BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LOUIS BURHANS, Claimant, vs. TURN AROUND WELDING, Employer, and AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA, Insurance Carrier, Defendants.	FILED JAN 09 2019 WORKERS COMPENSATION	File No. 5062498 ARBITRATION DECISION Head Note Nos.: 1108, 1402, 1801, 1802, 2700, 3000

STATEMENT OF THE CASE

Louis Burhans, claimant, filed a petition in arbitration seeking workers' compensation benefits from defendants Turn Around Welding, employer, and American Casualty of Reading, Pennsylvania, insurer. The hearing occurred before the undersigned on November 7, 2018, in Des Moines, Iowa.

The parties filed a hearing report at the commencement of the arbitration hearing. In the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision, and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

The evidentiary record consists of: Joint Exhibits 1 through 6, Claimant's Exhibits 1 through 21, and Defendants' Exhibits A through K and M. Claimant's Exhibit L was withdrawn at the outset of the hearing. (Hearing Transcript page 12)

Claimant testified on his own behalf. No other witnesses testified. The evidentiary record closed on November 7, 2018. The case was considered fully submitted upon receipt of the parties' briefs on December 10, 2018.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury that extended beyond his left leg and into his body as a whole.

2. Whether claimant has reached maximum medical improvement (MMI).

3. If claimant has reached MMI, whether claimant sustained any permanent disability, the extent of any such disability, and the commencement date for permanent partial disability (PPD) benefits.

4. Whether claimant is entitled to any temporary disability benefits, including a running award.

5. Rate.

6. Whether claimant is entitled to an order of alternate medical care.

7. Whether claimant is entitled to the payment of medical expenses and medical mileage.

8. Whether claimant is entitled to reimbursement for an independent medical examination (IME) and corresponding mileage.

9. Costs.

FINDINGS OF FACT

Claimant sustained a stipulated work injury during the night shift on April 9, 2016 when he tripped over a four- to six-inch containment wall. (Hrg. Tr. pp. 41-42) Claimant was performing pipefitting work and searching for some pieces of iron in the dark when his right foot caught the top edge of the containment wall. (Hrg. Tr. pp. 41-43) His left foot had already cleared the wall, causing him to land in what he described as a hurdler's stretch. (Hrg. Tr. p. 43) Claimant's left leg was fully extended when he landed, and his upper body lurched forward, causing his chest to hit his left knee. (Hrg. Tr. pp. 43-44)

Claimant reported the incident to his foreman, who then took claimant to the on-site safety trailer. (Hrg. Tr. p. 45) At the time of the injury, claimant, who resides in Michigan, was on a job site in Iowa assisting pipefitters who were working to repair pipes that had been improperly installed by a different company. (Hrg. Tr. p. 31) The job was a temporary assignment that claimant expected to last anywhere from two to five months. (Hrg. Tr. p. 32) While claimant enjoyed this work, he explained that "if you

get hurt . . . you're fired." (Hrg. Tr. p. 46) For this reason, claimant declined immediate medical treatment after his trip and fall on April 9, 2016. (Hrg. Tr. p. 46)

When claimant returned to his hotel after his shift on April 9, 2016, he was experiencing pain from his left knee up into his left thigh. (Hrg. Tr. p. 47)

Claimant returned to the job site for his next regularly scheduled shift on April 10, 2016 and was able to work the full shift. (Hrg. Tr. p. 48) However, near the end of the shift he felt increasing pain in his left leg as he crouched down on some scaffolding. (Hrg. Tr. p. 48) This pain caused him to limp, and the limping continued into the next night when he returned for his shift on April 11, 2016. (Hrg. Tr. p. 49) When claimant presented to the safety trailer with his complaints, he was directed to Mercy Urgent Care. (Hrg. Tr. p. 49)

Claimant was evaluated at Mercy Urgent Care on April 12, 2016. He reported pain in his left knee, and he was positive for a gait disturbance. (JE 1, p. 2) An x-ray of claimant's left knee was negative, so claimant was diagnosed with a sprain and discharged with work restrictions. (JE 1, pp. 3, 5)

Claimant continued working at defendants' job site with full pay despite these restrictions, though he was no longer assisting pipefitters; instead, he was transferred to the "print shack," where he did roster and blueprint work on the computer. (Hrg. Tr. pp. 50, 52-53)

After the April 12, 2016 appointment, defendant-employer authorized follow-up treatment with Rodney Cassens, M.D., at Mercy Business Health Services. At claimant's April 19, 2016 appointment, Dr. Cassens recommended an MRI of claimant's left knee. (JE 2, p. 7) Dr. Cassens lifted the restrictions assigned by the providers at Mercy Urgent Care because he believed claimant could do his "regular duty job with self-accommodations." (JE 2, p. 7) At that point, however, claimant was still performing sit-down work and had not returned to his normal pipefitting duties. (Hrg. Tr. p. 53)

Claimant's left knee MRI was completed on April 28, 2016, and it was unremarkable but for a bone contusion in the anterior aspect of the medial femoral condyle. (JE 2, p. 11) Because the MRI showed no derangement and Dr. Cassens' subsequent physical evaluation of claimant's knee on May 2, 2016 revealed no deformity or instability, Dr. Cassens diagnosed claimant with a contusion and placed him at MMI. (JE 2, p. 12) Dr. Cassens released claimant from his care and instructed him to return to work without restrictions. (JE 2, p. 12)

Claimant testified he was still experiencing pain and difficulty walking when he was placed at MMI and released from Dr. Cassens' care on May 2, 2016. (Hrg. Tr. p. 54)

Despite Dr. Cassens' full-duty release, defendant-employer allowed claimant to continue his light-duty work in the print shop at his full wage until he was laid off in July of 2016. (Hrg. Tr. pp. 56, 60) Claimant testified several other employees were laid off at the same time and that he was told he was being laid off because the job was coming to an end. (Hrg. Tr. p. 60) Because claimant only expected the job to last for two to five months when he was hired and several employees were laid off at the same time as claimant, I find claimant's layoff was due to the job coming to an end.

After claimant was laid off, he returned home to Michigan. (Hrg. Tr. p. 61) Upon his return, claimant's mother suggested treatment with Sudhir Rao, M.D., who is an orthopedist. (Hrg. Tr. p. 61) Claimant was first evaluated by Dr. Rao on September 15, 2016. (JE 3, p. 16) It does not appear from the record that claimant requested or received authorization from defendants for this visit. (See Hrg. Tr. p. 62)

Claimant reported pain in his left knee and entire thigh at the September 15, 2016 appointment with Dr. Rao. (JE 3, p. 16) Dr. Rao's clinical examination of claimant's knee was negative, but his examination of claimant's left hip revealed "an obviously stiff hip with trochanteric and anterior tenderness." (JE 3, p. 16) Dr. Rao opined he was "almost certain" there was no primary knee pathology, but he recommended an MRI of claimant's left hip due to his positive exam findings. (JE 3, p. 16)

Before claimant proceeded with the MRI, however, defendants authorized an appointment with another orthopedist, Grant Hyatt, M.D. After his November 8, 2016 examination of claimant, Dr. Hyatt, like Dr. Rao, recommended an MRI of claimant's left hip to determine whether claimant had a labral tear. (Defendants' Exhibit B, p. 7) Regarding claimant's left knee, Dr. Hyatt noted only mild swelling without any physical evidence of internal derangement or instability. (Def. Ex. B, p. 7) Dr. Hyatt recommended work restrictions until the MRI of claimant's hip could be completed. (Def. Ex. B, pp. 7-8)

The left hip MRI was completed on December 14, 2016. On December 19, 2016, Dr. Hyatt issued a report indicating that while he was initially suspicious that claimant's residual symptoms were related to a labral tear, the MRI was "specifically negative" for a labral tear or detachment or any other internal derangement. (Def. Ex. C, p. 11) With respect to claimant's knee, Dr. Hyatt reaffirmed that he believed claimant suffered only a bone bruise that would have healed in a span of six to eight weeks. (Def. Ex. C, p. 11) He stated there was "no physical or diagnostic evidence of a functionally limiting orthopaedic condition involving the left lower extremity." (Def. Ex. C, p. 11) As a result, Dr. Hyatt removed the work restrictions he originally recommended, placed claimant at MMI, and released him from his care. (Def. Ex. C, pp. 11-12)

It appears defendants stopped authorizing additional medical treatment after Dr. Hyatt's December 19, 2016 report. (See Hrg. Tr. p. 67) Claimant apparently utilized Medicaid for insurance coverage after this point. (See Hrg. Tr. p. 74)

Claimant then returned to Dr. Rao on January 6, 2017. Dr. Rao reviewed the MRI film of claimant's left hip and saw no clear evidence of a labral tear or any other significant pathology. (JE 3, p. 17) He went on to state:

> Patient now wonders if the pain is arising from his back. . . . This was not his presenting complaints and it is not clear when he noticed it. In any event there is no significant spinal tenderness, and he seems to have quite pain-free spinal motion. With a normal hip and knee MRI scan and unremarkable x-rays except for the presence of a femoral cam lesion I am not certain that I can clearly explain what is going on here. His symptoms far exceed any objective physical findings. I recommend we get a second opinion because of his persistent pain and symptoms of instability.

(JE 3, p. 17)

From Dr. Rao, claimant was referred to Orthopaedic Associates of Michigan, where he was initially evaluated by a nurse practitioner. The nurse practitioner indicated that it was possible claimant's complaints were originating in his low back. (JE 4, p. 20) Claimant was then referred to James Lee, M.D., an orthopedic surgeon in the same office.

At claimant's evaluation with Dr. Lee on March 14, 2017, Dr. Lee opined that claimant's left hip pain was due to trochanteric bursitis and/or gluteus medius tendinopathy. (JE 4, p. 25) He recommended a course of physical therapy. (JE 4, p. 25)

Claimant, however, did not immediately complete the recommended physical therapy because he was hired by a utility company to do maintenance on power towers in Indiana. (Hrg. Tr. p. 69) The utility work was claimant's first formal employment since being laid off by defendant-employer in July of 2016. (Hrg. Tr. p. 68) Claimant only performed the job for four weeks before he was required to come back home due to some personal family issues. (Hrg. Tr. pp. 69-70)

After claimant returned to Michigan, he followed up with Dr. Lee on August 28, 2017. Dr. Lee recommended a diagnostic/therapeutic left hip injection, which was performed on September 7, 2017. (JE 4, pp. 31, 34) The injection provided some relief to claimant's hip pain but not his low back symptoms. (JE 4, p. 35) Dr. Lee recommended physical therapy for the lumbar spine and hip and an MRI of claimant's lumbar and thoracic spine to rule out radiculopathy. (JE 4, pp. 36, 41)

The MRI of claimant's lumbar spine revealed degenerative disc disease and mild bilateral neural foraminal stenosis at L4-L5. (JE 4, p. 42) The MRI of claimant's thoracic spine revealed a small lipoma "of doubtful significance" and mild degenerative changes. (JE 4, p. 43).

Dr. Lee referred claimant for a neurology consultation, but claimant was initially unable to pursue this referral due to problems with his insurance coverage. (See JE 4, p. 44; Hrg. Tr. p. 74) Eventually, on February 19, 2018, claimant presented to neurosurgeon Hayden Boyce, M.D. Dr. Boyce diagnosed claimant with chronic bilateral low back pain with left-sided sciatica and recommended more physical therapy. (JE 5, p. 65) Claimant testified Dr. Boyce told him he was not a surgical candidate. (Hrg. Tr., p. 75)

In April of 2018, after claimant's February 19, 2018 appointment with Dr. Boyce, claimant was hired by Xtreme Cleaning & Restoration to clean carpets. (Hrg. Tr., pp. 77-78; see Cl. Ex. 21) Claimant was continuing to work for Xtreme at the time of the hearing. (Hrg. Tr. p. 79)

Claimant received no additional treatment until August 29, 2018, when he was evaluated by Stephen Bloom, D.O., for purposes of claimant's IME. Dr. Bloom diagnosed claimant with left knee trauma resulting in a bone contusion, resolved left trochanteric bursitis and gluteus medius tendinopathy, and chronic low back pain with persistent intermittent radicular low back pain on the left consistent with mild L5 radiculopathy. (Cl. Ex. 14, p. 37)

Regarding claimant's knee, Dr. Bloom recommended anti-inflammatory medications and an evaluation with physical medicine and rehabilitation for "ongoing management" of claimant's symptoms. (Cl. Ex. 14, p. 38)

Regarding claimant's hip, Dr. Bloom noted claimant's hip range of motion was relatively intact. (Cl. Ex. 14, p. 38) As such, he believed claimant's hip was not the main pain generator. (Cl. Ex. 14, p. 38)

Regarding claimant's back, Dr. Bloom opined that claimant's fall aggravated his L4-5 lateral foraminal stenosis causing impingement of the nerve root. (Cl. Ex. 14, p. 37) He explained that claimant's spondylosis and stenosis likely preexisted the work injury but the work injury caused significant exacerbation of this condition to the point where it aggravated the nerve. (Cl. Ex. 14, p. 38) Dr. Bloom recommended an EMG to assess for L5 radiculopathy, which could possibly be treated with a nerve block or epidural steroid injection. (Cl. Ex. 14, p. 38)

Dr. Bloom opined that claimant had not yet reached MMI but given the length of his symptoms likely sustained "at least some degree" of permanent impairment. (Cl. Ex. 14, p. 38) He recommended work restrictions. (Cl. Ex. 14, p. 39)

Roughly a month after claimant's IME with Dr. Bloom, claimant presented to the emergency room on September 25, 2018 with increased left-sided low back pain with left-sided sciatica. (JE 6)

Defendants then authorized an additional appointment with Dr. Hyatt on September 27, 2018. Regarding claimant's left hip, Dr. Hyatt acknowledged that there was some diagnostic evidence of mild impingement of the left hip; however he, like Dr. Bloom, did not detect any clinical findings on examination. (Def. Ex. D, p. 20)

Regarding claimant's back, Dr. Hyatt opined that any injury to the back, lumbar spine, or nerve roots on April 9, 2016 would have been immediate in onset and would have been most severe when the injury occurred. (Ex. D, p. 22) As such, he concluded:

> Medical evidence does not support cause or aggravation of any injury to the lower back at the time of the event on April 9, 2016. Medical evidence does not support any causal relationship between the clinical workup and the course of treatment for a possible lumbar condition that was initiated in January 2017.

(Def. Ex. D, p. 22) He further stated:

> From a functional standpoint, there has been no identification of any functionally limiting orthopaedic condition that might be related to the remote work injury said to have occurred on April 9, 2016. [Claimant] has been experiencing progressively increasing back pain, but unfortunately, a clear organic basis for those complaints has yet to be identified.
>
> In terms of treatment, there is no indication of a medically distinguishable condition related to the injury of April 9, 2016 that would serve as an indication for any additional treatment. The only distinct finding identified which could have been related to injury, is the bone bruise of the medial femoral condyle of the left knee, which would have healed in a matter of six to twelve weeks.

(Def. Ex. D, p. 21) He therefore concluded there was no identifiable objective basis for claimant's chronic and increasing symptoms. (Def. Ex. D, p. 23)

On October 17, 2018, Dr. Lee responded to a letter from claimant's attorney. Dr. Lee diagnosed claimant with left hip impingement, left gluteus medius tendinopathy, and low back pain without sciatica. (JE 4, p. 45) He opined claimant's left hip MRI was consistent with femoroacetabular impingement, or hip impingement. (JE 4, p. 46) Regarding causation, Dr. Lee opined as follows: "I believe [claimant's] work injury on April 9, 2016, was a significant contributing factor, causing the need for his medical care provided by me in 2017." (JE 4, p. 47) Dr. Lee had no recommendations for further treatment for claimant's pain other than an evaluation with a hip surgeon who treats hip impingement. (JE 4, p. 47) Notably, when Dr. Lee authored this letter in October of 2018, he had not evaluated claimant since late 2017; in the interim, both Dr. Hyatt and Dr. Bloom opined claimant's hip condition had resolved.

Claimant then followed up with Dr. Boyce on October 18, 2018. (JE 5, p. 77) Dr. Boyce again reviewed claimant's lumbar spine MRI and indicated it was "without significant surgical pathology to explain his symptoms." (JE 5, p. 79) Because claimant was not a surgical candidate and had failed physical therapy, Dr. Boyce recommended pain management for a possible spinal cord stimulator trial. (JE 5, p. 79)

On October 31, 2018, roughly a week before hearing, claimant returned to Dr. Lee. Claimant testified Dr. Lee also recommended pain management. (Hrg. Tr. pp. 82-83)

With this extensive history and fragmented medical treatment in mind, I will first address claimant's left knee injury, and then I will address whether claimant's injury extends beyond his leg and into his body as a whole. Defendants admit claimant injured his left knee on April 9, 2016, but they dispute whether claimant's left hip and low back symptoms are causally related to the April 9, 2016 work injury.

Both the treating and expert physicians in this case essentially agree that claimant sustained nothing more than a bone bruise to his left knee as a result of his April 9, 2016 work injury. (See JE 2, p. 12; JE 3, p. 16; Cl. Ex. 14, p. 37; Ex. D, pp. 21-22) The MRI of claimant's left knee was unremarkable for any additional findings, such as a ligament tear, and subsequent physical examinations were likewise negative. (See JE 2, p. 11; JE 3, p. 16; Def. Ex. C, p. 11) Dr. Hyatt opined that claimant's bone bruise would have taken no more than 12 weeks to heal. (Def. Ex. D, p. 22) This is consistent with Dr. Rao's clinical examination in September of 2016, when he indicated he was "almost certain" claimant had no primary knee pathology. (JE 3, p. 16) For these reasons, I find that while claimant sustained a bone bruise to his left knee as a result of his work-related fall on April 9, 2016, this bone bruise was a temporary condition that subsequently resolved with no resulting permanent disability.

As mentioned, however, claimant also asserts he sustained injuries to his left hip and low back during his work-related fall on April 9, 2016. Claimant's left hip is first mentioned in the medical records from claimant's appointment with Dr. Rao on September 15, 2016, when Dr. Rao's examination revealed "an obviously stiff hip with trochanteric and anterior tenderness." (JE 3, p. 16) Although claimant's left hip MRI was unremarkable for a labral tear, Dr. Rao referred claimant to Dr. Lee, who opined that claimant's left hip pain was due to trochanteric bursitis and/or gluteus medius tendinopathy. (JE 4, p. 25) Dr. Lee subsequently opined that the treatment he offered claimant in 2017 for his left hip conditions were caused by the April 9, 2016 work injury. (JE 4, p. 47)

However, by August 29, 2018, when claimant was evaluated by Dr. Bloom for his IME, Dr. Bloom opined that claimant's left trochanteric bursitis and gluteus medius tendinopathy had "resolved." (Cl. Ex. 14, p. 37) Dr. Bloom did not believe claimant's hip to be the source of claimant's pain. (Cl. Ex. 14, p. 38) Thus, I find that while claimant's left hip bursitis and tendinopathy were related to claimant's April 9, 2016 work

injury, these conditions were temporary in nature and had fully resolved by August of 2018 with no resulting permanent disability.

With respect to claimant's back, claimant was referred by Dr. Rao to Dr. Lee, and then by Dr. Lee to Dr. Boyce after treatment for claimant's left hip failed to alleviate claimant's symptoms. Dr. Boyce diagnosed claimant with left-sided sciatica but offered no causation opinion.

The only causation opinions regarding claimant's back come from the parties' respective IME physicians. Dr. Hyatt, defendants' expert, opined that any injury to claimant's nerve roots on April 9, 2016 would have been immediate in onset. (Def. Ex. D, p. 22) Because Dr. Hyatt perceived a delay in claimant's presentation of back symptoms until January of 2017, Dr. Hyatt opined that there was no causal relationship between claimant's back condition and his work-related fall. (See Def. Ex. D, pp. 22-23) Based on claimant's testimony at hearing, however, it appears this perceived delay in presentation was actually a misidentification of claimant's symptoms.

Dr. Rao, who was the first doctor to see claimant after he was laid off, stated that claimant's back was not initially presented as a complaint when he was evaluated in September of 2016. (See JE 3, p. 17) Instead, according to Dr. Rao, claimant's back was not mentioned by claimant until January of 2017. (See JE 3, p. 17) However, claimant testified at hearing that he had difficulty explaining the location of his symptoms to his providers and often described the pain as pain in his buttocks and tailbone. For example:

> Q. Now, with reference to the low back, at what point in time did you start to think you were having symptoms in the low back area compared to the left hip and what you described earlier about the leg?
>
> A. When I came home from Iowa, after I got laid off, I started - - I think when I went and seen Dr. Rao the first time, I kept - - my butt kept hurting, like right in my lower back and then my tailbone. And I was like, I don't know why my butt is hurting and, you know, towards my tailbone . . . . But I couldn't really tell where it was coming from when I first got hurt. After I got the first injection in my hip from Dr. Lee, it kind of made it more isolated to where you could kind of feel things better, but . . . it confused me even more because I didn't know how to explain that to them. You know, it was really hard to explain.

(Hrg. Tr. pp. 89-90)

Claimant offered a consistent explanation on cross-examination:

> Q. At [the September 14, 2016 evaluation with Dr. Rao] you didn't have any low back problems; true?

> A. It was right at the bottom of my like - - like at my tailbone. It was at the very lower of my back and where the top of my butt is.

(Hrg. Tr. p. 97)

> Q. So when did the pain really start in your lower back? After the therapy?
>
> A. No. My pain started in my lower back when I went to see Dr. Rao for the first time [in September of 2016] . . . . Like it was right at the lower back where my spine is, right where my spine is, and it was - - like I kept saying it was around my butt cheek and my back, but I couldn't figure out why it was hurting.

(Hrg. Tr. p. 100)

Notably, consistent with claimant's testimony, the notes from claimant's September 14, 2016 appointment with Dr. Rao, indicate claimant was positive for pain in the "gluteal region." (JE 3, p. 16)

In Dr. Hyatt's September 27, 2018 report, he remarked that claimant had "no complaints of low back pain at the time of [his] examination performed on November 8, 2016." (Def. Ex. D, p. 22) However, consistent with claimant's testimony and claimant's presentation to Dr. Rao in September of 2016, Dr. Hyatt's November 8, 2016 report noted "activity-related pain arising from the *left gluteus region* radiating into the left thigh." (Def. Ex. B, p. 5) (emphasis added).

With claimant's testimony in mind, I find that what was perceived by Dr. Rao and Dr. Hyatt as a delay in claimant's presentation of back symptoms was actually a miscommunication or misidentification of symptoms. Whether it was described by claimant as "low back," "gluteal," "butt cheek," or "tailbone" pain, claimant has consistently complained of pain in the low back region since September of 2016. For these reasons, I do not find Dr. Hyatt's report, which is based on the assumption that claimant had a delayed presentation of back symptoms, to be convincing.

Instead, I find Dr. Bloom, claimant's expert, to be more persuasive. Dr. Bloom opined that claimant's April 9, 2016 work-related fall aggravated his L4-5 lateral foraminal stenosis, which caused impingement of the nerve root. (Cl. Ex. 14, p. 37) Dr. Bloom opined that claimant was not yet at MMI and instead should pursue an EMG to assess for L5 radiculopathy. (Cl. Ex. 14, p. 38) I therefore find claimant sustained an injury to his back as a result of the April 9, 2016 work-related fall but has not yet reached MMI for his back condition.

In summary, I find that claimant sustained temporary injuries to his left leg and left hip as a result of his April 9, 2016 work-related fall, but those injuries have resolved with no resulting permanent disability. I also find that claimant sustained an injury to his

back as a result of his April 9, 2016 work-related fall, but he has not yet reached MMI for this condition.

Claimant has also asserted a claim for temporary benefits. Claimant asserts he is entitled to temporary benefits beginning on July 21, 2016, which is the day after claimant was laid off from defendant-employer.

The award of temporary benefits, whether temporary total disability or healing period benefits, is dependent on factual findings regarding when claimant returned to work, was capable of substantially similar employment, or reached MMI. As discussed above, I already determined claimant has not reached MMI for his back as of the date of hearing. However, claimant testified he returned to work the day after his injury. (Hrg. Tr. p. 48) I therefore find claimant returned to work on April 10, 2016.

Claimant continued working without interruption until he was laid off in July of 2016 for reasons unrelated to his work injury. At the time of this layoff, claimant was working without doctor-imposed restrictions. I acknowledge defendant-employer allowed claimant to continue working in the print shop even after he was released to full-duty work and that claimant testified defendant-employer never pushed or expected him to return to his regular pipefitting duties. (Hrg. Tr. pp. 54-56) However, at the time of claimant's layoff, claimant had been released without restrictions from Dr. Cassens' care for nearly three months. (See JE 2, p. 21) I therefore find claimant was medically capable of returning to substantially similar employment at the time of his layoff in July of 2016.

Claimant was under no doctor-imposed restrictions and therefore continued to be capable of returning to substantially similar employment until he was evaluated by Dr. Hyatt on November 8, 2016. (Def. Ex. B, pp. 7-8) At that visit, Dr. Hyatt recommended avoiding prolonged periods of standing and walking and working on uneven surfaces, inclines, and heights, along with a lifting limit of 20 to 25 pounds. (Def. Ex. B, pp. 7-8) Based on claimant's job description in Claimant's Exhibit 6, I find claimant would be unable to return to substantially similar work under Dr. Hyatt's restrictions. Dr. Hyatt then removed those restrictions as of December 19, 2016. (Def. Ex. C, pp. 11-12) I therefore find claimant was not capable of returning to substantially similar employment from November 8, 2016 through December 19, 2016. Claimant was also not working during this timeframe.

After Dr. Hyatt lifted his restrictions on December 19, 2016, claimant received no doctor-imposed restrictions until his IME with Dr. Bloom on August 29, 2018. Dr. Bloom recommended no lifting greater than 15 pounds, no repetitive bending, no kneeling, and no ladder climbing. (Cl. Ex. 14, p. 39) Dr. Bloom opined that claimant should not return to the pipefitter job he was performing on the date of his work-related injury. (Cl. Ex.14, p. 39) By August of 2018, however, claimant had returned to work; he was hired by Xtreme Cleaning & Restoration in April of 2018. (See Hrg. Tr. pp. 77-78; Cl. Ex. 21, p. 57) I therefore find that from December 20, 2017 through April of 2018 claimant had

no doctor-imposed restrictions and was medically capable of returning to substantially similar employment. I also find that from April of 2018 through the date of hearing claimant had returned to work.

Claimant submitted an earnings record from Xtreme Cleaning & Restoration as Claimant's Exhibit 21. Unfortunately, claimant offered no explanation or breakdown of this evidence, such as why he was working less than full-time hours or whether his reduced hours were attributable to his work injury. (See Hrg. Tr. pp. 78-79) I therefore find there is insufficient evidence to determine whether claimant's partial reduction in earning ability is due to his work injury.

The next issue to be addressed is the rate at which claimant's weekly benefits should be paid. Claimant asserts a rate of $1,383.71, while defendants assert a rate of $1,166.47. The dispute concerns whether a partial workweek and claimant's per diem compensation should be included in the calculation.

The dispute about which weeks to be included in the rate calculation stems from the fact that claimant started with defendant-employer midway through a pay period. Claimant started on May 16, 2016, but the pay period actually began on March 14, 2016 and ended on May 20, 2016. (Cl. Ex. 7, p. 15) I therefore find claimant only worked five of the seven days in the initial pay period.

The parties agree that claimant was paid on an hourly basis (see Cl. Ex. 9-10), and defendants do not dispute the fact that claimant received an additionally weekly "per diem" payment in the amount of $805.00. (See Cl. Ex. 18, p. 50)

Claimant testified at hearing that he paid "at least" $300.00 per week for rent, though he could not recall exactly how much he paid. (Hrg. Tr. p. 33) He testified he spent "[m]aybe about $20 a day" on food and "at least $70 a week" on gas. (Hrg. Tr. pp. 34-35) Later, on cross-examination, claimant acknowledged it was "hard for [him] to remember" exactly how much he spent out of his per diem allowance. (Hrg. Tr. p. 102) Other than his testimony, claimant offered no additional evidence regarding the expenditures of his per diem allowance, such as receipts, pay stubs, or credit card invoices. Without any such additional evidence, I do find claimant's vague testimony regarding his spending of his per diem allowance to be credible. I therefore find there is insufficient evidence to determine whether only a portion of the weekly $805.00 "per diem" payment was actually for claimant's expenses.

In addition to his claim for weekly benefits, claimant also seeks an order for alternate medical care. Specifically, claimant requests the treatment recommended by Dr. Bloom and an evaluation with a hip surgeon as recommended by Dr. Lee. At the time of the hearing, defendants were denying liability for claimant's ongoing complaints and not offering any additional care. Defendants made no indication as to who they would authorize for additional treatment should I find in claimant's favor.

Because I found that claimant's work-related left knee and left hip conditions were temporary in nature and resolved, I find claimant is not entitled to additional care for those body parts.

However, Dr. Bloom recommended an EMG to assess for L5 radiculopathy. (Cl. Ex. 14, p. 38) I find that the recommendation for the EMG is related to continued treatment of claimant's back condition, which I found to be related to the work injury and not yet at MMI. As such, I find claimant's request for the EMG to be reasonable and appropriate.

Dr. Bloom also recommended consideration of a nerve root block or epidural steroid injection should the EMG be positive for L5 radiculopathy, which is consistent with Dr. Boyce's recommendation for a referral to pain management for claimant's ongoing back complaints. (Cl. Ex. 14, p. 38; JE 5, p. 79) I therefore find claimant's request for a pain management referral to be reasonable and appropriate.

Claimant also seeks payment of past medical expenses and mileage as set out in Claimant's Exhibit 15 and 16. As mentioned above, defendants appear to have denied liability for claimant's ongoing symptoms and stopped authorizing care after Dr. Hyatt's December 19, 2016 report. (See Hrg. Tr. p. 67) I find that all of the past medical expenses sought by claimant occurred after defendants' denial of liability. (Cl. Ex. 15) All of the treatment dates in Exhibit 15 correspond with treatment records in Joint Exhibits 3, 4, and 5. As such, I find that all of the expenses sought by claimant in Exhibit 15 were for reasonable treatment related to his work-related hip and back conditions.

I find claimant's mileage for his trips to Dr. Hyatt's office (278 + 167 = 445) was mileage incurred for appointments authorized by defendants.

I find claimant's mileage for his MRIs, his appointments with Dr. Boyce, his appointments with Dr. Lee, and his therapy at Spectrum Health (185.6 + 328.8 + 1,187.2 + 28.8 = 1,730.4) was all incurred for treatment that was reasonable, related to claimant's work-related condition, and occurred after defendants' denial of liability.

Claimant asserts a claim for mileage for two trips to Dr. Rao's office, but I found the September 15, 2016 appointment with Dr. Rao was not authorized and occurred prior to defendants' denial of liability. However, I find the remaining mileage for the trip to Dr. Rao's office (54.8) was incurred for an appointment that was reasonable, related to claimant's work-related condition, and occurred after defendants' denial of liability.

Claimant is seeking mileage for four trips to Spectrum Health Reed City Hospital, but it is not clear from claimant's exhibit what these visits were for or when they occurred. I find there is insufficient evidence in the record for me to determine whether these trips were related to claimant's work injury.

I therefore find claimant incurred 2,230.2 miles (445 + 1,730.4 + 54.8) of transportation that was either for treatment authorized by defendants or for treatment incurred after defendants' denial of liability that I found to be reasonable and related to claimant's work injuries.

Claimant is also making a claim for reimbursement of her IME with Dr. Bloom and corresponding mileage. (Cl. Ex. 14, p. 40; Cl. Ex. 16) I find that prior to claimant's appointment with Dr. Bloom on August 29, 2018, no physician retained by defendants made an evaluation of permanent disability.

CONCLUSIONS OF LAW

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

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

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v.

Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

As discussed above, I found claimant sustained work-related injuries to his left leg, left hip, and back. However, I found claimant's left leg and left hip injuries were temporary conditions that fully resolved without any permanent disability. I therefore conclude claimant failed to satisfy his burden to prove entitlement to PPD benefits for his left leg or left hip injuries.

With respect to claimant's back condition, I found claimant has not yet reached MMI. I therefore conclude claimant's entitlement to PPD benefits for his back condition is an issue not yet ripe for determination.

Notably, although I concluded claimant's claim for PPD benefits relating to his back is not yet ripe for determination, my finding that claimant returned to work the day after his injury allows me to determine the commencement date for PPD benefits should claimant eventually prove his entitlement to them in a future action.

The Iowa Supreme Court has specifically held that PPD benefits commence whenever the first factor of Iowa Code section 85.34(1) is met. Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 (Iowa 2016). In other words, the commencement date for PPD benefits is the earliest date on which claimant achieves one of the factors outlined in Iowa Code section 85.34(1).

The three factors of Iowa Code section 85.34(1) are whether (1) "the employee has returned to work," (2) "it is medically indicated that significant improvement from the injury is not anticipated" (MMI), or (3) "the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury." Iowa Code § 85.34(1).

Having found that claimant returned to work on April 10, 2016, I conclude claimant's return to work was the first factor in Iowa Code section 85.34(1) to occur. Therefore, I conclude any PPD benefits, should claimant eventually prove his entitlement to them, should commence on April 10, 2016. See Iowa Code § 85.34(1); Evenson, 881 N.W.2d 360.

However, pursuant to the court's holding in Evenson, claimant is still entitled to make a claim for intermittent temporary disability benefits after the commencement date for PPD benefits. Evenson, 881 N.W.2d 360.

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability (TTD) benefits during the time the worker is disabled by the injury. Iowa Code section 85.33(1) provides that TTD benefits are to be paid "until the

employee has returned to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first." Iowa Code § 85.33(1) (2016).

Healing period compensation is similar but describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Iowa Code section 85.34(1) provides that healing period (HP) benefits are payable until the claimant "has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first." Iowa Code § 85.34(1) (2016).

Whether such benefits are ultimately labeled as TTD or HP will turn on the question of claimant's entitlement to PPD benefits, which is presently not ripe for determination. Regardless, claimant's entitlement to either TTD or HP benefits is dependent on whether claimant returned to work or was medically capable of returning to substantially similar work. See Iowa Code §§ 85.33(1); 85.34(1).

In this instance, claimant seeks TTD/HP benefits starting on July 21, 2016, when he was laid off from defendant-employer. However, I found that claimant, although he was not working, was capable of returning to substantially similar work until November 8, 2016. I therefore conclude claimant failed to prove his entitlement to TTD/HP benefits from July 21, 2016 through November 7, 2016.

From November 8, 2016 through December 19, 2016, Dr. Hyatt imposed work restrictions that I found made claimant incapable of returning to substantially similar work. Because claimant was not working and incapable of returning to substantially similar employment during this timeframe, I conclude claimant is entitled to TTD/HP benefits from November 8, 2016 through December 19, 2016. Iowa Code § 85.33(1), 85.34(1); Evenson, 881 N.W.2d 360.

Claimant then had no doctor-imposed restrictions from December 20, 2016 until his IME with Dr. Bloom on August 29, 2018. However, in April of 2018 prior to his IME with Dr. Bloom, claimant returned to work with a different employer and continued this work through the date of the hearing. As such, I found that claimant was either capable of returning to substantially similar work or had returned to work from December 20, 2016 through the date of hearing. I therefore conclude claimant failed to prove his entitlement to additional TTD/HP benefits after December 20, 2016. I likewise conclude claimant failed to prove his entitlement to a running award of TTD/HP benefits. See Iowa Code §§ 85.33(1), 85.34(1).

Claimant testified he works less than full-time hours at Xtreme Cleaning and Restoration. Iowa Code section 85.33(2) addresses periods of temporary partial disability. It provides:

> "Temporary partial disability" or "temporarily, partially disabled" means the condition of an employee for whom it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, but is able to perform other work consistent with the employee's disability. "Temporary partial benefits" means benefits payable, in lieu of temporary total disability and healing period benefits, to an employee because of the employee's temporary partial reduction in earning *ability as a result of the employee's temporary partial disability*.

Iowa Code § 85.33(2) (2016) (emphasis added).

It is not enough for claimant to show only that his earning ability was reduced and that he was injured. See Burtnett v. Webster City Custom Meats, Inc., 728 N.W.2d 851 (Iowa Ct. App. 2007) (table). Instead, the reduction in earning ability must be "as a result of" the injury and not due to other absences. See id.

In this case, I found there was insufficient evidence to determine whether claimant's partial reduction in earning ability was due to his work injury or other factors. I therefore conclude claimant failed to carry his burden to prove entitlement to temporary partial disability benefits.

In summary, I conclude claimant satisfied his burden to prove entitlement to one period of TTD/HP benefits from November 8, 2016 through December 19, 2016.

Having found claimant is entitled to TTD/HP benefits, the next issue to be addressed is the rate at which those benefits should be paid.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

In this case, claimant was paid on an hourly basis. When an employee is paid on a daily or hourly basis, the weekly earnings are computed by dividing by 13 the earnings over the 13-week period before the work injury. Iowa Code section 85.36(6). Any week that does not fairly reflect the employee's customary earnings is excluded. Section 85.36(6).

However, if the worker has worked less than 13 weeks, the gross weekly earnings are determined by looking at the earnings of other similarly situated employees employed over that full period. Iowa Code § 85.36(7). If earnings of similar employees

cannot be determined, the gross weekly earnings are determined by averaging the employee's weekly earnings computed for the number of weeks that the employee has been in the employ of the employer. Iowa Code § 85.36(7).

In this case, the parties offered no evidence regarding the earnings of similar employees. Thus, I conclude claimant's gross weekly earnings should be determined by averaging the number of weeks claimant was employed by defendant-employer.

Claimant's first paid workday was March 16, 2016, and the corresponding pay period ended on March 20, 2016. (Cl. Ex. 7, p. 15) While claimant agrees with defendant that claimant earned $1,609.50 in his first pay period (see Cl. Ex. 9-10), claimant argues this week and pay period should be excluded from the rate calculation because he did not work the full week. However, Iowa Code section 85.36(7), unlike subsection (6), says nothing about excluding weeks that do not fairly reflect an employee's customary earnings. See Iowa Code § 85.36(6), (7).

That being said, treating the period of May 16, 2016 through May 20, 2016 as a full workweek, as defendants do in their calculation (see Cl. Ex. 9), is also inappropriate because it unfairly deflates claimant's average gross weekly earnings.

Instead, I conclude the period of May 16, 2016 through May 20, 2016, which is 5 days, should be included in the average calculation but treated as 0.714 of a week.

Based on their rate calculations as set out in Claimant's Exhibits 9 and 10, the parties agree that claimant's gross weekly earnings in the pay periods prior to his injury totaled $5,753.50 ($2,738.00 + $1,406.00 + $1,609.50). This amount averaged over claimant's 2.714 weeks that claimant was employed by defendant-employer prior to his injury equals $2,119.93 ($5,753.5 / 2.714).

The next question is whether claimant's per diem allocation should be included in the rate calculation.

Iowa Code section 85.61(3) provides a definition of "gross earnings" and provides that "reimbursement of expenses" and "expense allowances" should be excluded from calculation of gross earnings.

In this case, claimant received $805.00 per week as a "per diem" payment. Claimant alleges $295.00 of his weekly "per diem" payment should be added to each week of his gross weekly earnings because this portion was not used as reimbursement for expenses or an expenses allowance.

Claimant's argument was previously recognized in Premium Transp. Staffing, Inc. v. Bowers, 872 N.W.2d 199 (Iowa Ct. App. 2015) (table). In Bowers, the claimant received $52.00 per diem as compensation. The claimant testified at hearing he spent only $12.00 per day for food and expenses and pocketed the remainder. The deputy commissioner concluded the claimant showed by a preponderance of the evidence only

a portion of his per diem was reimbursement for expenses. The deputy commissioner found $12.00 of the per diem payment was an expense allowance under Iowa Code section 85.61(3) but included the remaining $40.00 of the per diem in calculating the weekly rate. The Iowa Court of Appeals eventually affirmed the deputy commissioner's inclusion of the $40.00 per diem in calculating the rate.

In this case, claimant did testify that he consistently underspent his per diem expenses. However, this testimony was vague was clearly based on rough estimates. Because claimant offered no evidence to substantiate his testimony, such as receipts or invoices, I did not find claimant's testimony regarding the use of his per diem allowance credible. I therefore conclude claimant failed to carry his burden to establish that his living expenses were lower than the $805.00 weekly "per diem" allowance. See Tammen v. Echo Powerline Leasing, LLC, File No. 5053791 (Arb. Dec. 8, 2017) (determining the claimant presented scant evidence the claimant's expenses were lower than the $20.00 per diem allotment and denying the request to include the per diem allowance in calculating the weekly rate). Thus, without the per diem allowance, I conclude claimant's average gross weekly wage is $2,119.93.

The weekly benefit amount payable to an employee shall be based upon 80 percent of the employee's weekly spendable earnings, but shall not exceed an amount, rounded to the nearest dollar, equal to 66-2/3 percent of the statewide average weekly wage paid employees as determined by the Department of Workforce Development. Iowa Code § 85.37.

The weekly benefit amount is determined under the above Code section by referring to the Iowa Workers' Compensation Manual in effect on the applicable injury date. Having accepted the parties' stipulations that claimant was married and entitled to four exemptions on his date of injury and having concluded that claimant's gross average weekly wage was $2,119.93, I conclude claimant's rate is $1,263.94 using the rate book with effective dates of July 1, 2015 through June 30, 2016.

Claimant also seeks an order for alternate medical care.

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care . . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee.

At the time of the hearing, defendants denied liability for claimant's ongoing conditions and were therefore offering no additional care. Having found claimant's ongoing back condition is related to the April 9, 2016 work injury, I now conclude

defendant is obligated pursuant to Iowa Code section 85.27 to provide prompt and reasonable care for this condition.

More specifically, I find claimant carried his burden to prove his entitlement to the care requested in the form of an EMG and a pain management referral. Defendants are ordered to authorize an EMG to assess for possible L5 radiculopathy. Defendants are also ordered to authorize a referral to a pain management specialist.

The next issue to consider is whether claimant is entitled to payment of medical expenses.

As discussed above, pursuant to Iowa Code section 85.27, the employer shall furnish reasonable medical services and shall also allow reasonable and necessary transportation expenses incurred for those services. Iowa Code § 85.27.

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code § 85.27; Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner, 78 (Review-Reopening 1975). Upon their denial of liability, defendants lose the right to control the medical care sought by claimant during the period of denial, and the claimant is free to choose his care. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010). In other words, when liability is denied, defendants are precluded from asserting an authorization defense as to any future treatment during the period of denial. Id.

I found defendants denied liability for ongoing care in December of 2016 and that all of the medical expenses sought in Claimant's Exhibit 15 occurred after this point. As such, I conclude defendants are precluded from asserting an authorization defense for the expenses sought. I also found all of the medical expenses sought by claimant were reasonably related to claimant's work-related conditions. I therefore conclude defendants are responsible for the expenses as set forth in Claimant's Exhibit 15.

I also found claimant incurred 2,230.2 miles of transportation that was either related to treatment authorized by defendants or treatment incurred after defendants' denial of liability that I found to be reasonable and related to claimant's work injuries. Thus, pursuant to Iowa Code section 85.27, I conclude defendants must reimburse claimant for this mileage.

Claimant also seeks a reimbursement of her IME with Dr. Bloom and corresponding mileage pursuant to Iowa Code section 85.39.

Iowa Code section 85.39 requires reimbursement for an IME and reasonably necessary transportation expenses "[i]f 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." Iowa Code § 85.39.

In this case, I found that none of the physicians retained by defendants made an evaluation of permanent disability. Therefore, the reimbursement provision of Iowa Code section 85.39 was not triggered. See Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015) (hereinafter DART). I therefore conclude claimant is not entitled to reimbursement for Dr. Bloom's IME and corresponding mileage under Iowa Code section 85.39.

The last issue to be resolved is the taxation of costs.

Claimant seeks the following costs: $1,000.00 (Dr. Bloom's report); $525.00 (Dr. James' report); $100.00 (filing fee); and $286.70 (hearing transcript). (Cl. Ex. 17; Cl. Brief, p. 18)

The assessment of costs is a discretionary function of this agency. Iowa Code § 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33.

As discussed above, the reimbursement section of 85.39 was not triggered prior to Dr. Bloom's IME. When Iowa Code section 85.39 is not triggered, only the cost of a report is taxable as a cost pursuant to rule 876 IAC 4.33. See DART, 867 N.W.2d at 847. In other words, the only recoverable cost for Dr. Bloom's IME under rule 876 IAC 4.33 is the cost of the report itself.

In this case, Dr. Bloom did not break down his bill to establish which portion of the $1,000.00 was associated with his report versus his examination. Because claimant did not offer any evidence regarding what was charged solely for Dr. Bloom's report, I conclude no portion of Dr. Bloom's IME charge can be taxed as a cost under rule 876-4.33. See Reh v. Tyson Foods, Inc., File No. 5053428 (App. March 26, 2018).

Claimant also seeks costs in the amount of $525.00 for Dr. Lee's "report," but an inspection of the billing reveals that the $525.00 was actually a charge for "review of records." (Cl. Ex. 17, p. 49) The court in Young held the "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." 867 N.W.2d at 847. I conclude expenses for a physician's review of medical records are expenses associated with an examination and therefore cannot be taxed under rule 876 IAC 4.33(6). See Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App. Dec. 17, 2018).

Defendants are taxed with the $100.00 filing fee and the $286.70 hearing transcript. 876 IAC 4.33(2), (7).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant temporary total disability (or healing period) benefits from November 8, 2016 through December 19, 2016.

All weekly benefits shall be paid at the rate of one thousand two hundred sixty-three and 94/100 dollars ($1,263.94) per week.

Defendants shall pay accrued weekly benefits, including but not limited to the underpayment of the weekly rate, in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants are responsible for reimbursement, satisfaction, or payment of the medical expenses set out in Claimant's Exhibit 15.

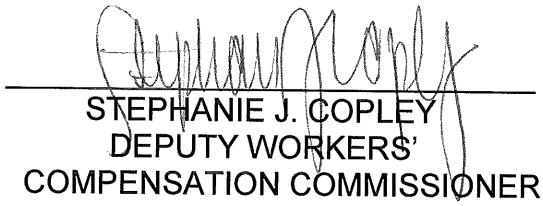
Defendants shall provide alternate medical care consisting of authorization of an EMG and a pain management referral.

Defendants shall reimburse claimant for two thousand two hundred thirty point two (2,230.2) miles of medical transportation.

Defendants shall reimburse claimant's costs totaling three hundred eighty-six and 70/100 dollars ($386.70).

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 9th day of January, 2019.



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