

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WILLIAM SCEARCY,

Claimant,

vs.

CITY OF DES MOINES,

Employer,
Self-Insured,
Defendant.

File No. 22700150.01

ARBITRATION DECISION

Head Notes: 1400; 1402; 1803

STATEMENT OF THE CASE

The claimant, William Searcy, filed a petition for arbitration seeking workers' compensation benefits from self-insured employer, City of Des Moines ("Des Moines"). Christopher Spaulding appeared on behalf of the claimant. Molly Tracy appeared on behalf of the defendant. Also present were Reagan Peterson, an assistant city attorney, and Payton Kitterman, a law clerk in the claimant's office.

The matter came on for hearing on May 31, 2023, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner, the hearing occurred electronically via Zoom. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibit 1, Claimant's Exhibits 1-2, and Defendant's Exhibits A-E.

The claimant testified on his own behalf. SueAnn Jones was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted after the parties filed post-hearing briefing on June 22, 2023.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

1. There was an employer-employee relationship at the time of the alleged injury.
2. That the claimant sustained an injury, which arose out of and in the course of employment, on February 8, 2022.

3. That the alleged injury is a cause of temporary disability during a period of recovery.
4. That, if the injury is found to be a cause of permanent disability, the disability is a scheduled member disability to the hand.
5. That the commencement date for permanent partial disability benefits, if any are awarded is February 24, 2022.
6. That, at the time of the alleged injury, the claimant's gross earnings were one thousand two hundred ten and 07/100 dollars (\$1,210.07), per week, the claimant was single and entitled to one exemption, providing the claimant with an agreed upon rate of seven hundred thirty-two and 56/100 dollars (\$732.56).
7. That the costs in Claimant's Exhibit 2 have been paid.

Entitlement to temporary disability and/or healing period benefits was no longer in dispute. Credits are also no longer in dispute. The defendant waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. Whether the alleged injury is a cause of permanent disability.
2. The extent of permanent disability benefits, should any be awarded.
3. Whether the claimant is entitled to reimbursement for the costs of an independent medical examination ("IME") pursuant to Iowa Code section 85.39.
4. Whether a specific taxation of costs is appropriate.

FINDINGS OF FACT

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

William Searcy, the claimant, resides in Des Moines, Iowa. (Testimony). He was born in 1956. (Testimony). At the time of his injury, he was single, with three adult kids. (Testimony). He graduated from high school in Des Moines in 1974, and attended a theology class following his graduation. (Testimony). However, he never received a degree or certification. (Testimony).

For the last 41 years, Mr. Searcy worked for Des Moines. (Testimony). Initially, he worked as an animal control officer. (Defendant's Exhibit E:23). Since 1989, he has been working in sewer maintenance for the Department of Public Works. (Testimony). Specifically, Mr. Searcy is a sewer maintenance worker. (DE A:1). Among other job duties, Mr. Searcy uses a sledgehammer and jackhammer. (Testimony). Some of his other job duties included cleaning sewers, digging ditches and trenches, backfilling holes around pipes, repairing breaks in sewer lines, cleaning catchbasins, cleaning culverts, operating air hammers, pumps, and compressors, and occasionally driving light trucks. (DE A:1). About one year prior to the hearing, Des Moines upgraded their equipment to provide workers with better drill bits and make their jobs easier. (Testimony).

Included in the record are claims notes from EMC Risk Services, LLC ("EMC"). (DE B:2-13). Some of these notes predate the alleged date of injury in this matter. The notes begin on August 16, 2019, with a note that Mr. Searcy originally called EMC on August 12, 2019, alleging a diagnosis by his personal doctor of work-related bilateral carpal tunnel issues. (DE B:13). Mr. Searcy indicated that he had surgery planned for the next Wednesday and that "it needs to be paid for." (DE B:13). The claims associate from EMC informed Mr. Searcy that no claim had been turned in, and that he needed to report it to his employer. (DE B:13).

Following the August 12, 2019, phone call, EMC called "Roxanne at DMOS" on August 13, 2019, to inform her of the claimant's allegations of work-related bilateral carpal tunnel. (DE B:12). EMC told DMOS that they were not authorizing the surgery on Wednesday, to which they were told that the claimant simply had an appointment scheduled for the upcoming week, and not a surgery. (DE B:12). EMC informed DMOS that any appointments were not authorized, and requested a copy of the previous medical records. (DE B:12).

Included in EMC's claims notes is a summary of a visit of the claimant with "Dr. Rodgers" at DMOS on August 14, 2019. (DE B:12). Mr. Searcy told the doctor that his left hand felt weak and no longer worked like it used to. (DE B:12). He also noted "postural and nocturnal paresthesias." (DE B:12). Mr. Searcy expressed an interest in surgery, and was told that he should decide on filing a workers' compensation claim. (DE B:12). Surgery would be scheduled "once we get work comp [sic] approval." (DE B:12).

Mr. Searcy reported an injury to his bilateral wrists on August 16, 2019. (DE C:14). Namely, this was "[c]arpul [sic] [t]unnel in both hands," which Mr. Searcy's personal doctor recommended that he "report ... to the city." (DE C:14). The cause was noted as "[u]nsure. Constant repetitive work over long periods of time." (DE C:14).

On August 19, 2019, an adjuster from EMC spoke to a "Dr. Penix," who indicated that the claimant required restrictions even though the underlying carpal tunnel issues were "undetermined" as related to work. (DE B:12). "Dr. Penix" also made mention of cubital tunnel issues which needed to be addressed. (DE B:12).

The adjuster also reviewed a medical record from an August 19, 2019, visit with UnityPoint. (DE B:9-10). The claimant complained of pain in both of his hands due to

use of jackhammers and heavy tools. (DE B:9). Pain was most severe in his left hand, which also had issues with grip. (DE B:9). Mr. Searcy felt strongly that his injuries were work related. (DE B:9). The doctor requested additional medical records to review to determine if the issues were work related, and then placed the claimant on modified duty with limited grasping, pinching, and repetitive wrist and elbow motions. (DE B:10).

A record from August 20, 2019, contains a note summarizing the results of a recorded statement taken from Mr. Searcy. (DE B:11). Mr. Searcy recounted a history of bilateral elbow tendonitis. (DE B:11). Recently, he had issues sleeping, so he visited "Dr. Brown," who thought that he may have a work-related issue. (DE B:11). "Dr. Brown" referred the claimant for some testing, which "confirmed he had carpal tunnel in both wrist[s]." (DE B:11). He saw several other providers, including "Dr. Rogers [sic]," who opined that the claimant had cubital tunnel, and provided him with braces. (DE B:11). Mr. Searcy indicated that he knew when he saw "Dr. Brown" in late May of 2019 that the issue was work related. (DE B:11).

Des Moines, through EMC, denied the initial claim. (DE B:3). Mr. Searcy expressed disappointment with this decision. (DE B:5).

On February 8, 2022, Mr. Searcy was drilling a hole in a street. (Testimony). He had to manipulate the drill when it twisted back and caused his left wrist to torque. (Testimony). Mr. Searcy also reported a similar incident having occurred on January 30, 2020. (DE E:27).

Following the February 8, 2022 incident, on February 9, 2022, Mr. Searcy reported to UnityPoint Occupational Medicine in Des Moines, Iowa. (Joint Exhibit 1:1-4). He complained of a throbbing, sharp pain in his left hand after drilling a hole in the street. (JE 1:2). He checked a box on the intake form indicating he had a similar injury in the past and wrote, "SAME THING." (JE 1:2). Judith Nayeri, D.O., examined the claimant. (JE 1:4). Mr. Searcy recounted the drill or jackhammer twisting after 20 minutes of use causing him to develop left wrist pain. (JE 1:4). He rated his pain 7 to 8 out of 10. (JE 1:4). He also had a shooting pain from his thumb to his wrist. (JE 1:4). Upon examination, Mr. Searcy demonstrated normal range of motion without pain, and normal grip strength. (JE 1:4). Dr. Nayeri reviewed x-rays, which showed moderate degenerative changes at the first carpometacarpal joint with mild degenerative changes at the "STT" joint. (JE 1:4). Dr. Nayeri characterized this as a "considerable amount of degenerative joint disease." (JE 1:4). She diagnosed Mr. Searcy with left wrist pain/strain, and a left thumb strain. (JE 1:4). She allowed the claimant to continue working, but restricted him from using vibrating or twisting tools. (JE 1:4). He could use his hand as tolerated, and was asked to wear a wrist splint until his next follow-up visit. (JE 1:4).

Kate Swift, A.R.N.P., examined Mr. Searcy on February 24, 2022, at UnityPoint Occupational Medicine. (JE 1:5). Mr. Searcy felt improved since the initial visit. (JE 1:5). He took Tylenol and wore his wrist splint during the day. (JE 1:5). The claimant denied any pain, numbness, or tingling in his left wrist, and as such rated his pain 0 out of 10. (JE 1:5). Upon palpation, the claimant demonstrated no pain in his left wrist or

thumb. (JE 1:5). He demonstrated the ability to make a fist and extend all of his digits. (JE 1:5). Ms. Swift reiterated the diagnoses provided by Dr. Nayeri. (JE 1:5). Mr. Searcy told her that he felt he could do his job on “regular duty.” (JE 1:5). Ms. Swift released him to full duty. (JE 1:5-6). She discharged him from care with no plans for a return appointment. (JE 1:5-6).

At the arrangement of claimant’s counsel, the claimant had an IME with Sunil Bansal, M.D., M.P.H., on August 18, 2022. (Claimant’s Exhibit 1:1-7). Dr. Bansal is board certified in occupational medicine. (CE 1:1). Dr. Bansal began his report by reviewing the medical records noted above. (CE 1:2). Throughout the report, Dr. Bansal makes mention of the claimant’s previous carpal tunnel syndrome. (CE 1:1-7). This is noted as for “Second Injury Fund” purposes. (CE 1:3). The Second Injury Fund is not a party to this matter, having previously resolved the claims against them. He also interviewed the claimant, who recounted the injury and that the machine “jerked and twisted his wrist.” (CE 1:2-3). The claimant also recalled pain, numbness, and tingling in his left wrist and left thumb, which later became swollen. (CE 1:3). Dr. Bansal noted that Mr. Searcy had bilateral carpal tunnel syndrome, and was scheduled for carpal tunnel release surgeries to both hands in October of 2022. (CE 1:3). Mr. Searcy also told Dr. Bansal that he was previously diagnosed with arthritis in his left hand, but that he did not seek treatment for this condition. (CE 1:3).

At the time of the examination, Mr. Searcy had pain, numbness, and tingling in his left hand. (CE 1:3). He noted that numbness and tingling were “particularly intense at night,” and that the issues woke him up. (CE 1:3). In spite of this, Mr. Searcy felt that he had no issues with his grip strength. (CE 1:3). Upon physical examination Dr. Bansal observed tenderness to palpation in the volar aspect and carpometacarpal joint of the left wrist. (CE 1:3). Mr. Searcy also displayed a loss of two-point sensory discrimination over the long finger. (CE 1:3). Dr. Bansal performed range of motion testing, and found the claimant to have 60 degrees of flexion, 60 degrees of extension, 20 degrees of radial deviation, and 30 degrees of ulnar deviation. (CE 1:4). Dr. Bansal also tested the carpometacarpal joint motion in the left hand. (CE 1:4). He found thumb “MP” flexion of 31 degrees, thumb “IP” flexion of 49 degrees, and opposition lack of 1 cm. (CE 1:4). Dr. Bansal performed grip strength testing with a dynamometer for both the left and right hands. (CE 1:4). The right wrist showed grip strength of 41 kg, 42 kg, and 42 kg. (CE 1:4). The left wrist showed grip strength of 35 kg, 33 kg, and 33 kg. (CE 1:4).

Dr. Bansal diagnosed Mr. Searcy with an aggravation of carpometacarpal arthritis, and left carpal tunnel syndrome. (CE 1:5). Dr. Bansal felt that “[t]he mechanism of having his left wrist and thumb sharply jerked and twisted by the jackhammer is consistent with the aggravation of his carpometacarpal joint arthritis.” (CE 1:6). Therefore, Dr. Bansal concluded that the left hand or wrist injury and “the disability resulting therefrom” was caused by the claimant’s employment with Des Moines. (CE 1:6). Dr. Bansal referred to Figures 16-12, 16-15, 16-8a, and 16-9 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, in opining that the claimant suffered a permanent impairment. (CE 1:5). Based upon those portions, Dr. Bansal opined that the MP flexion of the thumb at 31 degrees resulted in a 4 percent

thumb impairment, while the IP flexion of the thumb at 49 degrees resulted in a 2 percent thumb impairment, and that the opposition lack of 1 cm resulted in a 1 percent thumb impairment. (CE 1:5). The result of the foregoing impairment percentages was a 7 percent thumb impairment, a 3 percent hand impairment, or a 3 percent upper extremity impairment. (CE 1:5). Dr. Bansal then provided impairment based upon carpal tunnel syndrome for “SIF,” which presumably refers to the Second Injury Fund. (CE 1:5). This impairment was 1 percent due to sensory deficits in the left hand. (CE 1:5). Dr. Bansal placed the claimant at maximum medical improvement (“MMI”) as of February 24, 2022, recommended no further treatment, and provided a permanent restriction to avoid the use of vibrating hand tools. (CE 1:6-7).

Mr. Searcy sought no care after seeing his own doctor because he received a second opinion. (Testimony).

At the time of the hearing, Mr. Searcy was back to work at full-duty with the same department. (Testimony). He testified that this was because he wanted to return to work. (Testimony). He described continued symptoms, including difficulty donning gloves, difficulty gripping knives, and pain in his thumb when he twists. (Testimony). He described dropping things, numbness, and shooting pain in his left hand up to his shoulder. (Testimony). He also testified to pain at night below his left thumb. (Testimony).

During his deposition, Mr. Searcy indicated that he had “ghost pains” in his hands. (DE E:34-35). Mr. Searcy could not remember when he began experiencing ghost pain in his hand. (Testimony). He has a history of bilateral carpal tunnel, and was asked on cross-examination how he did not know that his current issues were due to his carpal tunnel issues. (Testimony). Mr. Searcy could not explain how he knew the issues were not related, but asserted that they were not. (Testimony).

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.904(3).

Permanent Disability

The claimant alleges that the February 8, 2022, work incident and injury to his left wrist caused a permanent impairment to his left hand and wrist.

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 medical causation is “essentially within the domain of expert testimony.” Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa

2011). The commissioner, as the trier of fact, must “weigh the evidence and measure the credibility of witnesses.” Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert’s education, experience, training, and practice, and “all other factors which bear upon the weight and value” of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

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). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is “proximate” when it is a substantial factor, or even the primary or 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).

The claimant has a pre-existing carpal tunnel issue, which workers’ compensation denied. He planned on having surgery to repair the carpal tunnel issues. Mr. Searcy was asked about his “ghost pains” in his left hand. He could not recall when the “ghost pains” began, and also could not explain how he knew his current issues were unrelated to his left wrist carpal tunnel syndrome.

The claimant alleges that he was drilling a hole in a street on February 8, 2022, when the drill twisted and caused his left wrist to torque. He further alleges that he developed shooting pain in the left wrist from his thumb to his wrist. He was examined by a physician on February 9, 2022, for his alleged injury, and noted he had a similar injury in the past. He even recorded “SAME THING” in a medical record. He was diagnosed with a left wrist pain, a left wrist strain, and a left thumb strain. An x-ray showed moderate degenerative changes at the first carpometacarpal joint with mild degenerative changes to another joint. The doctor allowed the claimant to work, but recommended that the claimant avoid working with vibratory or twisting tools.

By a February 24, 2022, follow-up with Nurse Practitioner Kate Swift, Mr. Searcy noted improvement to his issues. He denied numbness, pain, or tingling in his left wrist. He showed no pain on palpation, and he rated his pain 0 out of 10. Mr. Searcy testified that he was never asked to rate his pain. However, elements of evidence give me reason to question Mr. Searcy’s credibility, as will be discussed further below. Mr. Searcy felt that he could perform his position without restrictions on “regular duty.” Ms. Swift discharged the claimant from care with no restrictions or plans for a return appointment.

Mr. Searcy had an IME with Dr. Bansal in August of 2022. Dr. Bansal opined that the claimant suffered an aggravation to his carpometacarpal arthritis, and left carpal tunnel syndrome when the tool jerked and twisted the left wrist. Based upon this mechanism of injury, Dr. Bansal opined that the claimant sustained a permanent impairment. Dr. Bansal performed certain measurements, and an examination. Based upon his application of the Guides, Dr. Bansal opined that the claimant had a 7 percent thumb impairment, a 3 percent hand impairment, or a 3 percent upper extremity impairment. Dr. Bansal placed the claimant at MMI as of February 24, 2022, and recommended no further treatment.

The evidence in this case supports that the claimant suffered an injury at work on February 8, 2022. He subsequently treated with UnityPoint on two occasions. During his February 24, 2022, visit, Mr. Searcy reported no pain. He also demonstrated no pain upon palpation. During that visit, Mr. Searcy expressed a desire to return to work on “regular duty.” The nurse practitioner that examined Mr. Searcy allowed him to return to work without restrictions and with no recommendation for additional medical care. No treating provider opined as to any permanent impairment on behalf of the claimant.

The only opinion that points to a permanent impairment on behalf of the claimant is that of Dr. Bansal. Dr. Bansal cannot explain why the claimant had no pain and then suddenly began to experience pain by the time of his IME. Neither Dr. Bansal, nor Mr. Searcy, could explain how the claimant’s current pain issues were unconnected from his pre-existing carpal tunnel pain. I would note that I am not summarily rejecting Dr. Bansal’s opinions. The claimant’s own statements and medical records undercut his claims to Dr. Bansal, and Dr. Bansal’s report. Namely, the claimant indicated that he had no pain during his February 24, 2022, visit with the nurse practitioner. He also exhibited no pain behaviors during that visit. Finally, the visit concluded with Mr. Searcy being allowed to work full-time, full-duty with no need for additional medical care. While not determinative in and of itself, it is an objective indication of a lack of permanency. Additionally, Dr. Bansal’s report is based only upon medical records following the alleged February 8, 2022, work injury. Dr. Bansal did not review, or have access to, the considerable medical records related to the claimant’s previous carpal tunnel issues. This casts serious doubt on the thoroughness of information relied upon by Dr. Bansal.

Above, I made mention of credibility issues with the claimant. The defendant astutely notes in their posthearing brief that the claimant told a prior workers’ compensation claims adjuster that he was scheduled to have bilateral carpal tunnel surgery. (DE B:13). This was later shown to be a mistake, as the doctor’s office indicated that a surgery was never scheduled. (DE B:13). Additionally, the claimant denied being diagnosed with carpal tunnel during his deposition. (DE E). The claimant also denied in his deposition that he ever sought workers’ compensation benefits in 2019, which is false. (DE B, E).

Based upon the foregoing, the claimant failed to meet his burden of proof by a preponderance of the evidence that the February 8, 2022, work injury caused a

permanent disability. He also did not prove that it was a permanent aggravation of his pre-existing carpal tunnel issues.

Reimbursement for IME pursuant to Iowa Code section 85.39

The claimant seeks reimbursement for the IME and subsequent report of Dr. Bansal in the amount of two thousand seven hundred eighty-nine and 00/100 dollars (\$2,789.00). The defendant makes no argument in their posthearing brief as to this issue; however, it is still the claimant's burden to prove entitlement thereto.

Iowa Code 85.39(2) states:

If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination.

. . .

An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

Iowa Code section 85.39(2).

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). An opinion finding a lack of causation is tantamount to a zero percent impairment rating. Kern v. Fenchel, Doster & Buck, P.L.C., 2021 WL 3890603 (Iowa App. 2021).

No doctor retained by the defendant provided any opinions as to permanent impairment, nor did any doctor opine as to causation. Therefore, the defendant is not responsible for reimbursing Dr. Bansal's IME fees.

Costs

Claimant seeks the award of costs. Specifically, the claimant seeks costs of the filing fee and Dr. Bansal's IME report. Costs are to be assessed at the discretion of the

deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code section 86.40. 876 Iowa Administrative Code 4.33(6) provides:

[c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

Pursuant to the holding in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), only the report of an IME physician, and not the examination itself, can be taxed as a cost according to 876 IAC 4.33(6). The Iowa Supreme Court reasoned, "a physician's report becomes a cost incurred in a hearing because it is used as evidence in lieu of the doctor's testimony," while "[t]he underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." Id. (Noting additionally that "[i]n the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition"). The commissioner has found this rationale applicable to expenses incurred by vocational experts. See Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App. December 17, 2018); Voshell v. Compass Group, USA, Inc., File No. 5056857 (App. September 27, 2019).

In my discretion I decline to award the claimant costs.

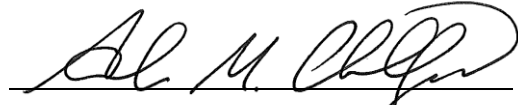
ORDER

THEREFORE, IT IS ORDERED:

That the claimant shall take nothing further.

That the defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to 876 Iowa Administrative Code 3.1(2) and 876 Iowa Administrative Code 11.7.

Signed and filed this 29th day of August, 2023.

A handwritten signature in black ink, appearing to read "Al M. Phillips", written over a horizontal line.

ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Christopher Spaulding (via WCES)

Molly Tracy (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.