BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DENNY PHIPPS,

Claimant,

vs.

MIDWEST AMBULANCE SERVICE OF IOWA,

Employer,

and

WEST BEND MUTUAL INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5055117

ARBITRATION

DECISION

Head Note Nos.: 1402.40, 1402.60
1801, 2501

STATEMENT OF THE CASE

Denny Phipps, claimant, filed a petition for arbitration against Midwest Ambulance Service of Iowa, as the employer and West Bend Mutual Insurance Company as the insurance carrier. An in-person hearing occurred in Des Moines, Iowa on October 27, 2016.

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

Claimant testified on his own behalf. Defendants called Joshua Chapman to testify.

The evidentiary record includes claimant's Exhibits 1 through 14 and defendants' Exhibits A through I, and K through P. Claimant asserted an objection to the timeliness of defendants' Exhibit D, pages 1 through 4. Pursuant to an agreement of the parties, the undersigned overruled that objection but permitted claimant additional time to submit rebuttal evidence.

On November 28, 2016, claimant submitted a rebuttal report from Sunil Bansal, M.D. as Exhibit 15. Exhibit 15 is formally received as part of the evidentiary record. Upon receipt of Exhibit 15, the evidentiary record closed.

However, counsel for the parties requested the opportunity to file post-hearing briefs. The parties were given until December 12, 2016 to serve their post-hearing briefs, at which time the case was considered fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant is entitled to temporary disability, or healing period, benefits from September 18, 2015 through January 25, 2016.

2. Whether the stipulated work injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits.

3. The proper commencement date for permanent disability benefits, which is dependent upon whether healing period benefits are awarded, with the parties' respective positions outlined on the hearing report.

4. Whether claimant is entitled to an award of past medical expenses, including an assertion by defendants that claimant's emergency room treatment on September 12, 2015 was not authorized, reasonable, or necessary treatment.

5. Whether claimant is entitled to an order for alternate medical care into the future.

6. Whether costs should be assessed against either party.

FINDINGS OF FACTS

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

Denny Phipps sustained a low back injury on July 9, 2015, while performing his typical work activities at Midwest Ambulance Service of Iowa. Specifically, claimant served as paramedic for the ambulance service. He was in the process of transporting a bariatric patient that weighed approximately 350 pounds. (Claimant's testimony)

As Mr. Phipps moved the patient's cart out of the ambulance with the patient on the cart, the latch that typically catches to lower the wheels of the cart did not "catch." The patient's cart began to fall and Mr. Phipps physically caught the cart to prevent injury to the patient. In so doing, Mr. Phipps injured his own low back. (Claimant's testimony)

Following the incident, Mr. Phipps reported his injury to the employer. Initially, Midwest Ambulance accepted liability for the injury and directed claimant to Concentra Medical Center for medical treatment. Mr. Phipps presented to Concentra on the same day as the accident and was diagnosed with a low back sprain without radiculopathy. (Exhibit 1, page 1) He returned to Concentra on July 13, 2015. His diagnosis on that date was again a low back sprain but this time was noted to have sensory radiculopathy. (Ex. 1, p. 2) Work restrictions were imposed by James A. Conroy, M.D. at Concentra.

Claimant was re-evaluated at Concentra on July 20, 2015 and again on July 27, 2015. His diagnosis remained a low back strain. (Ex. 1, p. 4; Ex., p. 3) However, an MRI was ordered following these appointments. (Ex. 1, p. 3) The MRI of Mr. Phipps' low back occurred on July 30, 2015 and did not demonstrate any objective impingement. (Ex. 2)

On August 10, 2015, Mary Shook, M.D., added a diagnosis of an acute lumbar radiculopathy. (Ex. 1, p. 6) On September 1, 2015, Dr. Shook re-evaluated Mr. Phipps and elected to make a referral to a spine surgeon, David E. Hatfield, M.D. (Ex. 1, p. 9)

Dr. Hatfield evaluated claimant on September 14, 2015 and concluded that claimant has some numbness and weakness in the left lower extremity. Dr. Hatfield imposed some work restrictions limiting claimant's lifting, bending and twisting. However, Dr. Hatfield recommended against any surgical intervention. (Ex. 3, pp. 1-2)

Dr. Hatfield referred claimant for a nerve root block to be performed by Christian Ledet, M.D. Dr. Ledet performed left L4-5 transforaminal epidural steroid injection on September 18, 2015, without apparent complication. (Ex. 4)

Three days later Mr. Phipps presented to the Unity Point Health Emergency Room in West Des Moines complaining of leg weakness. Defendants dispute liability for the emergency room charges. Claimant contends that the charges should be ordered paid by defendants because he asserts the care was authorized.

With respect to the emergency room visit, claimant testified that Kim Westphal, the insurance carrier claims representative, called the ambulance to take claimant to the emergency room on September 21, 2015. (Tr., p. 31) Claimant provided credible testimony on this issue and no contrary evidence is in this record about the insurance carrier's actions with respect to the emergency room visit.

The employer's representative, Joshua Chapman testified that he did not authorize the emergency room treatment. Mr. Chapman further testified that he is not aware of anyone at Midwest Ambulance Service having authorized the emergency room treatment on September 21, 2015. (Tr., pp. 79-80) I also find Mr. Chapman's testimony to be credible. There is no contrary evidence in this record about the employer's actions.

However, I find that the testimony of Mr. Phipps and Mr. Chapman are not irreconcilable in this case. Specifically, I find that no one associated with or employed by Midwest Ambulance Service of Iowa authorized claimant's treatment at the emergency room on September 21, 2015. However, I find that Kim Westfall with West Bend Mutual Insurance Company did authorize the emergency room treatment and arranged for an ambulance to transport claimant to the emergency room. Therefore, I find that the defendants, through the insurance carrier, did authorize the emergency room treatment on September 21, 2015.

There is no evidence that defendants notified claimant prior to the treatment at the emergency room that the treatment was not authorized or would be contested. This treatment was not truly emergent in nature such that an explanation of the denial could not have been offered by defendants prior to the charges being incurred. Therefore, I find that the insurance carrier authorized the ambulance to transport claimant to the emergency room. The insurance carrier paid the ambulance charges, but did not notify claimant that the emergency room charges were disputed or not authorized. Claimant relied upon the insurance carrier's authorization to seek care at the emergency room on September 21, 2015.

The emergency room documented on September 21, 2015, that "Patient is unable to raise left leg against gravity." (Ex. 6, p. 3) The emergency room indicated that claimant "should not return to work until cleared by a physician." (Ex. 6, p. 4)

On that same date, Dr. Hatfield entered an office notation, indicating that he was called earlier that day by Mr. Phipps. Dr. Hatfield noted that he had reviewed the MRI and that it "shows no evidence of acute change to suggest etiology of his reported symptoms." (Ex. 3, p. 3) Dr. Hatfield reiterated his opinion that surgery was not indicated for claimant. (Ex. 3, p. 3)

In a September 23, 2015, report to the nurse case manager, Dr. Hatfield noted that claimant's "findings are most consistent with a chronic rather than acute presentation." (Ex. B, p. 5) On September 30, 2015, Dr. Hatfield confirmed that he had not altered claimant's restrictions after the emergency room visit and noted his understanding that a neurology consultation was being set up for claimant. (Ex. B, p. 6)

Mr. Phipps presented to Mercy Ruan Neurology Clinic on October 30, 2015 for evaluation by a neurologist, Steven Adelman, D.O. Dr. Adelman noted that he was "strongly suspicious that his left leg weakness is related to functional weakness without evidence of a primary neurologic disorder." (Ex. 7, p. 4) However, in his October 30, 2015 note, Dr. Adelman ordered an EMG be conducted and ordered claimant to be off work until the EMG took place.

The EMG occurred on November 2, 2015. Dr. Adelman reported that the nerve conduction studies associated with that testing were normal. The EMG testing demonstrated no evidence of lumbosacral radiculopathy, plexopathy, or entrapment neuropathy. Instead, Dr. Adelman indicated that his neurologic examination

demonstrated inconsistent weakness in several muscle groups and opined that "there was no neurologic explanation for his leg weakness." (Ex. 7, p. 5)

Dr. Adelman suggested that claimant may be malingering. He recommended against a return to work, but opined that any ongoing left leg weakness "is not related to a work related injury." (Ex. 7, p. 5) Following issuance of Dr. Adelman's report, defendants denied liability for ongoing care or for the ongoing condition.

Mr. Phipps sought care thereafter at Broadlawns. On November 9, 2015, the physician at Broadlawns documented that claimant was using crutches to walk, that he could not pull his left thigh into flexion and that he was dragging his left foot when he walked. (Ex. 8, p. 1) By December 14, 2015, claimant was using a cane to walk and improved by January 25, 2016 to be able to walk without an ambulatory aid. (Ex. 8, pp. 5, 9)

Audra Ramsey, D.O., the treating physician at Broadlawns opined in a report signed September 15, 2016 that claimant's low back condition was causally related to and/or materially aggravated by his work injury on July 9, 2015. (Ex. 8, p. 14) Similarly, she opined that she believed the July 9, 2015 work injury caused a permanent injury to claimant's low back. (Ex. 8, p. 14)

Claimant sought an independent medical evaluation performed by Dr. Bansal on September 2, 2016. Dr. Bansal is a board certified occupational medicine physician and is the medical director at Alegent Creighton Health and provides expert witness services through his company, Iowa Injury Institute. (Ex. 10, p. 16) Dr. Bansal opined that claimant's ongoing low back symptoms are causally related to the July 9, 2015 work incident. (Ex. 10, pp. 12-13) Dr. Bansal opined that claimant has achieved maximum medical improvement and has sustained a five percent permanent impairment of the whole person as a result of the July 9, 2015 work injury.

Dr. Bansal recommended permanent work restrictions that are consistent with a functional capacity evaluation (FCE) performed on August 16, 2016. (Ex. 10, p. 14) That FCE suggested valid results and recommended lifting restrictions of 15 pounds occasionally below waist height, 10 pounds to shoulder height and 5 pounds overhead. (Ex. 9, p. 1) That FCE also recommended limitations on claimant's ability to reach above shoulder, bend, forward reach, kneel, squat, stair climb, walk, crawl, and with balance issues. (Ex. 9, p. 1)

The results of the August 16, 2016 FCE are disputed by defendants because claimant also participated in an FCE that occurred eight days earlier on August 8, 2016. During the August 8, 2016 FCE, the therapist found claimant's effort to be invalid and inconsistent. The therapist conducting the August 8, 2016 FCE commented that claimant "failed to give maximum voluntary effort during today's FCE." (Ex. C, p. 1)

Nevertheless, despite reported inconsistent effort, claimant demonstrated the ability to lift at least 31.94 pounds from 10 inches off the floor to waist height. (Ex. C, p.

2) Although his performance varied during the August 8, 2016 FCE, his demonstrated abilities during that FCE significantly outpaced the performance given and documented eight days later in the second FCE. I have a very difficult time believing that claimant was documented as capable of lifting at least 31 pounds on August 8, 2016 but was unable to lift more than 15 pounds occasionally eight days later. I find that claimant gave inconsistent and less than full effort on the competing FCEs. I also find it interesting that Dr. Bansal was provided a copy of and purportedly reviewed the August 8, 2016 FCE but made no comments about the inconsistencies and simply accepted the lower findings of the August 16, 2016 FCE. This seems odd and biased to the undersigned given the proximity of the FCE to each other and the disparate findings contained therein.

Defendants obtained an independent medical evaluation performed by David Boarini, M.D. on August 24, 2016. Dr. Boarini is a neurosurgeon in private practice. Dr. Boarini detailed that claimant had a normal MRI of his spine. Dr. Boarini documented that claimant had an invalid FCE. Dr. Boarini documented that claimant's examination demonstrated a nonphysiologic and inconsistent limp. Dr. Boarini also noted that claimant "complains of some numbness of the leg when testing, but this was in a nonphysiologic and nonradicular pattern. (Ex. D, p. 2) Dr. Boarini opines that claimant's "complaints are not consistent and are not explainable on any physiologic basis and are clearly consistent with malingering." (Ex. D, pp. 2-3)

Ultimately, Dr. Hatfield opines that claimant sustained an injury on July 9, 2015 but essentially defers to the neurology consultation that occurs after him. Audra Ramsey, D.O., the Broadlawns' physician, opines that claimant's condition is permanent and was caused or materially aggravated by the July 9, 2015 injury. However, her credentials are unknown and she does not appear to have the full history. It appears that Dr. Ramsey was aware that claimant had been treated by occupational medicine, a spine surgeon, and neurology. (Ex. 8, p. 1) Yet, it does not appear that Dr. Ramsey had those records available, or the records from Dr. Ledet. She certainly makes no significant comment on those histories when analyzing claimant's case or rendering treatment.

Dr. Bansal provides a relatively thorough analysis of the causation issue and cites to some medical literature in support of his analysis and conclusions. Yet, his opinion appears biased in this situation. He elects to rely upon one FCE, while making no analysis of the first FCE, which demonstrated some inconsistencies and higher lifting capabilities. In this instance, the timing of the FCEs and differing results suggested some comment or explanation would be necessary for Dr. Bansal to rely upon the lower of the two FCEs and to disregard the functional abilities in the invalid but higher demonstrated ability level FCE.

Dr. Adelman is a neurologist. He evaluated claimant twice, including for EMG testing. Dr. Adelman identified inconsistencies in his evaluation of claimant and noted that claimant's subjective complaints are not consistent with any objective testing. For instance, Dr. Adelman explained the positive "Hoover sign" he discovered, which

suggested malingering to him. Dr. Adelman opined that "Mr. Phipps did not suffer any particular neurologic injury, and we would have to assume that the cause of his leg weakness is functional (nonorganic) in nature." (Ex. A, pp. 3-4)

A similar positive Hoover sign was documented independently by claimant's treating physical therapist on August 28, 2015. (Ex. H, pp. 36-37) Similar to the explanation provided by Dr. Adelman, the treating therapist noted, "Lack of downward pressure on posterior calcaneus with attempts to perform left active SLR is not consistent with a maximal effort." (Ex. H, p. 37)

Dr. Adelman's evaluation and findings are also corroborated by the August 8, 2016 FCE findings and documented inconsistencies. Dr. Boarini's opinions similarly corroborate the evaluation and findings of Dr. Adelman. Specifically, Dr. Boarini opines that "Mr. Phipps' complaints are not consistent and are not explainable on any physiologic basis and are clearly consistent with malingering." (Ex. D, pp. 2-3)

I found it significant that Dr. Boarini documented that claimant "clearly has a nonphysiologic and inconsistent limp" and that "the patient was clearly malingering" and "did not demonstrate any physiologically verifiable abnormality." (Ex. D, p. 2) This is quite strong and definitive language to be used by a physician and reflects very specific findings and conclusions by Dr. Boarini against the finding of any ongoing or permanent injury. As a neurosurgeon, Dr. Boarini's opinions pertaining to physical examination and findings relative to radiculopathy and a low back injury are entitled to significant weight.

Dr. Bansal provided a rebuttal report in which he critiqued Dr. Boarini because Dr. Boarini's opinion was "based in large part on a normal EMG and one of two FCEs that was classified as invalid. Making that conclusion ignores/dismisses objective pathology noted on multiple imaging, including CT and MRI, as well as another FCE that was not invalid." (Ex. 15, p. 2) I find the contrary to be true. I do not understand how Dr. Bansal disregarded an "invalid" FCE that documented higher functional abilities than the FCE he relied upon. I find Dr. Bansal's rebuttal report to be less than convincing, particularly with the numerous pieces of medical evidence demonstrating other inconsistent findings such as from the treating physical therapist, Dr. Adelman, and Dr. Boarini. Ignoring those pieces of evidence and not explaining those inconsistencies physiologically damages Dr. Bansal's credibility and the weight to be given to his opinions in this case.

Having considered the relative strengths of the competing medical opinions, the qualifications of the competing medical experts, and the objective medical testing performed, I find the opinions of Dr. Adelman, Dr. Boarini, the treating physical therapist and the physical therapist performing the August 8, 2016 FCE to be the most convincing medical opinions in this evidentiary record. Therefore, I find that Mr. Phipps failed to prove by a preponderance of the evidence that his ongoing left leg weakness and symptoms are causally related to the July 9, 2015 work injury. I find that Mr. Phipps failed to prove by a preponderance of the evidence that he sustained a permanent disability as a result of the July 9, 2015 work injury.

Claimant also seeks an award of the medical expenses for treatment through Broadlawns. Having found the opinions of Dr. Adelman and Dr. Boarini to be most convincing, I find that all treatment rendered at Broadlawns to be unrelated to the July 9, 2015 work injury.

CONCLUSIONS OF LAW

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

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

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

Having found that claimant failed to prove he sustained a permanent disability as a result of the July 9, 2015 injury to his low back, I conclude that claimant is not entitled to an award of permanent disability benefits.

Nevertheless, Mr. Phipps also asserts a claim for temporary disability benefits from September 18, 2015 through January 25, 2016. (Hearing Report) Defendants stipulate that claimant was off work for this period of time. (Hearing Report) However, defendants dispute whether claimant is entitled to temporary total disability benefits for the requested period of time. Defendants contend that claimant was offered light duty

work and waived his right to any temporary disability benefits when he refused light duty work.

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

However, Iowa Code section 85.33(3) provides:

> If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employee refuses to accept the suitable work with the same employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal.

Mr. Phipps contends that he qualifies for temporary total disability benefits after September 18, 2015 because he did not return to work after his epidural injection on that date and because the emergency room took him off work on September 21, 2015. In his post-hearing brief, claimant argues that he is entitled to temporary total disability benefits after September 21, 2015 because "[c]laimant was taken off work until seen by a provider. (Ex. 6) The first time Claimant saw a provider was Dr. Adelman on 10/30/15." (Claimant's Post-Hearing Brief, p. 7) Unfortunately, neither of these assertions is accurate. The physician assistant in the emergency room indicated claimant "should not return to work until cleared by a physician." (Ex. 6, p. 4) The physician's assistant did not take claimant off until seen by a provider.

Similarly, claimant's assertion that claimant did not see another medical provider after the emergency room visit until he was evaluated by Dr. Adelman in October 2015 is inaccurate. In fact, claimant was re-evaluated at Concentra on September 23, 2015 and Concentra deferred to Dr. Hatfield. (Ex. 1, pp. 10-11) Dr. Hatfield confirmed that he had not changed claimant's restrictions, as noted above.

The employer testified that it offered light duty work consistent with claimant's medical restrictions. The work offered involved reviewing paramedic literature as well as auditing run reports generated by other paramedics at Midwest Ambulance Service of Iowa. I find that the work offered by the employer was consistent with claimant's medical restrictions. Claimant did not return to work after September 18, 2015, despite being medically released to work light duty. Having found that the employer offered claimant suitable work consistent with his medical restrictions during the claimed period of temporary disability and having found that the claimant refused the offer of light duty,

I conclude that claimant failed to prove entitlement to temporary total disability benefits from September 18, 2015 to October 29, 2015.

Dr. Adelman took claimant off work as of October 30, 2015 until the EMG was performed. (Ex. 7, p. 4) Claimant remained off work during this period of time. (Hearing Report) Therefore, claimant was medically restricted from work and was not actually working from October 30, 2015 through November 1, 2015 pursuant to the restrictions imposed by Dr. Adelman. Therefore, claimant did prove he was medically restricted and off work from October 30, 2015 through November 1, 2015, a period of three days.

Pursuant to Iowa Code section 85.32, there is a three day waiting period for commencement of temporary disability benefits. In this instance, claimant proved he was medically restricted and off work for three days. Claimant has not established entitlement to temporary disability benefits beyond this three day waiting period or entitlement to any permanent disability benefits. Iowa code section 85.32.

All symptoms and treatment after Dr. Adelman's evaluation were found unrelated to the work injury. Therefore, I conclude that claimant has not proven entitlement to any temporary disability benefits. Iowa Code sections 85.32; 85.33.

Claimant seeks an award of past 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).

Pursuant to Iowa Code section 85.27(4), "[i]f the employer chooses the care, the employer shall hold the employee harmless for the cost of care until the employer notifies the employee that the employer is no longer authorizing any or any part of the care and the reason for the change in authorization." However, section 85.27(4) also provides that "[a]n employer is not liable for the cost of care that the employer arranges in response to a sudden emergency if the employee's condition, for which care was arranged, is not related to the employment." In this case, I found the claimant sought care through the emergency room. However, the care was not truly "emergency treatment" because there was an opportunity to consult with the insurance carrier and make arrangements for the transportation, rather than simply a 9-1-1 call or similar emergency situation.

Having found that the care was not of an emergency nature, I also found that the insurance carrier authorized claimant's transport and treatment at the emergency room.

The employer did not notify the claimant thereafter that it denied liability or refused authorization for the emergency room care. Therefore, pursuant to Iowa Code section 85.27(4), defendants are liable for all charges related to claimant's treatment at the emergency room.

Having found that the defendants, through the insurance carrier, authorized claimant's emergency room visit on September 21, 2015, and having found no evidence that the defendants gave notice this treatment would not be authorized thereafter, I conclude that defendants are liable for the claimant's emergency room care. Iowa Code section 85.27(4). However, none of the treatment at Broadlawns has been proven to be authorized or causally related to the work injury, as the opinions of Dr. Adelman and Dr. Boarini have been accepted as accurate. Therefore, claimant has not proven entitlement to any of the other medical expenses sought.

Claimant also seeks an award of alternate medical care. (Hearing Report) Claimant urged an award of alternate medical care for future treatment of claimant's low back and/or left leg. An award of alternate medical care can only be made after the alleged condition is found to be compensable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 197 (Iowa 2003). Having found that claimant failed to prove any ongoing or permanent injury to his low back or left leg, I conclude that claimant is not entitled to future medical care for the injury. Iowa Code section 85.27.

Finally, claimant seeks assessment of his costs. Costs are assessed at the discretion of the agency. Iowa Code section 85.40. Exercising the agency's discretion and recognizing that claimant prevailed on at least one of the issues he asserted (emergency room medical expenses), I exercise the agency's discretion and conclude that claimant's filing fee of $100.00 shall be assessed pursuant to 876 IAC 4.33(7).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall reimburse claimant, pay directly to medical providers if unpaid, or otherwise hold claimant harmless for the medical expenses incurred for treatment at Iowa Methodist West Hospital's emergency room on September 21, 2015, including charges totaling up to seven thousand two hundred forty-five and 29/100 dollars ($7,245.29), as summarized and contained in claimant's Exhibit 11, pages 1-5.

Defendants shall reimburse claimant's filing fee totaling one hundred dollars ($100.00) as a cost pursuant to 876 IAC 4.33.

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

Signed and filed this 10th day of February, 2017.

William H. Grell

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Eric J. Loney
Attorney at Law
1311 – 50th St.
West Des Moines, IA 50266
eric@loneylaw.com

Mark A. Bosscher
Attorney at Law
6800 Lake Dr., Ste. 125
West Des Moines, IA 50266-2504
Mark.bosscher@peddicord-law.com

WHG/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.