. 8, p. 35)

Claimant saw Anureet Walia, M.D. at the University of Iowa Pain Clinic on July 9, 2019. (Jt. Ex. 13, p. 1) After reviewing claimant's MRI imaging and meeting with him, Dr. Walia noted claimant likely had multifactorial etiology for low back pain, including postsurgical pain, adjacent paraspinal myofascial pain, and radicular pain secondary to lumbar spinal stenosis. (Jt. Ex. 13, p. 7) Dr. Walia recommended a caudal epidural steroid injection, some changes in claimant's medications, and physical therapy for "gentle stretching exercises," as his prior physical therapy only exacerbated his symptoms. (Jt. Ex. 13, pp. 7-8) Claimant followed up with Dr. Millea, who agreed with the plan and prescribed an aquatic therapy program. (Jt. Ex. 8, p. 37) Claimant returned to the pain clinic on August 21, 2019, at which time he received the caudal epidural steroid injection. (Jt. Ex. 13, pp. 15-16)

Claimant also attended the rescheduled IME on July 10, 2019. (Def. Ex. D, p. 47) The IME was performed by Trevor Schmitz, M.D., at Iowa Ortho. He noted that claimant described pain at a level 10 of 10, mainly in the low back and bilateral legs. Claimant stated his pain was made worse with walking, sitting, and standing. (Def. Ex. D, p. 47) Dr. Schmitz reviewed medical records and examined claimant. After his review, Dr. Schmitz stated that he could not state within a reasonable degree of medical certainty that claimant sustained a low back injury at the time of the bus accident on November 27, 2017. (Def. Ex. D, p. 54) It was his opinion that the accident was not severe enough to cause an exacerbation or the need for surgery. (Def. Ex. D, pp. 54-55) He further opined that claimant was having symptoms prior to the accident, and has degenerative

spondylolisthesis as well as degenerative lumbar spinal stenosis, and both of these conditions can cause pain without any inciting event. (Def. Ex. D, p. 55) He notes that claimant has a "significant history of low back pain, as well as bilateral lower extremity pain, which is well documented in the records prior to the accident." (Def. Ex. D, p. 55) Dr. Schmitz did not believe claimant required any additional permanent restrictions related to the accident, as any permanent restrictions "are more likely related to his underlying fusions." (Def. Ex. D, p. 56)

Claimant correctly points out in his brief that Dr. Schmitz's report contains several factual errors. Perhaps most significant is that Dr. Schmitz apparently did not have complete medical records initially, as he incorrectly stated that claimant did not seek "significant care until nearly a month after the accident." (Def. Ex. D, p. 55) It appears the first medical record Dr. Schmitz had following the accident was from claimant's December 18, 2017 appointment with his primary care provider. (Def. Ex. D, p. 51) There are also some errors in Dr. Schmitz's report regarding the correct date of injury, and claimant's prior surgical history. (Def. Ex. D, pp. 47; 48; 51) Dr. Schmitz prepared a second letter, dated September 23, 2020, in which he notes he had since received a copy of claimant's IME report, as well as the previously missing medical record from November 28, 2017, the day after the bus accident. (Def. Ex. D, p. 57) Dr. Schmitz then indicated that these reports did not alter his previous opinions, as he did not feel as though the underlying facts in claimant's case had changed. (Def. Ex. D, p. 57)

While Dr. Schmitz was eventually provided with the November 28, 2017 medical record, there is no indication that he was also provided with physical therapy records or other records prior to December 18, 2017. Additionally, Dr. Schmitz talks a great deal about claimant's symptoms prior to the date of injury, but does not appear to consider that claimant's chronic symptoms were stable and he was able to function prior to the bus accident. The fact that he formed his initial opinions regarding causation based on incomplete and inaccurate information leads me to afford them little weight. Additionally, he provided very little information regarding why the receipt of the additional medical records did not change his opinion. This omission is significant because his mistaken belief that claimant did not seek medical care for "nearly a month" after the accident seemed to be a large part of his initial opinion. Given these issues, I do not find Dr. Schmitz's opinions regarding causation to be convincing.

Based on Dr. Schmitz's opinions, defendants denied claimant's back injury. (Tr., pp. 47-48) Claimant returned to Dr. Millea on September 5, 2019. (Jt. Ex. 8, p. 40) Unfortunately the caudal injection had not been helpful, and claimant's condition had not changed. Dr. Millea noted that claimant's aquatic therapy had not been approved at that time, and he continued to recommend that form of rehab as he thought it would be more successful than a standard rehab program. (Jt. Ex. 8, p. 40) Dr. Millea also noted on his "Return to/excuse from Work" form that claimant continued to be unable to return to work and added "do not anticipate return to previous job in the future." (Jt. Ex. 8, p. 41) Claimant testified that this information made him feel "sick to my stomach," and that he liked his job at Durham. (Tr., pp. 48-49)

Claimant's final appointment with Dr. Millea took place on October 7, 2019. (Jt. Ex. 8, p. 44) At that time, his condition had not changed, but he had been scheduled to begin aquatic therapy in the coming weeks. Dr. Millea advised claimant that he had spoken to both attorneys involved in the case, and that he continued to recommend aquatic therapy and referral back to the pain clinic at the University of Iowa as he had no further treatment options to offer. (Jt. Ex. 8, p. 44) Shortly thereafter claimant did begin the aquatic therapy, and upon discharge it was noted that he had made some progress on set goals but continued to have impairments in function and pain. (Jt. Ex. 8, p. 49)

On November 4, 2019, Dr. Millea signed a letter authored by claimant's attorney, which summarized Dr. Millea's opinions regarding causation. (Cl. Ex. 2, pp. 1-2) Dr. Millea agreed that it was his opinion that claimant sustained a recurrent disc herniation in his lumbar spine at L2-3 as a result of the bus accident. (Cl. Ex. 2, p. 2) It is further noted that Dr. Millea indicated that approximately 15 percent of his patients have recurrent disc herniations following a fusion, and most patients are generally deemed stable within 13 months of surgery. (Cl. Ex. 2, p. 2) Finally, Dr. Millea agreed that the potential need for a spinal cord stimulator was also necessitated by the work accident. (Cl. Ex. 2, p. 2)

Dr. Millea was the treating surgeon who provided claimant with a great deal of treatment. His records are detailed and appear to be quite accurate. I find his opinions regarding causation are entitled to the greatest weight.

Claimant had an IME on July 13, 2020, with Mark C. Taylor, M.D. (Cl. Ex. 1) Dr. Taylor reviewed claimant's prior medical history, including his prior back surgeries, and noted that prior to the bus accident, claimant's symptoms were mild, he could engage in most activities, including work, and he was "doing reasonably well and had minimal symptoms as long as he was cautious with his activities." (Cl. Ex. 1, p. 3)

Claimant described his current symptoms to Dr. Taylor as "extreme" lower back pain, as though something was "compressing, or 'squishing,' his spine in the lower back." (Cl. Ex. 1, p. 7) He reported pain levels averaging between 8.5 to 9 out of 10. He described periodic numbness and tingling into his legs, and noted that the current symptoms in his legs were different than the cramping sensations he had in his legs prior to the accident, which were related to his peripheral vascular disease. (Cl. Ex. 1, p. 7) He noted using a walker when he leaves the house, and being unable to climb ladders, mow, or pick up anything, including his grandchild. (Cl. Ex. 1, p. 7)

With respect to causation, Dr. Taylor opined that the bus accident on November 27, 2017, was a substantial contributing factor to claimant's low back condition and subsequent treatment. (Cl. Ex. 1, p. 10) Despite his history of prior back problems, claimant was stable and doing "fairly well" prior to the work injury. Dr. Taylor opined that there was a "clear change" in claimant's status as a result of the injury, to the point that he told Dr. Millea in February 2019 that the symptoms were "not at all acceptable." (Cl. Ex. 1, p. 10) Additionally, claimant was having difficulties with all activities, and was very limited in what tasks he could perform. Dr. Taylor noted that after the accident, there

was a "sudden change in the degree of symptoms" that claimant was experiencing. While he may have eventually developed worsening symptoms or the need for surgery at some point in the future, it is not likely that it would have needed to occur when it did "but for the fact that he sustained his injury in November 2017." As a result, Dr. Taylor opined that the work injury was an aggravation or acceleration of a pre-existing condition. (Cl. Ex. 1, p. 10)

Dr. Taylor opined that claimant would reach maximum medical improvement (MMI) at the completion of claimant's aquatic therapy. (Cl. Ex. 1, p. 11) With respect to future medical care, he recommended claimant follow up with the University of Iowa Pain Clinic to see if they have additional treatment recommendations. (Cl. Ex. 1, pp. 10-11) Using the AMA Guides to the Evaluation of Permanent Impairment, Dr. Taylor provided an impairment rating of 27 percent of the whole person. Finally, with respect to permanent restrictions, Dr. Taylor noted that claimant is "quite limited," and that he now uses a walker. He recommended no lifting over 15 to 20 pounds on an infrequent basis, and noted it would be limited due to his need for a walker. He recommended claimant have the ability to alternate sitting, standing, and walking as needed; rare and only partial squatting; rare bending; avoid crawling; kneeling rarely and only if he has something to hold on to when arising; no climbing ladders; climbing stairs on an infrequent basis and with a handrail and no added weight; and occasional travel as long as he can stop and get out of the vehicle as needed to stretch and move around. (Cl. Ex. 1, p. 11)

While Dr. Taylor, like Dr. Schmitz, was only a one-time examiner for purposes of litigation, I find his opinions more credible than those provided by Dr. Schmitz. It appears that Dr. Taylor was provided with more complete medical records and had a more accurate understanding of claimant's prior medical history and physical condition. His report is detailed and appears to be quite accurate. It is also consistent with the other medical records and claimant's testimony. Therefore, I find Dr. Taylor's opinions are also credible and entitled to more weight than those of Dr. Schmitz.

Based on the opinions of Dr. Millea and Dr. Taylor, along with the remainder of the evidence in the record, I find that claimant sustained an injury to his low back arising out of and in the course of his employment with defendant employer on November 27, 2017.

Defendants also requested a report from Anthony John Klappa, M.D., regarding claimant's cardiac condition and treatment that took place in 2018, prior to his back surgery. (Def. Ex. C) Dr. Klappa's report is not dated but appears to have been served on July 29, 2019. Dr. Klappa reviewed claimant's medical records and was asked to answer several questions related to claimant's cardiac condition. Ultimately, Dr. Klappa opined that claimant's diagnosis of "severe coronary artery disease including significant left main disease" required being addressed regardless of the work injury. (Def. Ex. C, pp. 20-21) Likewise, the open-heart surgery claimant underwent in April 2018 would have been necessary regardless of the work injury, as "patients with untreated multivessel disease are at a very high risk of death if untreated." (Def. Ex. C, p. 22)

Finally, Dr. Klappa opined that it is unlikely that the work injury claimant sustained accelerated his coronary artery disease in any way. (Def. Ex. C, pp. 25-26)

While Dr. Klappa's report appears to be accurate, causation of claimant's heart condition necessitating his open-heart surgery in 2018 is not at issue. Rather, the question at issue is whether defendants are required to pay for that treatment as a condition precedent to claimant's work-related back surgery. As discussed further below, this agency has a long history of requiring an employer to treat a preexisting non-work-related condition to the extent that doing so is necessary in order to effectively treat a work-related condition. While Dr. Klappa's report is certainly very helpful to a lay-person's understanding of the cardiac records, his opinion regarding causation is not relevant. What is clear from all of the evidence, including Dr. Klappa's report, is that preoperative testing revealed that claimant had an asymptomatic cardiac condition that would be potentially fatal if left untreated. As Dr. Klappa points out, "[t]he urgency in which Mr. Camp went from diagnosis to surgery is in line with the standard of practice which recommends prompt revascularization as it is paramount to improving long-term survival in patients like Mr. Camp." (Def. Ex. C, p. 24) (internal citation omitted) Clearly, claimant had to have his non-work-related heart condition stabilized prior to having surgery for his work-related back injury. As such, I find that the heart surgery was a condition precedent to treatment of claimant's work-related back surgery, and defendants are responsible for that treatment.

Since the work injury, claimant has not applied for any jobs. (Tr., p. 96) He has applied and been approved for Social Security Disability benefits. (Tr., p. 59) He would like to go back to work, but does not believe he is able to do so anymore. (Tr., p. 101) Prior to the bus accident, claimant was able to work with little to no difficulty. He did not use a walker to ambulate. His symptoms were manageable and stable. His prior jobs involved general labor, including delivering glass windshields, working as a security guard, and driving a school bus. Given his current limitations, it is unlikely he would be able to find suitable work. I find that he is physically unable to perform work that his experience, training, education, and intelligence would otherwise have allowed him to perform.

CONCLUSIONS OF LAW

The first issue to determine is whether claimant sustained an injury arising out of and in the course of his employment on November 27, 2017. The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e).

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" refer 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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

It is not disputed that an accident occurred on November 27, 2017, in which the school bus that claimant was riding, while stopped at a red light, was rear-ended by a pickup truck. It is not disputed that claimant was standing up at the time of impact, walking toward the front of the bus to speak to the driver. It is not disputed that claimant experienced pain the following morning, prompting him to advise his employer that he needed medical care. The dispute is whether the back condition for which claimant was ultimately treated was the result of that accident. Defendants rely on the opinion of Dr. Schmitz for their denial of liability, as well as claimant's history of preexisting back problems. However, I found Dr. Schmitz's opinion to be unreliable, as it was initially

based on inaccurate information. Further, when provided with additional information, Dr. Schmitz did not provide a convincing explanation for why his opinion did not change.

In contrast, both Dr. Millea and Dr. Taylor provided thorough opinions based on accurate factual information. Dr. Millea, as the treating surgeon, saw claimant on multiple occasions, and had a clear understanding of claimant's prior low back surgeries. Dr. Taylor's report is consistent with the medical evidence in the record, as well as claimant's own testimony. Both physicians opined that the accident on November 27, 2017 caused the need for claimant's medical treatment related to his back after that date.

With respect to claimant's preexisting back problems, prior to the bus accident claimant was able to work with little to no difficulty. He did not use a walker to ambulate. His symptoms were manageable and stable. He did not have permanent restrictions. Again, both Dr. Millea and Dr. Taylor determined that the bus accident was the cause of claimant's current condition. Based on their opinions, combined with the remainder of the evidence in the record, I find that claimant sustained an injury to his low back arising out of and in the course of his employment with defendant employer on November 27, 2017.

The next issue to address is the extent of claimant's permanent disability. Claimant has alleged that he is permanently and totally disabled as a result of the work injury. Defendants disagree and argue that any permanent disability is minimal.

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. of Iowa, 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). The commissioner may also consider claimant's medical condition prior to the injury, immediately after the injury, and presently in rendering an evaluation of industrial disability. IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 632-633 (Iowa 2000) (citing McSpadden, 288 N.W.2d at 192).

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co.,

288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City Ry. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

Although claimant is close to a normal retirement age, proximity to retirement cannot be considered in assessing the extent of industrial disability. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). However, this agency does consider voluntary retirement or withdrawal from the work force unrelated to the injury. Copeland v. Boone's Book and Bible Store, File No. 1059319, (App. November 6, 1997). Loss of earning capacity due to voluntary choice or lack of motivation is not compensable. Id.

Having considered all of the evidence in the record, the greater weight of evidence in this case supports a finding that claimant is permanently and totally disabled. Claimant was 66 years old at the time of hearing. He did not graduate from high school but did obtain his GED. While claimant has a long history of low back problems and other health problems, the evidence shows that he was able to function at an acceptable level, and able to perform his job duties with little to no difficulty, prior to the accident on November 27, 2017. He did not require the use of a walker. He did not have significant permanent restrictions such as those recommended by Dr. Taylor. Dr. Millea's last visit with claimant resulted in a return-to-work form dated October 16, 2019, that states "unable to return to work." (Jt. Ex. 8, p. 45) Additionally, claimant has been awarded Social Security Disability benefits.

While claimant has not applied for any jobs since the work injury, this is not due to a lack of motivation. He testified that he had planned to continue working for at least 10 to 15 more years. (Tr., p. 58) He liked his job at Durham, and he would like to go back to work. (Tr., pp. 58; 101) However, given his limitations, it is unlikely he would be able to find suitable work. He is physically unable to perform work that his experience, training, education, and intelligence would otherwise have allowed him to perform. Considering claimant's age, educational background, employment history, ability to retrain, motivation to return to the workforce, permanent impairment, and permanent restrictions, as well as the other industrial disability factors set forth by the Iowa Supreme Court, I find that claimant is permanently and totally disabled commencing on the date of injury, November 27, 2017. Defendants are entitled to a credit for all weekly payments made since that date.

As claimant is permanently and totally disabled, the issue of healing period benefits is moot.

The next issue to determine involves the medical expenses related to claimant's heart surgery. As defendants point out, claimant had a well-established history of cardiac issues prior to the work injury. This is not disputed, and claimant is not alleging

that his cardiac condition is work-related. Rather, claimant argues that his 2018 heart surgery was a condition precedent that required treatment in order to proceed with his back surgery.

This agency has a long history of precedents that require an employer to treat a preexisting non-work-related condition to the extent that doing so is necessary in order to effectively treat a work-related condition. Shilling v. Eby Constr. Co., II Iowa Industrial Commissioner Report, 350 (App. 1981). In other words, a medical procedure that is necessary to address a non-work-related condition preliminary to treating a condition that is caused or aggravated by the work injury may be the responsibility of the defendants. Gray v. Five Star Quality Care, File No. 5001178 (Arb. Sept. 16, 2003); See also Woods v. Siemens-Furnas Controls, File No. 1303082 (App. July 22, 2002); Edgington v. Iowa Spring Mfg., File No. 1281672 (Arb. Nov. 24, 2014)

One of the basic rules of workers' compensation law is that the employer takes the employee as is. Id. Few individuals are a picture of perfect physical and mental health. Id. Claimant's coronary artery disease and related heart problems are preexisting conditions. His heart disease did not intervene subsequent to his injury. Clearly, the heart surgery had benefits beyond simply allowing the subsequent back surgery to take place. That being said, it was necessary to remedy his heart condition prior to proceeding to his back surgery. The rule of law is no different than if there is a need to treat obesity, high blood pressure, uncontrolled diabetes, or any other preexisting malady before directly addressing the results of the work-related injury. See Woods. As such, I find that the heart surgery in April 2018 was reasonable and necessary medical treatment in the course of treating claimant's work-related back injury. See Gray.

Treatment for preexisting conditions is the employer's responsibility only to the extent that is required in order for care to be given for the work-related injury. See Woods. In this case, claimant's open-heart surgery that took place in April 2018 is part of the care of the work-related back injury. The employer is not liable for treatment related to his cardiac condition subsequent to the date of his back surgery.

With respect to the remainder of the medical expenses related to claimant's back condition, I found the back injury to be compensable. As such, defendants are responsible for all reasonable and necessary medical treatment causally related to claimant's low back condition beginning on the date of injury, November 27, 2017.

Claimant is not entitled to reimbursement for medical bills unless claimant shows that they were paid from his own funds. See Caylor v. Employers Mutual Casualty Co., 337 N.W.2d 890 (Iowa Ct. App. 1983). Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Where medical payments are made from a plan to which the employer did not contribute, the claimant is entitled to a direct payment. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 867-68 (Iowa 2008) ("We therefore hold that the commissioner did not err in ordering direct payment to the claimant for past medical expenses paid through insurance coverage obtained by the

claimant independent of any employer contribution.") See also: Carl A. Nelson & Co. v. Sloan, 873 N.W.2d 552 (Iowa App. 2015) (Table) 2015 WL 7574232 15-0323. Claimant has the burden of proving that the fees charged for such services are reasonable. Anderson v. High Rise Construction Specialists, Inc., File No. 850096 (App. July 31, 1990).

Defendants shall reimburse claimant for the portions of the medical bills he paid from his own funds and are responsible to reimburse any providers or lienholders with outstanding claims.

Claimant submitted two additional medical-related receipts as costs, but as they are related to medical treatment, it is more appropriate to address them here. The first is for the cost of his current walker, which was purchased on May 30, 2019. (Cl. Ex. 8, p. 1) Iowa Code section 85.27 states that 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 is also required to furnish "reasonable and necessary crutches, artificial members, and other appliances. . ." Iowa Code section 85.27.

There does not appear to be a specific prescription or order in the medical records with respect to claimant's walker. However, claimant testified that Dr. Millea suggested that he use it. (Tr., pp. 36; 99-100) Claimant did not use a walker prior to the work injury. (Tr., pp. 36; 99-100) This is supported by Dr. Millea's records, as he notes that claimant was using a walker on several occasions, and references claimant's mobility difficulties. I find the walker to be a reasonable and necessary appliance related to claimant's work injury, and as such, defendants shall reimburse claimant $213.95 for its purchase, pursuant to Iowa Code section 85.27.

Claimant also submitted a receipt for a prescription for hydrocodone, prescribed by Dr. Millea and filled on July 23, 2019. (Cl. Ex. 9, p. 1) I find this prescription is also related to claimant's work injury, and defendants are responsible to reimburse claimant in the amount of $14.33, again pursuant to Iowa Code section 85.27.

The next issue to determine is whether claimant is entitled to reimbursement for his IME with Dr. Taylor under Iowa Code section 85.39.

The Iowa Workers' Compensation Commissioner has noted that the Iowa Supreme Court adopted a strict and literal interpretation of Iowa Code section 85.39 in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015) (hereinafter "DART"). See Cortez v. Tyson Fresh Meats. Inc., File No. 5044716 (Appeal December 2015). If an injured worker wants to be reimbursed for the expenses associated with a disability evaluation by a physician selected by the worker, the process established by the legislature must be followed. This process permits the employer, who must pay the benefits, to make the initial arrangements for the evaluation and only allows the employee to obtain an independent evaluation at the

employer's expense if dissatisfied with the evaluation arranged by the employer. DART, 867 N.W.2d at 847 (citing Iowa Code § 85.39).

In this case, defendants asked Dr. Schmitz to address causation, and having found none, Dr. Schmitz did not provide an impairment rating. The Iowa Court of Appeals recently offered additional guidance with respect to situations such as these. See Kern v. Fenchel, Doster & Buck, No. 20-1206, 2021 WL 3890603, at *4-5 (Iowa Ct. App. 2021). The Court of Appeals noted that the "primary purpose of the workers' compensation statute is to benefit the worker and his or her dependents, insofar as statutory requirements permit." Id. (citing IBP, Inc. v. Harker, 633 N.W.2d 322, 325 (Iowa 2001); quoting McSpadden, 288 N.W.2d at 188). Accordingly, the statutes are construed liberally. Id. The Court went on to note that while the examining physician chosen by the defendants in Kern did not use the words "zero" or "no disability," "the clear effect of his no-causation determination was a finding of no compensable permanent disability." Id. The claimant disagreed, and thought such a determination was "too low." The Court, reading section 85.39 liberally in order to benefit the worker, opined that the "next logical step" was for the claimant to "have an IME, seeking evidence of permanent disability, which can only be made if there is also a causation determination, typically done in the same examination. In fact, there can be no disability determination arising out of a disability evaluation without a determination there was causation." Id. Based on that, the Court found no conflict in applying the Supreme Court's interpretation of section 85.39 in DART to a finding that a lack of causation opinion is "tantamount to a zero percent impairment rating." Id.

Based on this guidance from the Court of Appeals, I find that Dr. Schmitz's finding of no causation was "tantamount to a zero percent impairment rating." As such, claimant is entitled to reimbursement for Dr. Taylor's IME pursuant to Iowa Code section 85.39, in the amount of $4,572.50. (Cl. Ex 1, p. 15)

With respect to the remainder of claimant's requested costs, I find that claimant was successful in his claim, and an award of additional costs is appropriate. I exercise my discretion and award claimant the additional cost of the $100.00 filing fee.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant permanent total disability benefits at the stipulated rate of two hundred seventeen and 99/100 dollars ($217.99) per week, commencing November 27, 2017, and continuing during the period of permanent total disability.

Defendants shall be entitled to a credit for all benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendants are responsible for the expenses incurred related to treatment of claimant's cardiac condition in order to allow his back injury to be surgically treated.

Defendants are responsible for all past and future medical care causally related to claimant's back injury.

Pursuant to Iowa Code section 85.27, defendants shall reimburse claimant two hundred thirteen and 95/100 dollars ($213.95) for the purchase of his walker, and fourteen and 33/100 dollars ($14.33) related to a prescription.

Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant for the cost of Dr. Taylor's IME, in the amount of four thousand five hundred seventy-two and 50/100 dollars ($4,572.50).

Defendants shall pay claimant's costs in the amount of one hundred and 00/100 dollars ($100.00), representing the cost of the filing fee.

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

Signed and filed this 13th day of September, 2021.

JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jenna Green (via WCES)

Lori Scardina Utsinger (via WCES)

Mark Woollums (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.