BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
FEB 22 2018
WORKERS' COMPENSATION

KENNETH FRANKLIN, Claimant, vs. ROPER INDUSTRIES, INC. d/b/a TRANSCORE, Employer, and NEW HAMPSHIRE INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5062030 ARBITRATION DECISION Head Notes: 1402.40, 2501, 2907

STATEMENT OF THE CASE

Claimant, Kenneth Franklin, filed a petition in arbitration seeking workers' compensation benefits from Roper Industries, Inc., d/b/a Transcore (Transcore), employer and New Hampshire Insurance Company, insurer, both as defendants. This matter was heard in Des Moines, Iowa on October 5, 2017 with a final submission date of November 30, 2017.

At hearing, defendants objected to Claimant's Exhibits 4 and 5. Claimant's Exhibit 4 is an independent medical evaluation (IME) report of approximately 20 pages. The report was served 25 days before hearing and was served untimely under rule 876 IAC 4.19(3)(d). Exhibit 5 is a report from Marc Hines, M.D. Exhibit 5 was served two to three days before hearing and was also served untimely under rule 876 IAC 4.19(3)(d).

Defendants contended at hearing and in subsequent motions, that Randall Benson, M.D., and Dr. Hines were physicians authorized by defendants to treat claimant. As such, claimant contends both reports should have been allowed into evidence under the ruling in Schoenfeld v. FDL Foods, Inc., 560 N.W.2d 595 (Iowa 1997).

Claimant also contends that Matthew Gray, M.D., was an authorized provider who referred claimant to Dr. Hines, who in turn referred claimant to Dr. Benson.

Claimant also contends defendants acquiesced to the care chosen by claimant, and thus Drs. Gray, Hines and Benson all are considered to be retained by the employer.

Claimant contends he was referred to Dr. Hines and Dr. Benson by an authorized treating medical provider. Claimant contends he was authorized by his employers to seek treatment for his work injury with Dr. Gray.

Claimant's accident occurred on October 22, 2014. Claimant was taken to St. Luke's Hospital and discharged the same day. On discharge, claimant was told to contact St. Luke's WorkWell Solutions if needed. Claimant did not contact St. Luke's WorkWell Solutions. (Exhibit 2, page 8)

Claimant testified in deposition that he did not ask his employer to send him to a medical provider concerning his October 22, 2014 work injury. He testified he asked to see his family doctor, and his employer referred him to a claims adjuster. Claimant testified he tried to contact the claims adjuster but allegedly received no response. Claimant testified he eventually saw Dr. Gray without defendants' authorization. (Transcript pp. 108-109; Ex. 2, Deposition pp. 87-88)

Claimant saw Dr. Gray on May 26, 2015. Dr. Gray initially recommended claimant be treated for a neuropsychological evaluation with Megan Adams Rieck, Ph.D. (Joint Ex. 5, p. 46)

Claimant spoke with his attorney who gave claimant the name of Dr. Hines for a neuropsychological evaluation. (Ex. 2; Depo. p. 92)

On August 12, 2015, approximately three months after seeing Dr. Gray, claimant called Dr. Gray's office and requested he make a referral for him to Dr. Hines. (Jt. Ex. 5, p. 47)

Dr. Hines testified in deposition he saw claimant and referred claimant to Dr. Benson. (Ex. 7; Depo. p. 55)

In an April 7, 2017 letter, claimant's counsel referred claimant to an endocrinologist, Opada Alzohaili, M.D. (Ex. L)

In answers to interrogatories, defendants deny they authorized care for claimant's alleged closed head injury. (Ex. E, p. 13; Ex. G, p. 19)

Claimant was told if he wanted followup care, he needed to contact the insurance carrier or seek treatment with St. Luke's WorkWell. Claimant did neither. Seven months after the accident, he was evaluated by his family doctor, Dr. Gray. Dr. Gray initially referred claimant to Dr. Adams Rieck. Claimant spoke with his attorney. Claimant's attorney gave claimant Dr. Hines' name. Three months after being referred to Dr. Adams Rieck, claimant requested, after his attorney's referral, to see Dr. Hines. Dr. Hines referred claimant to Dr. Benson. Claimant's counsel also referred claimant to Dr. Alzohaili. Defendants did not acquiesce or authorize the care by Dr. Gray, Dr. Hines

or Dr. Benson. The record suggests claimant only came to be referred to Dr. Hines, and later Dr. Benson and Dr. Alzohaili, based on recommendations made by claimant's counsel. For the reasons detailed above, the law in Schoenfeld is not applicable to this case.

This matter was filed on June 29, 2016. It had been continued once in July of 2017. Claimant gave no good reason for serving an IME report 25 days before the hearing, and another two to three days before the hearing.

The Iowa courts have long held that parties' failure to comply with agency rules may result in exclusion of evidence. Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845, 859 (Iowa 1995); Stephenson v. Furnas Electric Co., 522 N.W.2d 828, 831-32 (Iowa 1994). The current commissioner has held that one party's attempt to include a new expert opinion within 30 days should be excluded as unfairly prejudicial. Aalbers v. Pioneer Hi-Bred International, File No. 5042600 (March 24, 2016).

Claimant's Exhibits 4 and 5 were properly excluded. Neither Dr. Hines nor Dr. Benson was an authorized treating physician. Claimant gave no good reason for the untimely service of these records. Inclusion of the records would be unfairly prejudicial to defendants.

The record in this case consists of Joint Exhibits 1 through 10, Claimant's Exhibits 1 through 3, Defendants' Exhibits A through O and the testimony of claimant, Anna Papesh, Daniel Tranel, Ph.D., Olaolu Ogunfusika. Subsequent to hearing, claimant submitted the deposition of Kent Jayne, MA, MBA, CRC as a portion of Exhibit 3. Exhibit 3 was made a part of the record.

ISSUES

1. Whether claimant's October 22, 2014 injury resulted in a permanent disability; and if so,

2. The extent of claimant's entitlement to permanent partial disability benefits.

3. Whether there is a causal connection between the injury and the claimed medical expenses.

4. Costs.

FINDINGS OF FACT

Claimant was 36 years old at the time of hearing. Claimant has a GED. Claimant has a two-year Associate's Degree in Accounting from Kaplan University. Claimant attended Mount Mercy College for approximately one year.

Claimant has done sidewalk construction and worked as a customer service representative. Claimant has worked as a customer service coach for newly hired

employees. Claimant also worked as a telemarketer. (Claimant's Ex. 3, p. 12; Ex. H, p. 23)

Claimant began with Transcore in November of 2012. Claimant worked as a field service technician I. (Ex. 2; Depo. p. 26) Claimant testified Transcore had a contract with the Iowa Department of Transportation (IDOT). Claimant testified Transcore built, maintained and designed the ITS networks for the IDOT. This included cameras, sensors and the interstate message signs that give information to drivers. (Tr. pp. 35-36)

On October 22, 2014 claimant was working on I-380 between Iowa City and Cedar Rapids as a part of maintenance work. (Ex. 2; Ex. 3, p. 1; Depo. pp. 65-66) Claimant was sitting in a work truck on the shoulder of the road playing the game "Candy Crush." (Claimant's Ex. 2; Depo. pp. 72-73) Claimant's truck was hit by another pickup truck trying to avoid traffic. The collision caused the truck claimant was sitting in to be pushed into the ditch and turned approximately 90 degrees. Claimant's left side of his head hit the driver's side windshield and broke the windshield. Photos of the work truck claimant was in are found at Exhibit 1.

Claimant was evaluated by Johnson County EMTs. Claimant denied loss of consciousness (LOC). Claimant's Glasgow Coma Scale (GCS) was 15/15. There were no neurological deficits. (Jt. Ex. 1, p. 1) A 15/15 GSC score indicates normal mental and neurological function. (Tr. p. 174) Claimant had a hematoma on the left frontal lobe of his head. Claimant declined an ambulance and was taken by a coworker to a hospital. (Jt. Ex. 1, p. 1; Tr. p. 42)

Claimant was evaluated at St. Luke's Hospital in Cedar Rapids. Claimant reported a potential loss of consciousness. Claimant denied neck pain or pain in the upper extremities. A CT scan of the head was normal. A neurological exam was normal. The GCS score was again 15/15. Claimant was assessed as having headaches and a concussive-type head injury. Claimant was told to follow up with St. Lukes WorkWell Solutions. Claimant was told he could return to work on October 27, 2014. (Jt. Ex. 2, pp. 5-8, 11, 19, 21-22)

As noted above, claimant saw his family physician, Dr. Gray without employer's authorization on May 26, 2015. (Tr. pp. 108-109; Ex. 2; Depo. pp. 87-88) This was approximately seven months after the accident. Claimant complained of lower back pain and right facial pain since February of 2015. (Jt. Ex. 2, p. 42) Dr. Gray noted claimant's CT scan was negative. Claimant's physical, neurological, and psychological exams were normal. (Jt. Ex. 5, p. 45) Claimant indicated head pressure since the date of injury. Claimant had headaches that went away.

Claimant indicated his work performance was excellent, but coworkers told him he often "spaces off." Claimant was referred to treat with Dr. Adams Rieck for further evaluation. (Jt. Ex. 5, pp. 42-46)

On October 12, 2015, approximately three months after his visit with Dr. Gray, claimant contacted Dr. Gray's office and asked for referral to Dr. Hines. Claimant did not have treatment with Dr. Adams Rieck. Claimant testified he got Dr. Hines' name from his attorney. (Ex. 2; Depo. p. 92)

On October 20, 2015, approximately five months after seeing Dr. Gray, and approximately one year after his date of accident, claimant was evaluated by Dr. Hines. Claimant indicated difficulty with focus. Claimant told Dr. Hines he had a loss of consciousness. Claimant told Dr. Hines he recalled talking to a paramedic and could not answer some of the questions. Claimant complained of headaches, staring episodes, and lack of focus. Claimant indicated he lost his ability to smell. He indicated being more irritable. Claimant was assessed as having a concussive head injury. Dr. Hines assessed claimant as having a traumatic brain injury without loss of consciousness. (Ex. 7, pp. 66-71)

Dr. Hines recommended an EEG, an MRI of the brain, neurological testing and a number of other tests. (Ex. 7, p. 72)

Dr. Hines testified in deposition no abnormalities were found in claimant's testing. (Jt. Ex. 7; Hines' deposition, p. 26)

On June 19, 2015 Jack Liu, D.D.S. performed a root canal on claimant. The root canal occurred on tooth number two. Records indicate tooth number two is on the right side of claimant's mouth. (Jt. Ex. 3, p. 34; Jt. Ex. 4, p. 37; Tr. pp. 44, 103)

On August 5, 2016 claimant returned to Dr. Hines. Claimant was accompanied by his girlfriend, Anna Papesh. Ms. Papesh completed a questionnaire. Ms. Papesh told Dr. Hines claimant was absent minded and forgetful. She said claimant had difficulty with taste and smell. She indicated claimant had a continuous low-grade headache. Ms. Papesh noted claimant had difficulty with articulating and mispronouncing words. (Ex. 7, pp. 72-74) On exam, claimant's mood was found to be normal with the exception of speech difficulties and headache. Dr. Hines prescribed medication. (Ex. 7, pp. 75-76)

On August 30, 2016 claimant was seen for an annual eye exam. In the review of symptoms portion of the exam, no symptoms or conditions were reported. Claimant was told to wear glasses full time in an attempt to help with headaches. (Ex. 6, pp. 63-64)

Claimant returned to Dr. Hines on November 9, 2016. Claimant indicated sensitivity to fluorescent light. Claimant was seeing better with wearing glasses full time. He still had headaches. Claimant was assessed as having a concussive head injury with decreased sense of smell and complaints of "blank spells." (Ex. 7, pp. 77-79)

On November 28, 2016 claimant began employment with Digital Traffic Systems (DTS). Claimant testified Transcore lost its contract with IDOT. DTS replaced

Transcore. (Ex. M, p. 38; Tr. pp. 66, 97, 209) Claimant testified he had essentially the same job duties with DTS as he had with Transcore. (Tr. p. 67) Claimant's job title with DTS is ITS Network Support Supervisor. (Tr. p. 98) At the time of hearing, claimant testified he earns $56,000.00 per year working for DTS. Claimant earned between $47,000.00 and $48,000.00 per year with Transcore. (Tr. pp. 86-88, 99; Ex. M, p. 38)

In an April 7, 2017 note Dr. Hines noted claimant had a flawed memory and claimant repeatedly needed to be reminded of activity. Dr. Hines believed claimant could have a diffuse axonal injury, based on claimant's drop from escalating function. Dr. Hines recommended claimant be evaluated by Dr. Benson in Michigan. (Ex. 7, p. 80)

In deposition, Dr. Hines testified he first saw claimant one year after the accident. (Hines' depo. p. 10) Dr. Hines testified that according to his records claimant took off two days after the accident. Other than that, claimant had minimal work loss due to the accident. (Hines' depo. p. 12) Dr. Hines testified the GCS is a rough scale used to triage patients. (Ex. 7; Depo. pp. 15-16) Dr. Hines testified he found no abnormalities in claimant's blood tests or lab work. (Ex. 7; Depo. p. 26) Dr. Hines testified claimant had difficulties with smell. Dr. Hines testified he assessed claimant as having a traumatic brain injury without loss of consciousness. (Ex. 7; Depo. pp. 35-36) Dr. Hines testified he believed claimant diminished his symptoms. (Ex. 7; Depo. p. 65)

On April 12, 2017 claimant was evaluated by Daniel Tranel, Ph.D. for a psychological/neuropsychological evaluation. Claimant told Dr. Tranel his loss of consciousness was 10 minutes. Claimant described problems with speech, memory and headaches. He described problems with emotional functioning. (Ex. N, p. 52)

Claimant indicated he worked full time for DTS. Claimant denied having any formal negative feedback regarding his work. He indicated he felt like his old self again and was hopeful his depression was gone. (Ex. N, p. 53)

Claimant gave good effort on all exams. Claimant was given a number of tests including, but not limited to the Wechsler Adult Intelligence Scale-IV, the Wechsler Memory Scale-III, Wisconsin Card Sorting Test, the Multilingual Aphasia Exam, and the Minnesota Multiphasic Personality Inventory-2 (MMPI-2). (Ex. N, p. 55)

All of claimant's scores were found within normal limits, and there was no evidence of any acquired decline in intellectual ability. Claimant had no evidence of acquired deficits with attention, working memory or processing speed. It was noted those abilities were among the strongest of claimant's cognitive profile. Claimant's memory was found intact with no evidence of acquired deficits. (Ex. N, p. 57)

Claimant was found to have normal intact cognitive functioning. Claimant had generally high average intellectual ability. Claimant's strengths were working memory and processing speed. Testing found claimant to be fully recovered from his head

injury. Claimant was found to be at maximum medical improvement (MMI) as of October 27, 2014. (Ex. N, pp. 57-58)

Claimant testified Dr. Tranel only spent approximately ten minutes with him during his evaluation. Claimant said most of the testing was done by other people. Claimant indicated he answered over 1000 questions during his testing with Dr. Tranel.

Dr. Tranel testified in hearing that his role in the process is to choose the test to administer and to do wrap-up interviews. He said the individuals administering testing are blinded to outside information about patients to ensure that the collection of data is not influenced by knowledge of a patient's history. (Tr. pp. 174-177)

Dr. Tranel testified he directs the Neuropsychological Department at the University of Iowa. He said he runs the Neuroscience Ph.D. Program at the University of Iowa. He also runs the Research Laboratory at the Department of Neurology at the University of Iowa. An abbreviated copy of Dr. Tranel's curriculum vitae (CV) is found at Exhibit O.

Dr. Tranel testified in hearing that in the evaluation of claimant he looked at claimant's prior medical records and interviewed claimant. He said claimant underwent between 40-50 different tests to provide a standardization of claimant's cognitive functions and behavior.

Dr. Tranel considered claimant had intact cognitive function. He opined claimant was fully recovered from the 2014 accident and was capable of working without restrictions. He opined claimant had no permanent impairment.

Dr. Tranel opined it was important to review emergency room records and first responder records.

Dr. Tranel opined Dr. Benson's approach of assessing claimant was not a normal part of a neurodiagnostic workup.

Dr. Tranel testified that the fact that claimant had a GCS of 15/15 indicated normal mental and neurological functioning and that it was extremely unlikely claimant had experienced axonal change to his brain.

On April 20, 2017, claimant was evaluated by Dr. Benson for a neurobehavioral evaluation. Claimant indicated a loss of consciousness after his accident. Claimant indicated being unable to recall his Social Security number, the date, or the name of the current president when he was asked by emergency staff. (Ex. 10, pp. 110-111) Claimant indicated loss of short-term memory, difficulty with word finding and pronouncing words. Claimant indicated sporadic headaches that had improved. (Ex. 10, pp. 111-113)

Claimant's girlfriend indicated claimant's memory was 40 percent lower than what it used to be. Claimant's girlfriend said claimant had difficulties with short-term memory and multitasking. (Ex. 10, p. 113)

After testing, Dr. Benson opined claimant had verbal problems and had difficulty with words unless cued. Claimant had difficulty with smells on the left side. He found claimant had a gap in time between his loss of consciousness following the collision. He also believed claimant had some emotional and personality changes. (Ex. 10, pp. 114-121)

Claimant testified Dr. Benson spent between four to six hours administering his tests.

On April 20, 2017 claimant was evaluated by Opada Alzohaili, M.D. This appointment was set up by claimant's counsel. (Ex. L) Claimant saw Dr. Alzohaili for insulin and glucagon testing to determine potential adrenal and pituitary failure. Claimant indicated he was in a car crash and lost consciousness but did not know how long he was unconscious. Claimant complained of headaches, low energy, mood swings and short-term memory issues. There was no indication in Dr. Alzohaili's exam if claimant was found to have adrenal or pituitary failure. (Ex. 9)

On May 22, 2017 claimant saw Thomas Petrie, D.O. Dr. Petrie is an ophthalmologist. Dr. Petrie saw claimant at Dr. Hines' request for possible convergence insufficiency. Dr. Petrie assessed claimant as having a traumatic fourth nerve palsy on the left. He indicated claimant could potentially do vision therapy in his office. Since Dr. Petrie had no records prior to claimant's injury, he was unable to opine regarding the potential convergence insufficiency. (Ex. 8, pp. 88-91)

In a May 29, 2017 letter Dr. Liu indicated claimant's October of 2014 crash had a more than slight role in the dental care he provided. (Ex. 4, p. 37)

In a June 7, 2017 letter, written by claimant's counsel, Dr. Gray indicated he referred claimant to Dr. Hines. He agreed claimant had a traumatic brain injury in the October 2014 crash. He indicated the referrals made to Drs. Hines, Benson, and Alzohaili were medically reasonable and beneficial to claimant. (Ex. 5, p. 58)

In a June 9, 2017 letter, Dr. Tranel indicated he had read reports from Dr. Benson and Dr. Alzohaili. He indicated nothing in the reports from either doctor have changed his opinion that claimant was fully recovered from the October 22, 2014 work accident. He indicated claimant did not show any symptoms of hypothyroidism or pituitary dysfunction at the time of his evaluation. He disagreed with Dr. Benson's opinion that claimant's brain MRI showed an axonal injury. Dr. Tranel believed brain imaging data was nonspecific. (Ex. N, pp. 59-60)

In a June 19, 2017 letter, Dr. Benson indicated he had read Dr. Tranel's June 9, 2017 addendum. Dr. Benson indicated he believed claimant's work was changed after

the accident, to a less demanding activity. He opined brain imaging and endocrinology testing provided evidence of a traumatic brain injury. Dr. Benson indicated claimant's growth hormone level suggested possible pituitary dysfunction. Dr. Benson admitted he did not see any of claimant's prior medical records. (Ex. 10, pp. 122-123)

In a June 16, 2017 letter Dr. Hines indicated he had reviewed Dr. Tranel's supplemental report. Dr. Hines suggested Dr. Tranel was manipulating data. Dr. Hines indicated he believed claimant was able to continue his job with DTS, as he was being accommodated. Dr. Hines indicated he believes claimant is underreporting his symptoms. Dr. Hines disagreed with Dr. Tranel's opinion that claimant had fully recovered from the October 2014 work accident. (Ex. 7, pp. 82-86)

In a June 14, 2017 report Kent Jayne, M.A., C.R.C. gave his opinions of claimant's vocational opportunities. Claimant reported reduced efficiency with his work and reduced concentration. He reported fairly severe loss of efficiency at work. Mr. Jayne opined if claimant would lose his job at DTS he would likely not be competitively employable in the labor market. (Ex. 3, pp. 1-16) He opined that despite the fact claimant was still employed with DTS, ". . . the results of the analysis indicate that Mr. Franklin has been precluded from the labor market in the state of Iowa at the present time." (Ex. 3, p. 18)

In deposition, Mr. Jayne said it is his understanding that claimant performed slower than prior to his work injury. He said it was his understanding claimant works 60 hours a week to perform work he had previously done in 40 hours. (Depo. p. 9) Mr. Jayne testified he did not review any records from claimant's employer or coworkers on how claimant performed at work. (Depo. p. 16) Mr. Jayne indicated he had no documents from the employer regarding any accommodations made for claimant. (Depo. p. 19) He testified claimant was working full time and, making more money than he did at Transcore with no restrictions. (Depo. pp. 27-28) Claimant told Mr. Jayne claimant works at a slower pace. (Depo. p. 33) Mr. Jayne opined if claimant lost his job at DTS he would have no chance of getting a similar paying job. (Depo. p. 45) He testified he believed claimant was getting more help from coworkers than he did before his injury. (Depo. p. 56)

Olaolu Ogunfusika, (referred to as "Ola" in the record), testified he was a maintenance/construction manager with Transcore. At the time of hearing, Mr. Ogunfusika was still employed with Transcore and had transferred to work for the company in Florida. He said this occurred after Transcore lost the IDOT contract.

Mr. Ogunfusika testified he was one of claimant's supervisors when claimant worked for Transcore. He said he moved to the construction manager job in approximately 2015. He said as a maintenance manager he interacted with claimant daily. As a construction manager, he still interacted with claimant two to four times a week.

Mr. Ogunfusika testified claimant never told him he had difficulty doing his job due to the accident. He did not recall claimant asking for restrictions or accommodations for his job.

Mr. Ogunfusika testified he did not observe claimant having any issues with performing his job after the accident. He testified that before the accident, claimant was told he needed to take a lot of notes for his job.

Mr. Ogunfusika testified that in the contract with IDOT, Transcore was required to have a safety manager. He said claimant was made a safety manager to fill that requisite. He said claimant was still working as a safety manager up until 2016.

Robert Roth testified he was employed with Transcore until February of 2017. Mr. Roth said he left Transcore as a part of Transcore losing the IDOT contract. Mr. Roth was the Midwest director of operations for Transcore. He said he was on phone calls with claimant at least once a week. He said he routinely interacted with claimant. He said claimant began as a safety manager in approximately 2012 and the job ended around the time Transcore lost its IDOT contract. He said claimant was removed as a safety manager in about 2016 when Transcore lost its contract. He said this occurred when claimant began counseling coworkers to look for other jobs during safety presentations.

Mr. Roth testified claimant never reported any difficulty with doing his job after the car accident.

Mr. Roth testified he was surprised claimant had an ongoing workers' compensation claim. He testified he assumed his workers' compensation claim was discontinued. He said he was told by claimant the workers' compensation claim was reopened. He testified he has never observed claimant with speech problems or having blank episodes.

Anna Papesh testified she is claimant's girlfriend. She testified she has known claimant for approximately ten years. Ms. Papesh lives with claimant. She said she went with claimant to his appointments with Drs. Hines and Benson. She also spoke with Mr. Jayne. She said since the crash claimant is more irritable and acts depressed. She says since the crash claimant has issues with his sense of smell and taste being affected. She said claimant has problems with insomnia. She says claimant has difficulties with word finding. She said since his accident claimant is not as flexible as he used to be with his scheduling.

Claimant testified he has issues with balance, vision, memory, and cognitive ability due to the crash. He testified coworkers have told him he has problems with communicating. He said it takes him two to three times longer to complete tasks at work. He testified in deposition he has not asked his supervisors to give him help with his job since the crash. (Ex. 2; Depo. p. 120)

Claimant testified his job at DTS is basically the same job he had at Transcore. (Tr. pp. 66-67) He said his job with DTS requires a lot of computer work and technical proficiency.

CONCLUSIONS OF LAW

The first issue to be determined is if claimant's injury resulted in a 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 was involved in a truck crash on October 22, 2014. The accident appears to have caused the left side of claimant's head to hit the driver's side window, breaking the window. EMT records indicate claimant had a hematoma on the left frontal lobe area. Claimant denied loss of consciousness. He scored a 15/15 on the GCS. (Ex. 1)

According to the GCS, a score of 15/15 indicates patient has spontaneous eye opening, can obey commands, and is oriented to person, time and place. See Glasgow Coma Scale http://www.glasgowcomascale.org/downloads/GCS-Assessment-Aid.pdf; Nursing Practices Review Neurology "Forty Years On: Updating the Glasgow Coma Scale" https://www.nursingtimes.net/Journals/2014/10/10/n/p/l/141015Forty-years-on-

updating-the-Glasgow-coma-scale.pdf; Surgical Technique "Glasgow Coma Scale: Technique and Interpretation; http://clinicsinsurgery.com/pdfs_folder/cis-v2-id1575.pdf

Claimant was taken to the emergency room following his accident. He was assessed as having a possible loss of consciousness. A CT scan was normal. All neurological exams were normal. The GCS was again 15/15. Claimant was assessed as having headaches and a concussive-type of head injury. (Ex. 2)

Regarding his head injury, claimant did not seek treatment for approximately seven months until May 26, 2015. He saw his family doctor, Dr. Gray. Claimant had lower back and facial pain since February of 2015. He had nonspecific feelings of head pressure. He complained of headaches and spacing off. Claimant had excellent work performance. Claimant's neurological and psychological exams were normal. Claimant was referred for a followup exam with Dr. Adams Rieck. (Jt. Ex. 5, pp. 45-46)

Three months after seeing Dr. Gray, and after being given Dr. Hines' name by his attorney, claimant called Dr. Gray's office and asked to be referred to Dr. Hines. (Ex. 2; Depo. pp. 113-114)

On October 20, 2015, approximately a year after the accident and five months after seeing Dr. Gray, claimant saw Dr. Hines. Claimant told Dr. Hines he could not answer questions asked by paramedics. This is contrary to EMT and emergency room records indicating a 15/15 GCS score. In the October 20, 2015 exam claimant had new symptoms including confusion, anxiety, memory problems, and he was easily angered. This was the first time these symptoms appeared in medical records. Dr. Hines assessed claimant as having a traumatic brain injury (TBI) with no loss of consciousness. (Ex. 7, pp. 66-72)

On August 5, 2016, approximately two years after the accident, claimant returned to Dr. Hines. At this exam claimant had other new symptoms not previously recorded. These include difficulties with speech, lightheadedness, auditory illusions and visual illusions. (Ex. 7, pp. 72-74)

On May 20, 2017 claimant was seen by Dr. Benson for an IME. This was approximately two and a half years after the date of injury. Claimant again indicated he could not tell EMTs the date, his Social Security number or the name of the president. As noted, this is contrary to EMT and emergency room records showing a 15/15 GCS. Claimant had more new symptoms including dark spots in his eyes, difficulty with word finding, difficulty with word pronunciation, mistaking street names, difficulty with sleeping, and difficulty with short-term memory. (Ex. 10, pp. 100, 112-113)

A number of experts have opined regarding whether claimant's closed head injury is a permanent disability. Dr. Hines assessed claimant on several occasions. Dr. Hines opined claimant has a traumatic brain injury caused by the crash. (Hines' depo. pp. 95-96) In two records Dr. Hines diagnosed claimant as having a TBI without loss of consciousness. (Ex. 7, pp. 72, 76) Dr. Hines suggests claimant may have an

axonal brain injury. (Ex. 7, p. 80) Dr. Hines appears to suggest claimant also has a pituitary dysfunction. (Ex. 7, p. 84) Dr. Hines offers no permanent impairment rating for claimant's alleged closed head injury.

Dr. Hines' various opinions are problematic for several reasons. First, there is no explanation why claimant's symptoms worsen and deteriorate the further in time from the date of injury. As noted, when claimant saw Dr. Gray, seven months from the date of injury, claimant complained of headaches and spacing off. He also indicated excellent work performance. By the time claimant was evaluated by Dr. Hines, in August of 2016, claimant had symptoms that included, but were not limited to, a loss of smell, memory problems, difficulty with speech, confusion, anxiety, auditory illusions, visual illusions, and being prone to anger. Dr. Hines offered no explanation why claimant's condition worsened instead of improving the further in time he got from the date of injury.

Second, as noted, Dr. Hines provided no opinions of a permanent impairment or that claimant had a permanent disability.

Third, most of Dr. Hines' opinions regarding claimant's condition are based on claimant's recital of events. For example, claimant told Dr. Hines he had a loss of memory at work, his work injury stalled his career, and his coworkers talked to him about staring into space. (Ex. 7, p. 82; Ex. 7; Depo. p. 70) However, there is no documentation from his employer, supervisors or coworkers that claimant has ever been disciplined or been noted to be doing poorly at work since his accident. Testimony from two of his prior supervisors indicates claimant had no difficulty at work following his accident. As noted, claimant told Dr. Hines his accident stalled his career. Claimant left Transcore making approximately $47,000.00 a year. Claimant was ultimately hired by DTS. At the time of the hearing he was making $56,000.00 a year. At the time of hearing, claimant was still working for DTS. He was working full time and had no job restrictions. This does not suggest a stalled career.

Fourth, prior agency decisions also question Dr. Hines' methodologies for finding causation and rating claimants. See Perez v. West Liberty Foods, File No. 5033695 (Arb. September 15, 2011); Brown v. Menards, Inc., File No. 5040961 (Arb. November 5, 2013); Olson v. Brooks Park Resorts, File No. 5043565 (Appeal September 9, 2015); Olhausen v. 1st Step Chiropractic, File No. 5045054 (Arb. October 31, 2016); Kovach v. Titan Machinery, Inc., File No. 5053492 (Arb. September 13, 2016); Grouette v. Gilbane Building Co., File No. 5044473 (Appeal September 18, 2017).

Given this record, the opinions of Dr. Hines regarding permanency for a closed head injury are found not convincing.

Claimant saw Dr. Benson once for an IME. There are also a number of problems with Dr. Benson's opinions regarding permanency. First, there is no evidence in the record regarding Dr. Benson's qualifications or his CV.

Second, as is the case with Dr. Hines, there is no explanation why claimant's condition allegedly deteriorated two years from the time of the date of injury.

Third, as is the case with Dr. Hines, Dr. Benson's history of claimant is based almost exclusively on the chronology of the injury provided by claimant. For example, claimant also told Dr. Benson he was unable to respond to EMTs questions regarding date, Social Security number, and who the president was. (Ex. 10, p. 111) This is contrary to reports from the EMTs and the emergency room indicating claimant had a 15/15 GCS.

Fourth, Dr. Benson did not review any of claimant's prior medical records. He has no idea that claimant had a 15/15 GCS with EMTs and in the emergency room. He has no knowledge claimant waited seven months from the date of injury until he again sought medical care. He had no idea claimant's symptoms when he saw Dr. Gray were primarily headaches and spacing off. Dr. Benson is unaware that, other than claimant's report, there is no evidence suggesting claimant's job performance suffered after his accident. Dr. Benson does not know claimant has the same job at DTS as he held with Transcore. He does not know claimant has an approximately $10,000.00 increase in salary since leaving Transcore. Dr. Benson does not seem to know claimant has missed little time from work, continues to work full time, and has no restrictions since the date of injury.

Given these discrepancies, it is found Dr. Benson's opinions regarding permanent impairment are found not convincing.

Dr. Tranel evaluated claimant once for an IME. Dr. Tranel's CV is in the record. Dr. Tranel directs the Neuropsychological Department at the University of Iowa. He runs the Ph.D. Program for graduate students. He runs the Research Lab for the Department of Neuropsychology at the University of Iowa. Dr. Tranel had a history for claimant. Dr. Tranel was aware claimant had a GCS score of 15/15. Claimant testified he answered over 1000 questions regarding tests given to him by Dr. Tranel. Dr. Tranel found all of claimant's intellect scores were within normal limits. Dr. Tranel found no evidence of decline of intellect. Dr. Tranel found no evidence of deficits in attention, memory or processing speed. Dr. Tranel found no deficits in claimant's speech or language. He found no deficits in claimant's memory. He saw no deficits in claimant's problem solving. He assessed claimant as having normal cognitive function. (Ex. N, pp. 56-57) Dr. Tranel's opinions are based upon testing involving 40-50 tests, claimant's prior history, and an interview. Dr. Tranel found claimant was fully recovered from his head injury and did not require any further treatment. (Ex. N, p. 58)

Dr. Tranel's credentials are impeccable. Under his supervision, claimant underwent 40-50 different types of testing. I am able to understand Dr. Tranel's report. Dr. Tranel's report and his testimony at hearing indicate he is aware of the discrepancies in claimant's records. Given this record, it is found Dr. Tranel's opinion that claimant has no permanent impairment from his alleged closed head injury is found more convincing.

It should be noted that there are also noted discrepancies in claimant's testimony and the history given in medical records. As noted, claimant told both Dr. Hines and Dr. Benson he was unable to identify the date, Social Security number and the president to EMTs. This is contrary to EMT and emergency room records that show claimant had a 15/15 GCS score. (Ex. 7, p. 66; Ex. 10, p. 111; Ex. 1; Ex. 2)

There are also discrepancies with claimant's loss of consciousness. EMT records indicate claimant had no loss of consciousness. (Ex. 1) Dr. Hines' records also indicate no loss of consciousness. (Ex. 7, pp. 72, 76) Claimant told Dr. Tranel he had a 10-minute loss of consciousness. (Ex. N, p. 52) Claimant told Dr. Benson he had loss of consciousness but was unaware for how long. (Ex. 10, p. 111)

There are also numerous references in the medical records, deposition and at hearing that claimant had difficulty with his job after his accident. Claimant told Dr. Benson that due to his problems, he was moved to a less demanding job. (Ex. 10, p. 122) Claimant also told Dr. Benson he had difficulty with work due to many cognitive issues. (Ex. 10, p. 112) Claimant told Mr. Jayne he had to work 60 hours after the date of injury, to do what he used to be able to do in 40 hours. (Jayne depo. p. 9)

There are no documents in evidence from Transcore or DTS that claimant has reported, been written up, or been documented to have problems at work since his date of injury.

Two former supervisors testified at hearing. Both testified claimant never indicated difficulty doing his job after his accident. Both testified claimant did not ask for accommodations. Mr. Roth testified he has never seen claimant have issues with speech or having blank expressions.

Claimant testified his job as safety manager was taken from him due to the crash. Mr. Roth testified claimant had the job of safety manager up until 2016. He said claimant was moved from the safety manager job when Transcore lost its IDOT contract, and because claimant began talking about financial issues during safety presentations.

Claimant indicated to Dr. Hines the 2014 injury stalled his career. (Ex. 7, p. 87; Ex. 7, Depo. p. 70) As noted, the record indicates claimant missed little time from the accident. He has no work restrictions. Around the time of the date of injury claimant was earning $47,000.00 a year. When Transcore lost its IDOT contract, claimant was hired by DTS. At the time of hearing, claimant was making $56,000.00 a year. This is not the record of a stalled career.

The opinions of Dr. Benson and Dr. Hines regarding permanent impairment and permanent disability are found not convincing. The opinion of Dr. Tranel, that claimant has no permanent impairment or permanent disability, is found to be more convincing. The inconsistency in claimant's testimony when compared to the record undermines claimant's credibility. Given this record, it is found claimant has failed to carry his

burden of proof he sustained a permanent disability or permanent impairment as a result of his closed head injury.

Regarding claimant's dental claims, claimant contends he sustained damage to his teeth as a result of the October 2014 crash. (Ex. 3, p. 33-35; Ex. 4, p. 37) The record indicates claimant's left side of his head hit the window in the truck crash. (Tr. p. 4) Claimant had a root canal on tooth number two, which is on the right side of his mouth. (Tr. p. 14; Ex. 3, p. 35; Ex. 4, p. 37) There is no explanation or rationale given in the record of how a blow to the left side of claimant's head resulted in a root canal on the right side of claimant's mouth. Given this discrepancy, it is found claimant has failed to carry his burden of proof he has any permanent impairment to his teeth from his October 2014 accident.

At hearing, claimant showed himself to be an engaging, pleasant and bright person. I empathize with the issues that are troubling his life. However, for the reasons detailed above, claimant has failed to carry his burden of proof on the issue of permanent disability, and I cannot find in his favor.

As claimant has failed to carry his burden of proof his injury did not result in a permanent disability, the issue of the extent of claimant's entitlement to permanent partial disability benefits is moot.

The next issue to be determined is if there is a causal connection between the injury and 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).

Under Iowa Code section 85.27, the employer has the right to choose medical care as long as it is offered promptly and is reasonably suited to treat the injury without undue inconvenience to the employee. An employer is not responsible for the cost of medical care not authorized by section 85.27. A claimant can seek payment of unauthorized medical care by a preponderance of the evidence that the care was reasonable and beneficial. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010). To be beneficial, the medical care must provide a more favorable medical outcome than would likely have been achieved by the care authorized by the employer. Id. at 206. The claimant has a significant burden to prove the care was reasonable and beneficial. Id. at 206.

As detailed in the statement of the case, the care claimant sought with Drs. Gray, Hines, Benson and other practitioners was not authorized by defendants.

Dr. Tranel found claimant was at maximum medical improvement as of October 27, 2014. (Ex. N, p. 58) Given this record, claimant has failed to carry his burden of proof that there is a causal connection between the injury and the claimed medical expenses.

The final issue to be determined is costs.

Costs were identified as an issue in dispute in the hearing report. Claimant also makes a request for costs at the end of his post-hearing brief.

There are a number of bills that were attached to the hearing report by claimant. Most of these bills appear to be bills for medical care. There is no breakdown of costs. It is difficult, if not impossible, to determine which bills are for costs and which bills pertain to medical care. Rule 876 IAC 4.33 indicates costs are assessed at the discretion of the deputy or the commission hearing the case. Claimant did not prevail in any of the issues in this case. Based on this, both sides shall pay their own costs.

ORDER

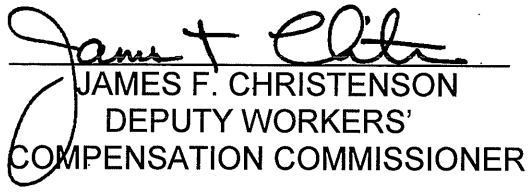
Therefore it is ordered:

That claimant shall take nothing from these proceedings.

That both parties shall pay their own costs.

That defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this 22nd day of February, 2018.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Dennis Currell
Attorney at Law
PO Box 1427
Cedar Rapids, IA 52406-1427
Currell.law@gmail.com

Aaron T. Oliver
Attorney at Law
5th Floor, US Bank Bldg.
520 Walnut St.
Des Moines, IA 50309-4119
aoliver@hmrlawfirm.com

JFC/sam

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.