BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHARLES E. WOOD,

Claimant,

vs.

A-TEC RECYCLING, INC.,

Employer,

and

EMCASCO,

Insurance Carrier,
Defendants.

File No. 5049820

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Charles Wood, filed a petition in arbitration seeking workers' compensation benefits from A-Tec Recycling, Inc., employer, and EMCASCO, insurance carrier, both as defendants, as a result of a stipulated injury sustained on March 4, 2013. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on March 1, 2016, in Des Moines, Iowa. The record in this case consists of joint exhibits 1 through 14, defendants' exhibits A through G, and the testimony of the claimant. The parties submitted post-hearing briefs, the matter being fully submitted on March 18, 2016.

ISSUES

The parties submitted the following issues for determination:

1. Whether the stipulated injury of March 4, 2013 is a cause of permanent disability;
2. The extent of claimant's industrial disability;
3. Whether defendants are responsible for claimed medical expenses; and
4. Whether claimant is entitled to reimbursement of an independent medical evaluation pursuant to Iowa Code section 85.39.

STIPULATIONS

The stipulations of the parties in the hearing report are incorporated by reference in this decision and are restated as follows:

1. The existence of an employer-employee relationship at the time of the alleged work injury.

2. Claimant sustained an injury on March 4, 2013 which arose out of and in the course of employment.

3. The injury was a cause of temporary disability during a period of recovery.

4. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.

5. The commencement date for permanent partial disability benefits, if any are awarded, is April 9, 2013.

6. At the time of the alleged injury, claimant's gross earnings were $707.90 per week, claimant was single, and claimant was entitled to one exemption.

7. Affirmative defenses were waived.

8. With reference to the itemized list of disputed medical expenses: the fees or prices listed are fair and reasonable; the treatment was reasonable and necessary; and although causal connection of the expenses to the work injury could not be stipulated, the listed expenses are at least causally connected to the medical condition(s) upon which the claimant of injury is based.

9. Prior to hearing, claimant was paid zero weeks of permanent partial disability benefits.

The stipulations of the parties in the hearing report are incorporated by reference in this decision.

FINDINGS OF FACT

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

Claimant's testimony was clear, well-delivered, and consistent as compared to the evidentiary record and his deposition testimony. His demeanor at the time of evidentiary hearing was excellent and gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

Claimant was 56 years of age at the time of hearing. He is single and a lifelong resident of Des Moines, Iowa, with the exception of his military service. Claimant graduated high school in 1978; he subsequently attended a community college and earned an associate's degree to become a diesel and heavy equipment technician. Claimant obtained employment as a diesel mechanic, which required him to routinely

handle objects weighing 100 to 150 pounds. (Claimant's testimony; Exhibit 14, page 11)

From 1982 to 1991, claimant served in the airborne infantry of the US Army. His military service included active duty deployments; he sustained no disabling injuries during this period. Claimant received an honorable discharge from the service. (Claimant's testimony; Ex. 14, p. 11)

Following his discharge, claimant obtained work at a ready-mix plant, performing mechanic duties and driving a ready-mix truck. Claimant described the work as extremely heavy in nature, as he was required to fix heavy pieces of machinery, shovel rock, and lift 100 pound bags of cement. Claimant earned $16.00 per hour. (Claimant's testimony; Ex. F, p. 4) In 1999, claimant suffered an alleged work-related injury while working in this position. He ultimately underwent surgical intervention with William Boulden, M.D., consisting of debridement of L5-S1 and partial discectomy at L4-L5. (Ex. B, pp. 1-2; Ex. F, p. 2)

Claimant testified he was ultimately released without restrictions, but was advised by his physician not to drive a ready mix truck due to the roughness of the ride. Claimant testified his employer was unable to accommodate this restriction and he sought other employment. Claimant procured employment as a corrections officer for the State of Iowa. However, claimant disliked the work and voluntarily left his employment. (Claimant's testimony; Ex. F, p. 4)

In early 2000, claimant began work as a regional truck driver for Brown Logistics. Claimant testified he could easily perform the physical requirements of his position and was able to return to heavy labor work without problem. Claimant testified he would suffer from a backache if he lifted too much or overworked his back, but this symptom did not interfere with his ability to work. (Claimant's testimony) In 2004, claimant suffered an alleged work-related fracture of his left arm. The fracture was surgically fixed with placement of hardware; claimant suffered from no permanent limitations. (Claimant's testimony; Ex. F, p. 2)

Claimant continued to work for Brown Logistics until approximately October 2007. At that time, claimant earned $17.00 per hour. Claimant testified he wanted to pursue a better paying job with greater future opportunities; he also desired to work a daytime shift, as opposed to the night shift he was assigned to after his left arm injury. (Claimant's testimony)

Claimant applied for work at defendant-employer and was hired as a truck driver in October 2007. His duties involved driving to locations and retrieving recyclable items such as electronics and batteries. The work was physically demanding, requiring claimant to lift up to 150 pounds and maneuver items weighing up to 900 pounds using carts. Claimant testified the work was very heavy in nature, but he was capable of performing his work. (Claimant's testimony)

Throughout the month of June 2010, claimant sought care with personal physician, Jerrold Flatt, D.O. Claimant's diagnoses during that period included fatigue, hyperlipidemia, benign prostatic hyperplasia, cough, chronic obstructive pulmonary disease (COPD), abdominal pain, diarrhea, sore throat, sinusitis, abdominal cramps, and reflux esophagitis. Claimant was treated conservatively with medications for his complaints, fluids, and rest, and was advised to follow a cardiac prudent diet, monitor his blood pressure, and cease smoking. (Ex. C, pp. 1-4) In September 2010, claimant presented to Dr. Flatt for laboratory work as directed by physicians at Iowa Digestive. Dr. Flatt assessed colitis and fatigue. (Ex. C, p. 5)

While at work on March 7, 2013, claimant attempted to kick open the back of his truck which had frozen shut. When he did so, he slipped off the back of the truck and struck his right side upon the truck before falling to the ground. Claimant's supervisor witnessed the event and claimant informed him that although he was hurting, he did not require emergency medical attention. Claimant testified he was heavily clothed and did not believe he had been badly injured; however, he did suffer from significant bruising on his right side. Following the injury, claimant continued to perform his work duties for defendant-employer. (Claimant's testimony)

Over the following days and weeks, claimant testified his condition progressively worsened. While on a route in Omaha, Nebraska, for defendant-employer, claimant testified he developed chest pain, had difficulty breathing and experienced a fluttering of his heart. He returned to Des Moines and sought medical treatment on March 25, 2013. (Claimant's testimony)

Medical records of UnityPoint Health—Iowa Methodist Emergency Department reveal claimant presented for care on March 25, 2013 and was evaluated by Mark Randleman, D.O. and Clint Hawthorne, M.D. Claimant expressed complaints of chest pain for one to two weeks and shortness of breath. The providers noted claimant had sustained trauma to his right lateral chest and ribs in a fall from a truck. (Ex. 2, pp. 2, 10) Claimant underwent an EKG. (Ex. 2, p. 11) A chest CT revealed a large right-sided pleural effusion with some consolidation in claimant's right lung. Dr. Hawthorne performed right-sided thoracentesis and aspirated 1200 cc of serosanguineous pleural fluid. (Ex. 2, p. 7) The providers issued diagnoses of atrial fibrillation, pneumonia, and pleural effusion. Claimant was issued prescriptions for ibuprofen 600 mg and Levofloxacin. (Ex. 2, pp. 1, 4, 7, 8)

Claimant testified he was advised by emergency room personnel to take it easy and follow up with his personal physician. As a result, on April 1, 2013, claimant presented to Dr. Flatt in follow up of the emergency room visit. Dr. Flatt prescribed a course of antibiotics. (Claimant's testimony; Ex. 4, p. 1)

At Dr. Flatt's referral, on April 4, 2013, claimant presented to cardiologist, Craig Stevens, M.D., for evaluation of pleural effusion and atrial fibrillation. Dr. Stevens noted claimant had demonstrated right pleural effusion and paroxysmal atrial fibrillation with rapid ventricular response. Dr. Stevens opined the effusion was probably traumatic in

nature, due to the fall at work. (Ex. 4, p. 2) Claimant expressed continued complaints of chest discomfort. Dr. Stevens noted claimant was a 25-year smoker and counseled claimant on smoking cessation and weight loss. He recommended claimant return in one week for an EKG and in six weeks for a stress test. (Ex. 4, pp. 2, 5)

Claimant testified during this period, he continued to work for defendant-employer and experienced increasing difficulty with his work duties and felt progressively sicker. (Claimant's testimony) He returned to Dr. Flatt on April 9 and April 16, 2013. On both occasions, Dr. Flatt prescribed antibiotics and recommended work restrictions. (Ex. 4, pp. 6-7)

Claimant testified on the evening of April 20, 2013, he collapsed at his home. He telephoned his brother, who drove claimant for emergency treatment. (Claimant's testimony) Emergency Department records from UnityPoint Health – Iowa Lutheran reveal claimant was evaluated by Matthew Webster, D.O. Claimant expressed complaints of shortness of breath, fever, chills, weakness and dehydration; he reported the problems began approximately one month prior after he sustained a fall and struck his right ribs. A CT of claimant's chest revealed pneumonia in the right lung base. Dr. Webster assessed systemic inflammatory response syndrome (SIRS), right lower lobe pneumonia, and leukocytosis. Claimant was admitted to the Intensive Care Unit (ICU). (Ex. 2, pp. 13, 17, 20-22) Claimant testified he was hospitalized in the ICU for the first three days of his admission because his blood pressure had fallen so low as to cause kidney and heart problems. (Claimant's testimony)

While claimant remained hospitalized, he was evaluated by several physicians. Dr. Flatt followed claimant's course of treatment. (Ex. 2, p. 29) In the ICU, pulmonologist, Gregory Hicklin, M.D., identified an increasing pleural effusion of claimant's right lung. Dr. Hicklin tapped the effusion and an empyema with purulent fluid was located. A culture of the fluid grew a *Streptococcus intermedius*. Dr. Hicklin ordered intravenous courses of Vancomycin and Zosyn. (Ex. 2, pp. 20, 29; Ex. 3, p. 4) Dr. Hicklin also subsequently performed a bronchoscopy. (Ex. 3, p. 16)

Claimant was also evaluated by infectious disease specialist, Leyla Best-Bandenay, M.D. Dr. Best-Bandenay's services were requested in order to solicit antibiotic recommendations. (Ex. 3, p. 9) She assessed empyema of the right pleural space, right lower lobe necrotizing pneumonia, and acute renal failure. Dr. Best-Bandenay stopped the course of Vancomycin and substituted Unasyn for Zoysn. (Ex. 3, p. 14)

Dr. Stevens also presented to evaluate claimant while hospitalized, as claimant developed intermittent atrial fibrillation with rapid ventricular response, as well as hypotension. With administration of medication, the atrial fibrillation was converted to a normal sinus rhythm. (Ex. 2, p. 20)

Finally, due to kidney problems, claimant was evaluated by nephrologist, Johann Schmolck, M.D. Dr. Schmolck assessed right chest empyema with sepsis, acute kidney injury, and intermittent atrial fibrillation. (Ex. 3, p. 22)

On April 29, 2013, claimant was discharged from with hospital with diagnoses of pneumonia due to streptococcus, sepsis/septicemia, empyema of the right pleural space, history of recurrent atrial fibrillation, severe malnutrition, anemia, acute kidney injury, and hyperphosphatemia (Ex. 2, pp. 12, 19) He was advised to utilize Tylenol, aspirin, clindamycin, diltiazem, and propafenone. (Ex. 2, p. 19)

On May 7, 2013, claimant was evaluated in follow up of his kidney condition by Luis Beltran-Garcia, M.D., a colleague of Dr. Schmolck. Claimant reported experiencing fatigue and a fogginess of his head since the hospitalization. Claimant remained on a course of clindamycin. (Ex. 8, p. 3) Dr. Beltran-Garcia opined claimant's creatinine level continued to improve with respect to the acute kidney injury. He recommended claimant stay well-hydrated, avoid use of NSAIDs, and return in one month. (Ex. 8, p. 5)

Dr. Beltran-Garcia opined the foggy feeling experienced by claimant was likely due to multiple factors, including recent hospitalization, sepsis, antibiotic use, and decreased renal function. He recommended claimant not return to work until the symptom improved. Once the symptom resolved and for so long as claimant's renal function continued to improve, Dr. Beltran-Garcia opined claimant could return to work without restrictions. (Ex. 8, p. 5)

The evidentiary record contains a work injury status report with a completion date of May 10, 2013; however, the author of the report is illegible. The report noted diagnoses of renal failure and right lobe pneumonia, with recommended treatment including rest, fluids, and antibiotics. Claimant was released to return to work on May 13, 2013, but was limited to light-duty work involving no lifting over 20 pounds and a frequent lifting maximum of 10 pounds. (Ex. 1, p. 1)

On June 3, 2013, claimant presented to Jason Mohr, D.O., a colleague of Dr. Hicklin, in follow up of his hospitalization. At the time of evaluation, claimant remained on a course of clindamycin. Dr. Mohr commented claimant was doing very well. (Ex. 3, p. 27) A CT scan revealed a very small residual fluid collection in the lower portion of the right lung. Dr. Mohr assessed COPD and empyema. He opined claimant had achieved maximum medical improvement (MMI) and released claimant to return to work on regular duty. He recommended claimant continue the antibiotic course of clindamycin for an additional seven days and then return for follow up evaluation in six months. (Ex. 3, p. 28)

Also on June 3, 2013, claimant presented to Dr. Schmolck for nephrology evaluation in follow up of claimant's acute kidney injury and hospitalization. Dr. Schmolck noted claimant remained on clindamycin, as well as diltiazem and Rythmol. Claimant reported he felt as if he had nearly returned to baseline, but continued to suffer

with occasional rib pain. Dr. Schmolck ordered a chest CT and repeat labs; he advised claimant to return in one month. (Ex. 8, pp. 1-2)

On July 9, 2013, claimant returned to Dr. Stevens. An EKG was performed and Dr. Stevens assessed atrial fibrillation, hyperlipidemia, obesity, and nicotine dependence. (Ex. 4, p. 10) Dr. Stevens opined:

> I think it is likely that his episode of chest wall rib contusion, bacterial pneumonia and empyema all seem to be temporally related and then the atrial fibrillation was secondary to that.

(Ex. 4, p. 11; Ex. D, p. 3)

Dr. Stevens opined continued smoking would increase claimant's risk for recurrent pneumonia and "may promote more development" of atrial fibrillation. He therefore recommended claimant cease smoking, as well as lose weight. Dr. Stevens also recommended use of diltiazem to maintain sinus rhythm and return evaluation in three months. (Ex. 4, p. 11; Ex. D, p. 3)

Following the work injury, claimant passed a Department of Transportation medical examination allowing him to maintain his CDL licensure. (Ex. 11, p. 1) Claimant testified that due to his medical conditions, he has now needed to certify annually, as opposed to every two years. (Claimant's testimony; Ex. 14, p. 9)

On October 9, 2013, claimant returned to Dr. Stevens. Following evaluation, Dr. Stevens recommended continued use of diltiazem in order to avoid recurrence of paroxysmal atrial fibrillation and a follow up evaluation and EKG in six months. Dr. Stevens released claimant to full work duties, without restrictions. (Ex. 4, p. 15; Ex. D, p. 5)

On October 17, 2013, claimant returned to Dr. Flatt in follow up of renal functioning and blood pressure. Dr. Flatt noted claimant had returned to work on a full time basis and did not complain of chest pain or shortness of breath. Dr. Flatt opined claimant's renal function was improving and assessed chronic kidney disease, stage II (mild). He also assessed atrial fibrillation, hypertension, osteoarthritis, and high triglycerides. He advised claimant to continue current medications, perform activity as tolerated, and follow a cardiac diet. (Ex. D, p. 1)

On February 17, 2014, claimant presented to Ryan Brimeyer, D.O., a colleague of Drs. Hicklin and Mohr. Claimant expressed complaints of right-sided chest pain for the last one to two months, described as a twisting sensation. (Ex. 3, p. 29) Spirometry revealed a mild obstructive ventilator defect and a chest x-ray demonstrated right-sided costophrenic blunting. Dr. Brimeyer assessed COPD and an abnormal chest x-ray. He encouraged claimant to cease smoking and provided a Ventolin inhaler for use on an as

needed basis. Dr. Brimeyer expressed belief that claimant's chest pain was related to the presence of some scar tissue in the right lower lobe, caused by the empyema. (Ex. 3, p. 30)

Claimant presented to Dr. Flatt on April 17, 2014 for a comprehensive physical examination. Claimant reported intermittent right-sided chest pain near the site of the impact sustained during his work injury. He denied experiencing any recent shortness of breath, palpitations, or chest pains. Dr. Flatt opined a chest x-ray revealed a residual pleural effusion; claimant also underwent an EKG and pulmonary function testing. (Ex. D, p. 2) The portion of Dr. Flatt's treatment record containing his assessment and treatment recommendations of that date is not included in the evidentiary record.

On April 22, 2014, claimant testified he felt poorly at work and went home. He laid down on the couch, fell asleep, and then awoke with the realization he was suffering with a severe episode of atrial fibrillation. He testified no one was present at Dr. Stevens' office, so he sought emergency care. (Claimant's testimony) Claimant presented to UnityPoint Health – Iowa Lutheran Emergency Department and was evaluated by Javaid Abbasi, D.O. Claimant indicated he had been awoken from his sleep by arrhythmia and complaints of a rapid and irregular heartbeat. (Ex. E, p. 1) Dr. Abbasi opined an EKG revealed atrial flutter fibrillation. Dr. Abbasi assessed atrial fibrillation with rapid ventricular response and admitted claimant to Telemetry on a diltiazem drip. (Ex. E, p. 7)

On April 29, 2014, claimant presented to Dr. Stevens in follow up of the recent hospitalization. Dr. Stevens noted claimant had awoken from sleep with a recurrent bout of atrial fibrillation with rapid ventricular response. (Ex. 4, p. 19) Claimant expressed complaints of some residual right-sided chest pain, which Dr. Stevens opined was "probably from the chest tube and/or pleural scarring from the empyema." (Ex. 4, p. 17) Dr. Stevens expressed belief it was highly likely claimant suffered from obstructive sleep apnea. If so, Dr. Stevens opined claimant had a much higher likelihood of recurrent atrial fibrillation which required care. He accordingly, recommended a sleep study. Dr. Stevens also recommended weight loss, smoking cessation, and continued medication use in order to prevent atrial fibrillation. He advised claimant to follow up in six months for evaluation and EKG. (Ex. 4, p. 19)

Claimant testified his work duties at defendant-employer were capable of bringing on a bout of atrial fibrillation. On one occasion, claimant testified he was moving heavy drums weighing 400 to 500 pounds. The day was extremely hot and claimant was required to sit against a wall for nearly one hour to recover. (Claimant's testimony) On September 5, 2014, claimant completed an incident report, indicating he suffered from episodes of atrial fibrillation at work on August 29, 2014 and September 4, 2014. (Ex. 6, p. 1)

On September 16, 2014, claimant returned to Dr. Stevens and reported he recently experienced palpations after pushing barrels at work during extreme heat.

Claimant denied persistent palpitations. (Ex. 4, p. 20) An EKG was completed. Dr. Stevens recommended continued medication therapy, as the regimen was generally working. He also recommended claimant cease smoking and lose weight. Dr. Stevens advised claimant to return in six months for evaluation and EKG. (Ex. 4, p. 22) Dr. Stevens also imposed a work restriction, prohibiting claimant from pushing or lifting weights over 100 pounds without assistance. (Ex. 4, pp. 22-23; Ex. D, p. 6) Claimant testified Dr. Stevens informed him this restriction was permanent in nature. (Claimant's testimony)

Around Christmastime of 2014, claimant suffered with a significant episode of atrial fibrillation. Claimant expressed belief the bout was brought on by excessive lifting and stress at work. As a result, he missed five or six days of work. (Claimant's testimony)

At the arranging of claimant's attorney, on February 23, 2015, claimant presented to Joel Kline, M.D., Director of the UIHC Asthma Center, for independent medical evaluation (IME). Claimant described the work injury for Dr. Kline and indicated he experienced significant improvement in his complaints following hospitalization. Dr. Kline opined claimant's acute renal failure resolved, his breathing improved, and the atrial fibrillation was generally controlled with diltiazem, despite some intermittent episodes of rapid heart rate related to vigorous activity. Claimant reported he never returned to a baseline level and continued to experience persistent exertional dyspnea and a pulling sensation of his right side with movement. Dr. Kline noted claimant most recently suffered from an episode of atrial fibrillation approximately two months prior while moving heavy drums, wherein he developed severe dyspnea and a racing heartbeat. (Ex. 9, pp. 1-2)

Dr. Kline reviewed and briefly summarized claimant's medical treatment following the work injury. (Ex. 9, p. 5) He noted claimant continued to use aspirin, diltiazem, and acetaminophen. (Ex. 9, p. 4) Dr. Kline reviewed claimant's social and occupational factors, including work history, exposures, and one-pack per day smoking habit. (Ex. 9, pp. 2-3) Claimant also underwent pulmonary function testing. (Ex. 9, pp. 5, 7-8)

Following records review, interview, and examination, Dr. Kline assessed COPD, mild; tobacco abuse; and atrial fibrillation, currently in sinus rhythm. Dr. Kline opined claimant met the criteria for COPD and further opined the pulmonary function testing showed findings "almost certainly secondary to long-standing tobacco use." He opined he was unable to state within a degree of medical certainty that claimant's current pulmonary function was related to the work injury. (Ex. 9, p. 6) Dr. Kline explained:

> A post-traumatic pleural effusion and subsequent empyema would most likely result in a restrictive physiology on pulmonary function tests due, in part, to scarring. [Claimant's] pulmonary function tests show no restrictive physiology, but do show early obstructive physiology consistent with tobacco use.

(Ex. 9, p. 6)

Dr. Kline also indicated claimant had decreased his physical activity due, in part, to claimant's concerns of inciting an episode of atrial fibrillation. As a result, Dr. Kline opined claimant experienced some level of deconditioning, which in turn worsened his exertional dyspnea. Dr. Kline opined claimant might benefit from an exercise regimen to improve his conditioning. In the event atrial fibrillation developed, Dr. Kline opined it may indicate claimant required additional medication to control his heart rate. (Ex. 9, p. 6)

With regard to the questions of causation and permanency, Dr. Kline opined:

> [Claimant] developed an episode of atrial fibrillation that was documented for the first time during his hospitalization in April of 2013. This is clearly temporally related to his accident/empyema/sepsis. It is not unusual for individuals in the setting of sepsis to develop atrial fibrillation. He may have had a preexisting tendency to developing atrial fibrillation that was unveiled by his acute illness, but it is not possible for us to state that that sequence of event is more likely than not.
>
> In summary, we are unable to state that it is more likely than not that [claimant] has sustained any permanent impairment of his cardiac or pulmonary system as a direct result of his accident in March 2013.

(Ex. 9, p. 6)

On April 24, 2015, claimant returned to Dr. Stevens for evaluation. Claimant reported he suffered from flu symptoms at or around Christmastime of 2014, at which time he experienced some symptoms of rapid palpitation. Claimant denied currently experiencing such palpitations. (Ex. 4, p. 25) An EKG was performed, which Dr. Stevens opined looked stable with maintained sinus rhythm. Dr. Stevens recommended continued medication therapy, with claimant advised to return in one year for evaluation and EKG. He indicated he might perform a stress test at that time. Dr. Stevens also recommended smoking cessation, weight control, a heart healthy diet, and exercise. (Ex. 4, pp. 27-28)

A claims adjuster with defendant-insurance carrier authored a letter directed to Dr. Stevens dated April 25, 2015. The letter briefly summarized claimant's treatment and inquired:

> Dr. Stevens in your expert medical opinion could you state that [claimant] was placed at maximum medical improvement and was able to return to full duties at work for his condition of March 1, 2013 and that this condition has resolved. Could you say that the problem that he is now having could be due to his high blood pressure, emphysema, smoking, and his weight.

(Ex. A, p. 1)

A handwritten statement follows this paragraph, stating "Answer is yes." The letter and statement do not contain a signature of Dr. Stevens and seem to bear initials which do not appear to match those of Dr. Stevens. (Ex. A, p. 1)

In the summer of 2015, claimant began a search for a better paying employment position which was less physically demanding. At the time, claimant earned approximately $15.00 per hour. (Claimant's testimony; Ex. 14, p. 8) Claimant testified he considered performing over-the-road trucking and contacted a large trucking firm. Claimant testified the company indicated claimant would not be considered for a position as he possessed only a one-year medical certification, indicating claimant had a medical issue. (Ex. 14, pp. 8, 10)

Claimant voluntarily left his employment with defendant-employer upon hire by Ruan Transportation. He began work as a tanker truck driver in early July 2015. Claimant worked full time and was paid by the load. His duties did not require loading or unloading of freight; at most, claimant was required to hook up hoses to pump out product. Claimant testified his earnings at Ruan Transportation were equivalent to those he earned at defendant-employer because although he earned more during his work days, he would often not have work provided to him due to weather conditions. (Claimant's testimony; Ex. 14, pp. 8-10)

On July 17, 2015, Dr. Stevens signed a "statement" regarding his opinions on claimant's ongoing medical condition. By the statement, Dr. Stevens opined claimant suffers from atrial fibrillation associated with the work injury, pneumonia, and related hospitalization. Dr. Stevens explained pneumonia is a substantial contributing factor to atrial fibrillation and a person who has had atrial fibrillation is "at risk for reoccurrence and that recurrence can result in significant damage to the heart muscle." He indicated atrial fibrillation can be controlled, to an extent, with medication use. Accordingly, Dr. Stevens opined claimant would remain on lifelong medications of diltiazem and aspirin as a result of the atrial fibrillation. Dr. Stevens specifically opined claimant's work injury and the accompanying development of pneumonia was a substantial contributing factor to claimant's atrial fibrillation condition. (Ex. 5, p. 1)

Claimant testified his work at Ruan Transportation was weather dependent. (Ex. 14, pp. 10-11) As the winter of 2015 approached, claimant testified he sought alternative employment. He voluntarily quit his employment at Ruan Transportation in October 2015 and thereafter, began work at less-than-load carrier, LME Incorporated. Claimant is employed as a regional truck driver; his work requires only occasional lifting and is much lighter in nature than his work at defendant-employer. As a result, claimant testified he has experienced fewer episodes of atrial fibrillation. Claimant remained employed at LME Incorporated as of the date of evidentiary hearing; he earns $18.50 per hour and averages 45 to 48 hours per week. (Claimant's testimony)

Claimant testified he continues to suffer from ongoing physical difficulties he relates to the work injury. Claimant testified his lung condition generally resolved following treatment with Dr. Hicklin, with the exception of some continued pain near the

bottom of his right rib cage. Claimant testified this area is constantly symptomatic, as he feels pain with each breath and also when he drives over bumpy surfaces. Claimant testified his pain ranges from a level 3 to level 5 on a 10-point scale. He relates this symptom to the work injury, as a colleague of Dr. Hicklin informed him scar tissue in his right lung was attached to the chest wall, resulting in a pulling sensation. (Claimant's testimony; Ex. 14, p. 12)

Claimant testified his kidney issues generally resolved with time. Claimant testified he continues to suffer with some pain in his left kidney, but had been advised by a provider that it would take an extended period for the kidneys to heal. Claimant finds his lung complaints more problematic than the kidney symptoms. (Claimant's testimony)

Finally, claimant testified he continues to experience heart symptomatology, specifically atrial fibrillation. He described episodes as experiencing a fluttering or racing of his heartbeat with accompanied dizziness and weakness. Claimant testified he feels as if he is placed in a reduced state of consciousness and awareness; he also becomes anxious out of fear of suffering a heart attack. Claimant denied any heart problems prior to the work injury. (Claimant's testimony; Ex. 14, p. 12)

Claimant testified he has likely suffered 15 to 20 similar episodes since he sustained his work injury. Claimant testified he has not suffered an episode while driving. When he does suffer with symptoms, he will lie down and attempt to relax; his heart will typically return to a normal rhythm in 15 minutes to 1 hour. Claimant testified the most recent episode occurred approximately two months prior to evidentiary hearing. On this occasion, claimant had been outside shoveling snow when symptoms developed. He went inside, laid down, and the symptoms subsided after approximately two hours. Following an episode, claimant testified he feels tired and fatigued, as if he had run a marathon. Claimant differentiated his fatigue related to atrial fibrillation from the fatigue he suffered prior to the work injury, fatigue he related to performing physical labor. (Claimant's testimony)

Claimant continues to follow up periodically with cardiologist, Dr. Stevens. Evaluations include EKGs and stress tests. Dr. Stevens continues to prescribe medication, diltiazem, for the atrial fibrillation; claimant takes the medication daily. Claimant testified he suffers with side effects of this medication, including a daily upset stomach and diarrhea every two to three days. Since the work injury, claimant testified he has not missed work as a result of these side effects; however, claimant has left work early to go home and rest following an episode of atrial fibrillation. (Claimant's testimony)

Claimant testified he is able to perform his current truck driving duties; however, he believes he is foreclosed from performing more physical trucking jobs. Claimant explained that trucking positions requiring physically loading or unloading items, such as construction supplies, earn higher wages. Similarly, loads requiring tarping and chaining allow drivers to earn more. Claimant believes handling tarps and chains

weighing 75 to 100 pounds would increase his likelihood of suffering atrial fibrillation; he expressed concern that if he suffered an episode while on top of a trailer, he could fall a distance to the ground. Claimant testified he experienced atrial fibrillation episodes at work for defendant-employer in instances where he was repetitively lifting objects weighing 50 to 70 pounds or heavy lifting over 100 pounds. (Claimant's testimony)

Claimant has reduced his smoking from one pack per day to one pack every two days. (Claimant's testimony)

CONCLUSIONS OF LAW

The first issue for determination is whether the stipulated injury of March 4, 2013 is a cause of permanent disability.

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 R. App. P. 6.14(6).

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).

Claimant suffered a stipulated work related injury on March 4, 2013. As a result of the injury, claimant required extensive medical treatment including hospitalization and care with multiple specialists. Claimant suffered with a number of diagnoses, most notably atrial fibrillation, sepsis/septicemia, acute kidney injury, pleural effusion, empyema with a positive *Streptococcus* culture and associated pneumonia. With time and treatment, claimant's health has improved significantly, with claimant only expressing residual complaints of right rib/lung pain, minor kidney pain, and continued

atrial fibrillation. Claimant argues he sustained permanent disability as a result of the work injury, while defendants deny claimant suffered any such disability.

During his course of care, claimant was evaluated by a number of treating physicians. With respect to his kidney complaints, Dr. Beltran-Garcia indicated claimant could work without restrictions so long as his kidney function continued to improve. Neither Dr. Schmolck nor Dr. Beltran-Garcia opined claimant sustained permanent functional impairment. There are no contrary opinions. Even claimant testified he suffered with only minor left kidney pain and had been advised it would take an extended period for his kidneys to heal entirely. Claimant testified he finds his kidney complaints to be the least bothersome of his ongoing complaints. Therefore, it is determined claimant failed to prove by a preponderance of the evidence that he sustained permanent disability to his kidneys as a result of the stipulated work injury.

Claimant also received ongoing treatment of pulmonary complaints. Claimant credibly testified at the time of hearing, he continued to experience constant pain near the bottom of his right rib cage, rated as a level 3 to 5 on a 10-point scale. During the course of claimant's treatment, Dr. Brimeyer expressed belief that claimant's chest pain was related to the presence of some scar tissue in the right lower lobe, caused by the work-related empyema. Dr. Brimeyer's opinion is buttressed by a reference of Dr. Stevens, who related claimant's reported chest pain probably to a recent chest tube and/or pleural scarring from the empyema. The only contrary opinion was authored by Dr. Kline. Dr. Kline opined he was unable to state claimant's pulmonary function was related to the work injury, as he believed the pulmonary function testing did not reveal restrictive pathology consistent with scarring, but of early physiology consistent with tobacco use.

Upon review of the entirety of the medical records and claimant's testimony, I find Dr. Brimeyer's opinion on the cause of claimant's ongoing right rib/lung pain to be entitled to the greatest weight. Dr. Brimeyer and his colleagues were tasked with providing treatment and monitoring of claimant's pulmonary condition and complaints. Claimant underwent extensive evaluation and testing; there is no evidence Dr. Kline performed any more specialized examination or testing than that performed by Dr. Brimeyer and his colleagues. Additionally, treating cardiologist Dr. Stevens also provided a supportive opinion relating claimant's chest pain to a recent chest tube and/or pleural scarring. Furthermore, there is no evidence claimant suffered from similar pain complaints of the right lung region prior to suffering the stipulated work injury and resultant pleural effusion, empyema, and pneumonia. As I find Dr. Brimeyer's opinion entitled to the greatest weight and claimant credibly testified to ongoing constant pain, it is determined claimant has proven the stipulated work injury is a cause of permanent disability to claimant's right lung/rib region.

Finally, claimant testified he continues to suffer with atrial fibrillation that he relates to the work injury. Only two physicians have offered opinions on the causal relationship between the work injury and claimant's continued atrial fibrillation and necessary treatment thereof, Dr. Stevens and Dr. Kline.

Dr. Stevens served as claimant's treating cardiologist following the March 2013 work injury and continued to serve in that capacity at the time of evidentiary hearing three years later. Dr. Stevens is anticipated to continue in that capacity, as he has opined claimant requires continued periodic evaluation, testing, and will require lifetime prescription medication to treat atrial fibrillation. Early in his treatment, Dr. Stevens opined claimant developed atrial fibrillation secondary to the work injury, pneumonia and empyema. A subsequent letter from defendants inquired if Dr. Stevens "could" opine claimant's original condition resolved and his ongoing issues were related to other comorbidities; Dr. Stevens replied "yes," he could make such statements. However, he later opined the work injury and pneumonia were a substantial contributing factor to claimant's atrial fibrillation.

Dr. Kline evaluated claimant on one occasion. He opined he was unable to state more likely than not that the work injury was a "direct" cause of permanent impairment to claimant's cardiac system. In his discussion of this question, Dr. Kline did acknowledge claimant's original development of atrial fibrillation was temporally related to the work injury, empyema, and sepsis. He also acknowledged it was not unusual for one with sepsis to develop atrial fibrillation and further stated it was possible claimant had a preexisting tendency for development of atrial fibrillation which was unveiled by the traumatic illness. Ultimately, Dr. Kline opined he was unable to relate the atrial fibrillation to the work injury by a requisite degree of medical certainty. However, he acknowledged claimant remained on ongoing medication and might require alteration in that medication regimen.

Upon review of the entirety of the medical records and claimant's testimony, I find Dr. Stevens' opinions to be entitled to the greatest weight. Dr. Stevens had the opportunity to examine and evaluate claimant on a number of occasions, placing him in the best position to assess claimant's ongoing condition and physical abilities. Dr. Stevens' most recent and most specific statement addresses the correct legal standard for the question of causation, as the work injury need only be a proximate cause of the disability and not the sole, direct cause. Dr. Stevens causally related claimant's diagnosis of atrial fibrillation and need for ongoing care to the stipulated work injury. He imposed a restriction on claimant's physical activity and opined claimant would also require lifelong prescription medication to manage the condition, medication which causes physical side effects in claimant. On this basis, it is determined claimant has proven by a preponderance of the evidence that the work injury of March 4, 2013 is a cause of permanent disability to claimant's cardiac system in the form of atrial fibrillation.

The next issue for determination is the extent of claimant's industrial disability.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The parties have stipulated claimant's disability shall be evaluated industrially.

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 R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

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

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

Claimant was 56 years of age on the date of evidentiary hearing. He successfully graduated high school and obtained an associate's degree which allowed claimant to work as a diesel and heavy equipment mechanic. Claimant possesses the intellectual capacity to learn and apply new employment skills. The vast majority of claimant's work experience has involved physical labor, as a mechanic or truck driver. Following his discharge from the US Army, claimant has primarily worked as a truck driver. This is the field which best suits claimant's interests and aptitude; therefore, any impact on claimant's ability to participate in this branch of the labor market negatively impacts claimant's earning capacity.

As a result of the stipulated work injury on March 4, 2013, claimant suffered with a number of significant medical conditions. As determined *supra*, two of these conditions have resulted in permanent impairment: claimant's right lung/rib region and cardiac system. While claimant credibly testified he continues to suffer from notable pain of his right lung/rib, no physician has opined claimant sustained permanent impairment or required permanent restrictions as a result of this condition. Claimant reported only minimal, if any, impact of this condition upon his ability to function. It is therefore determined that while claimant sustained permanent disability to his right lung/rib region as a result of the work injury, the extent of associated industrial disability is minor.

Claimant also sustained an ongoing cardiac condition as a result of the work injury, in the form of atrial fibrillation. While it is unknown if claimant will suffer further episodes of atrial fibrillation, Dr. Stevens opined claimant will require lifelong use of a prescription medication to manage the condition. This medication causes claimant to suffer with a daily upset stomach and diarrhea multiple times per week. Dr. Stevens

also imposed a restriction of no pushing or lifting over 100 pounds without assistance as a result of the cardiac condition.

Claimant was able to return to his preinjury position with this restriction and has subsequently earned and retained truck driving employment with two employers. He currently remains employed with one employer and earns approximately $3.50 more per hour than he had at defendant-employer, with similar hours worked. Although claimant has been able to obtain and retain employment in his chosen field of work, there are undoubtedly job positions within this field which are foreclosed by claimant's 100-pound restriction. Truck driving which requires drivers to physically load and unload heavy freight or secure loads with heavy tarps and chains are now likely unavailable to claimant and if he were to attempt such positions, would pose a risk to claimant's health.

Claimant has shown motivation to continued employment. He immediately returned to work for defendant-employer following the work injury and continued to work throughout the course of his medical treatment. Claimant has continuously engaged in the workforce since the work injury and only left an employment scenario when he had located another employment opportunity. After recovering from the work injury, claimant was able to return to his preinjury job with no proven loss of earnings; however, claimant testified he has missed some time from work as a result of a need to physically rest and recover from episodes of atrial fibrillation.

Upon consideration of the above and all other relevant factors of industrial disability, it is determined claimant sustained a 10 percent industrial disability as a result of the stipulated work-related injury of March 4, 2013. Such an award entitles claimant to 50 weeks of permanent partial disability benefits (10 percent x 500 weeks = 50 weeks), commencing on the stipulated date of April 9, 2013. The parties stipulated at the time of the work injury, claimant's gross weekly earnings were $707.90, and claimant was single and entitled to one exemption. The proper rate of compensation is therefore, $445.75.

The next issue for determination is whether defendants are responsible for claimed medical expenses.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

A significant amount of medical expenses have been incurred in treatment of claimant's work injury of March 4, 2013. These medical expenses have been paid by

defendants, with the exception of a $2,275.71 copay on the emergency room visit of April 22, 2014. On this occasion, claimant was awoken from his sleep by a severe episode of atrial fibrillation and he sought emergency medical treatment. Dr. Abbasi assessed atrial fibrillation with rapid ventricular response and administered treatment. As determined *supra*, claimant's atrial fibrillation is causally related to the work injury and therefore, the treatment was rendered on a compensable claim. Pursuant to Iowa Code section 85.27(4), in the case of an emergency, an employee may choose the provider of care at the employer's expense, provided the employer or agent was not immediately available. Given claimant was awoken from sleep and he testified no provider was available at Dr. Stevens' office, claimant was justified in seeking emergency medical treatment given the severity of a cardiac condition. Therefore, defendants are found responsible for the medical expenses claimed by claimant.

The final issue for determination is whether claimant is entitled to reimbursement of an independent medical evaluation pursuant to Iowa Code section 85.39.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

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). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Previous agency decisions have supported awarding reimbursement for IME expenses in circumstances where claimant is released from medical care or returned to work without opinions on permanent impairment or permanent restrictions, where defendants delayed in securing such opinions from employer-retained physicians, or where the physician otherwise implied an evaluation of permanent impairment had been made. (See Flynn v. John Deere Davenport Works, File Nos. 5030928, 5030940 (App. Nov. 21, 2011); Kuntz v. Clear Lake Bakery, File No. 1283423 (App. July 12, 2004); Barnett v. Altoona Manor, File No. 1036926 (Arb. May 12, 1994); Anderson v. GKN Armstrong Wheels, Inc., File No. 5003600 (Arb. September 7, 2004)). In such cases, it was determined the conduct of the employer-retained physician was sufficient to trigger claimant's entitlement to a section 85.39 IME evaluation.

Claimant seeks reimbursement of Dr. Kline's IME in the amount of $2,256.00. At the time of Dr. Kline's IME on February 23, 2015, Dr. Mohr (pulmonologist) had previously opined claimant achieved MMI and Dr. Mohr, Dr. Beltran-Garcia

(nephrologist) and Dr. Stevens (cardiologist) all released claimant to return to regular duty. These opinions triggered claimant's right to a section 85.39 IME. There is no evidence Dr. Kline's IME charge was unreasonable. Defendants shall reimburse claimant for Dr. Kline's IME in the amount of $2,256.00.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant fifty (50) weeks of permanent partial disability benefits commencing April 9, 2013 at the weekly rate of four hundred forty-five and 75/100 dollars ($445.75).

Defendants shall pay accrued weekly benefits in a lump sum.

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

Defendants shall receive credit for benefits paid.

Defendants shall pay claimant's prior medical expenses submitted by claimant at the hearing as set forth in the decision.

Defendants shall reimburse claimant for Dr. Kline's independent medical evaluation in the amount of two thousand two hundred fifty-six and no/100 dollars ($2,256.00).

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

Costs are taxed to defendants pursuant to 876 IAC 4.33.

Signed and filed this 13th day of September, 2016.

ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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EJF/kjw

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.