

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES MARRAH,

Claimant,

vs.

INTERNATIONAL EQUIPMENT  
SOLUTIONS, LLC,

Employer,

and

ZURICH INSURANCE,

Insurance Carrier,  
Defendants.

File No. 5061431

ARBITRATION DECISION

Head Note Nos.: 1402.30, 1402.40,  
1803, 2907

Claimant James Marrah filed a petition in arbitration on January 22, 2019, alleging he sustained an injury to his back and body as a whole, while working for Defendant International Equipment Solutions, LLC, ("IES") on. IES and its insurer Defendant Zurich American Insurance Company ("Zurich") filed an answer on February 6, 2019, admitted Marrah sustained a work injury.

An arbitration hearing was held *via* CourtCall video conference on March 15, 2021. Attorney Joshua Moon represented Marrah. Marrah appeared and testified. Attorney Ed Rose represented IES and Zurich. Brian Besler appeared and testified on behalf of IES and Zurich. Joint Exhibits ("JE") 1 through 5, and Exhibits 1 through 11 and A and B were admitted into the record. The record was held open through April 16, 2021, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

Prior to the hearing the parties submitted a hearing report, listing stipulations and issues to be decided. IES and Zurich waived all affirmative defenses.

**STIPULATIONS**

1. An employer-employee relationship existed between IES and Marrah at the time of the alleged injury.
2. Marrah sustained an injury, which arose out of and in the course of his employment with IES on February 23, 2017.
3. Temporary benefits are no longer in dispute.

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 February 24, 2017.

6. At the time of the alleged injury Marrah's gross earnings were \$787.53 per week, he was single and entitled to one exemption, and the parties believe the weekly rate is \$481.40.

7. The costs listed in Exhibit 1 have been paid.

### **ISSUES**

1. Is the alleged injury a cause of temporary disability during a period of recovery?

2. Is the alleged injury a cause of permanent disability?

3. What is the extent of disability?

4. Is Marrah entitled to interest?

5. Is Marrah entitled to payment of medical expenses and medical mileage?

6. Is Marrah entitled to alternate medical care?

8. Should costs be assessed against either party?

### **FINDINGS OF FACT**

Marrah is single and he does not have any children. Marrah graduated from high school in 1982. (Ex. 10, p. 3; Transcript, p. 8) Marrah has not received any post-secondary education or specialized training. (Tr., pp. 9, 39) Marrah is able to use a computer to shop and check his e-mail. (Tr., p. 39) At the time of the hearing he was fifty-seven. (Tr., p. 8)

After graduating from high school Marrah worked for a grocery store, as a carpet cleaner, and he performed carpentry work. (Tr., p. 9) From January 1998 through February 4, 2014, Marrah worked as a production operator, supervisor, production manager, machine specialist for Bestcob. (Ex. 10, p. 4; Tr., pp. 9-12)

Marrah sustained five work injuries while working for Bestcob. (Tr., p. 13) He injured his upper back or thoracic spine in 1991 or 1992, he developed tennis elbow, in 1996 he developed trigger finger in 1996, he fractured his hand in 1998, and he broke his ankle in 2005 or 2006. (Tr., pp. 13-15) Marrah reported after he sustained his upper back injury a myelogram showed he had some herniated discs. (Tr., p. 14 )

Marrah reported he received a 50 pound lifting restriction and his injury “[p]retty much” resolved, noting if he lifted over fifty pounds he would “know it” and that he could lift forty-eight pounds all day he did not have any problems. (Tr., p. 14)

Shortly before he stopped working for Bestcob Marrah experienced some low back issues. (Tr., p. 46) He reported he could not figure out what was going on. (Tr., p. 46) Marrah testified in 2013 or early 2014 he underwent magnetic resonance imaging, which showed he had had herniated discs in his back, which was why he received a permanent 50 pound lifting restriction. (Tr., p. 46) No medical records were produced at hearing regarding the imaging or any treatment Marrah received.

In 2014, Bestcob terminated Marrah’s employment. (Tr., p. 47) Marrah testified after he left Bestcob he was still working under a 50 pound lifting restriction and a restriction of no overhead work from his upper back injury. (Tr., p. 48)

IES hired Marrah after he left Bestcob. (Tr., p. 13) IES manufactures attachments for skid loaders and wheel loaders. (Tr., p. 17) At the time of the hearing Marrah had worked for IES for six years and 11 months. (Tr., p. 13) Marrah testified he loves his job at IES and he wants to continue working there. (Tr., p. 19) Marrah’s position with IES does not require him to lift over 50 pounds. (Tr., p. 48)

For the first 18 months of his employment with IES, Marrah worked on the paint line, hanging parts on the line. (Tr., p. 15) He then moved to an assembler position, which was his position at the time of the hearing. (Tr., p. 15) As an assembler, Marrah mainly assembles two components, a Kubota and a tilt attach. (Tr., p. 17) The Kubotas weigh 200 pounds without parts and weigh around 240 pounds with parts. (Tr., p. 87) Marrah picks up the Kubotas with a hoist. (Tr., p. 87) Marrah works from a lift table that goes up and down. (Tr., pp. 19, 51)

Marrah works second shift. On February 23, 2017, shortly after midnight, Marrah was working in material handling, which required him to drive a forklift and pick up parts to take them to different areas in the plant. (JE 1, p. 1; Tr., p. 19) Matt Curtain, another material handler, called Marrah on the radio for assistance with a team lift. (Tr., p. 19) Curtain and Marrah lifted metal tubes that were fifteen feet long from a raised forklift and placed them on a shelf. (Tr., pp. 19, 21) While lifting one of the tubes, Marrah’s toe caught on the corner of a metal plate or pallet and lodged under the plate or pallet and he started to fall and hit a metal bin. (JE 1, p. 1; Tr., p. 20) Marrah hit the metal bin between his right side underneath the bottom of his ribs and his back. (JE 1, p. 1; Tr., pp. 21, 23) Marrah testified he hit the tub or bin really hard and came up a bit, and then went down on the tub or bin like a bounce. (Tr., p. 23) Marrah reported the second time he hit the bin it felt like “something gave” and he relaxed and went down. (Tr., p. 23) After falling, Marrah could not stand up and he leaned over because when he tried to stand up his right buttock hurt worse. (Tr., pp. 23-24) Marrah was transported to the emergency room at Regional Medical Center. (JE 1, p. 1)

At the hospital Marrah complained of extreme pain in his right lower back to his buttock after falling and hitting his side while doing a team lift at work. (JE 1, pp. 3, 8) Marrah reported straightening his body made his condition worse. (JE 1, p. 8) Marrah relayed he had a history of a back injury and a bulging disc. (JE 1, p. 15) Marrah received x-rays of his lumbosacral spine and ribs. (JE 1, pp. 18-19) The reviewing radiologist found Marrah had degenerative changes at L1-L2 with mild-to-moderate loss of disc interspace and moderate L5-S1 facet arthropathy with mild loss of disc interspace, but no evidence of lumbar spine malalignment or vertebral compression fracture and that there was no evidence of any rib fractures. (JE 1, pp. 18-19) Hospital staff treated Marrah for his pain, prescribed Ibuprofen and Lortab, referred Marrah to occupational health, and discharged him with restrictions of no lifting or carrying over 10 pounds, no repetitive bending, lifting, or twisting of his back, no bending or stooping, and no squatting or kneeling. (JE 1, pp. 20, 22-23)

The afternoon of February 23, 2017, Marrah attended an appointment with Robert Tomas, M.D., with Medical Associates Clinic. (JE 2, p. 2) Dr. Tomas documented Marrah reported after the work injury he experienced immediate, severe pain in his back in the right lumbar to flank area, and that as his day progressed he was able to ambulate better and his symptoms were quite minimal when sitting quietly or lying down. (JE 2, p. 2) Dr. Tomas examined Marrah, noting he had a horizontal abrasion over the right posterior flank area with some swelling and erythema, minimal ecchymosis and the area was quite tender to palpation. (JE 2, p. 2) Dr. Tomas assessed Marrah with an acute soft tissue back injury and imposed restrictions of no lifting, carrying or equivalent pushing or pulling above 10 pounds, no repetitive bending, lifting or twisting of the back, no kneeling, crawling, climbing, or squatting, and sitting, standing, and walking limited to comfort. (JE 2, pp. 2-3) Marrah testified IES accommodated his work restrictions by having him perform office work. (Tr., p. 26)

During a follow-up appointment on March 2, 2017, Dr. Tomas documented Marrah reported he was 10 percent better and that he was experiencing pain with movement radiating radiated into his buttock, he was sleeping well, and he could do most of his job if it did not involve any bending or lifting. (JE 2, p. 4) Dr. Tomas continued his work restrictions. (JE 2, pp. 4-5)

On March 13, 2017, Marrah attended an appointment with Dr. Tomas reporting some improvement, but he was still quite painful with movement and that he felt like he was having muscle spasms. (JE 2, p. 6) Dr. Tomas documented Marrah had good range of motion, he was markedly tender to palpation on the posterior lateral chest, his flexion and extension were normal, and Dr. Tomas assessed him with a chest wall injury. (JE 2, p. 6) Dr. Tomas ordered physical therapy and continued his restrictions. (JE 2, pp. 6-7)

Marrah returned to Dr. Tomas on March 27, 2017, reporting he did not believe physical therapy was improving his overall symptoms, noting he continued to experience significant pain in his lower right thoracic and lumbar area, he was having pain in the right iliac crest area that seemed to radiate into his thigh, he was

experiencing discomfort while sleeping at night and rolling over, and he hurt when coughing and deep breathing. (JE 2, p. 8) Dr. Tomas assessed Marrah with a chest wall injury and injury of the lumbar spine, continued his work restrictions, and recommended magnetic resonance imaging. (JE 2, pp. 8, 10)

Marrah received pelvis, thoracic spine, and lumbar spine magnetic resonance imaging. (JE 2, pp. 11-13) The reviewing radiologist listed an impression of changes of osteoarthritis in the hips bilaterally, with no fractures or acute abnormalities for the pelvis, and mild degenerative disc changes, but without significant spinal canal stenosis and only mild neural foraminal at L5-S1 for the lumbar spine, and a normal thoracic spine. (JE 2, pp. 11, 13-14)

On April 12, 2017, Marrah returned to Regional Medical Center, reporting the pain in his rib area was 50 percent better and recently he was putting on a belt and he felt a sharp pain in the anterior aspect of his right ilium that shot down his thigh. (JE 1, p. 26) Marrah denied prior trauma to his back. (JE 1, p. 26) Douglas Cooper, M.D., examined Marrah, reviewed his spine x-rays and a computerized tomography scan of Marrah's pelvis. (JE 1, p. 26) Dr. Cooper noted there were no fractures in his pelvis, he had some mild arthritis in his hips and mild degenerative disc disease at L5-S1, that he believed Marrah had sustained a contusion of the rib and pelvic region. (JE 1, pp. 26, 28-29) Dr. Cooper prescribed physical therapy for ultrasound and phonophoresis and released Marrah to return to full duty on April 19, 2017. (JE 1, pp. 26, 28-29)

Marrah attended seven sessions of physical therapy between March 15, 2017, and April 20, 2017. (JE 3) During his session on April 20, 2017, Marrah reported he had returned to full days the day before and that he experienced some soreness, but he was doing okay. (JE 3, p. 11)

Marrah sought chiropractic treatment with Leah Hubbard, D.C., with Lifetime Chiropractic, complaining of back pain. (JE 4, p. 4) Marrah attended sessions with Dr. Hubbard from later April 2017 through August 2017 for myofascial releases and adjustments. (JE 4) Marrah complained of pain and achiness while working, especially when he picked up his pace, and noted his pain would come and go depending on the amount of work he would do, and while he received some relief from his pain, the relief did not seem to last, noting his pain was worse on the right side. (JE 4, pp. 6, 10, 12)

On August 23, 2017, Marrah returned to Dr. Cooper at Regional Medical Center, reporting his ribs were better, but he was still experiencing chronic low back pain. (JE 1, p. 30) Dr. Cooper reviewed Marrah's x-rays, which he noted showed some degenerative disc disease, noted Marrah was walking well and his neurovascular exam was grossly intact, noted he would see him back on an as-needed basis, and referred Marrah to the pain clinic. (JE 1, p. 30)

On August 29, 2017, Marrah completed a pain consultation form at Regional Medical Center Iowa Anesthesia, complaining of constant low back pain with burning, tingling, and going into his thighs following the February 2017 work injury. (JE 1, p. 31)

Marrah noted the pain was worse if he sat too long or stood for extended periods. (JE 1, p. 31) William Barnhill, CRNA, examined Marrah, diagnosed him with low back pain right facet degeneration without myelopathy or radiculopathy, and recommended treatment. (JE 1, pp. 32-36)

Marrah returned to Barnhill on September 5, 2017, for right lumbar medial branch nerve blocks at the L3-L4, L4-5, and L5-S1 levels and a right primary dorsal ramus of L5 at the sacral articular process block. (JE 1, p. 37) Barnhill assessed Marrah with low back pain, lumbar facet arthropathy, and lumbar degenerative disc disease without radiculopathy or myelopathy. (JE 1, p. 37)

On October 2, 2017, Marrah attended a follow-up appointment with Barnhill and received left lumbar medial branch nerve blocks at the L3-L4, L4-L5, and L5-S1 levels, and a left primary dorsal ramus of L5 at the sacral articular process block. (JE 1, p. 40) Barnhill listed an impression of low back pain, lumbar facet osteoarthritis without myelopathy or radiculopathy, and lumbar degenerative disc disease. (JE 1, p. 30)

Marrah underwent repeat blocks with Barnhill on October 30, 2017. (JE 1, p. 43) Marrah returned to Regional Medical Center on November 2, 2017, complaining of continued back pain and reporting he experienced 80 percent relief for four hours after his last injections and he wanted to proceed with the next phase of treatment. (JE 1, p. 46) Mark Odden examined Marrah and discussed frequency ablation. (JE 1, p. 46)

On December 26, 2017, Jonathan Fields, M.D., performed an independent medical examination for IES and Zurich. (JE 5) Dr. Fields reviewed Marrah's medical records and examined him. (JE 5) Dr. Fields noted,

[w]hen I examined Mr. Marrah, he had an essentially normal clinical exam. He did not have any marked tenderness to palpation in his lumbar spine. He had full range of motion in his lower back including forward flexion, backwards extension, lateral side bends. He had a negative straight leg raise test bilaterally. He had 5/5 strength in his bilateral lower extremities. He could perform a full squat in clinic, stand on his heels and toes and walk without issue.

(JE 5, p. 8) Dr. Fields diagnosed Marrah with a right rib contusion that had resolved, noting he had reached maximum medical improvement as of August 23, 2017, and opined he had no impairment or restrictions with chronic, degenerative lower back pain "which is non-work related and may be related to his facet joints or other chronic degenerative changes." (JE 5, p. 8) Dr. Fields opined Marrah's current symptoms were not related to the February 2017 work injury, noting he could perform activities of daily living without issues, including riding his motorcycle for three hours. (JE 5, p. 8) Dr. Fields did not recommend any additional treatment for his work injury, but found Marrah may benefit from treatment at a pain clinic, including radiofrequency ablation for his chronic bilateral facet joint pain related to degenerative changes. (JE 5, p. 8)

On March 26, 2018, Marrah returned to Barnhill and Barnhill performed a radiofrequency denervation of the bilateral lumbar medial branch nerves at L3-L4, L4-L5, and L5-S1 levels and a radiofrequency denervation of the bilateral dorsal ramus of L5 at the sacral articular process. (JE 1, p. 48)

Marrah attended a follow-up appointment with Barnhill on May 7, 2018, complaining of pain mainly in the left iliolumbar region radiating into his lateral thigh and down his lower gluteal area, with an occasional ache on the right side, with the majority of his issues on the left side. (JE 1, p. 52) Barnhill listed an impression of left sacroiliac joint pain, status post bilateral lumbar radiofrequency ablation. (JE 1, p. 52) Barnhill documented, “[o]verall he is increased his activity he estimates 20% relief overall but of his low back pain he has greater than 80% relief. Provocative testing for Faber’s Fortin finger and Lewin Gaenslen’s were all positive hop test however was negative,” and noted he planned to administer a left sacroiliac joint injection. (JE 1, p. 52) Barnhill administered the injection on June 4, 2018. (JE 1, p. 54)

On June 2, 2018, Marrah returned to Barnhill complaining of low back pain in the gluteal and iliolumbar region. (JE 1, p. 57) Barnhill listed an impression of chronic low back pain related to facet arthropathy, degenerative disc disease, and left SI joint pain. (JE 1, p. 57) Barnhill documented Marrah had good range of motion in his spine and good strength in his lower extremities, noted the left SI joint injection provided some significant relief, but he continued to have an ache he rated as a three out of 10. Barnhill recommended strengthening of the iliolumbar and gluteal muscles using weight lifting maneuvers such as a dead lift, which he demonstrated. (JE 1, p. 57)

Marrah returned to Barnhill on September 18, 2018, reporting a leg length discrepancy and pain in his iliolumbar he described as a spasm provoked by lateral bending and extension. (JE 1, p. 59) Barnhill listed an impression of left iliolumbar and hip pain. (JE 1, p. 59) Barnhill documented Marrah had good lower extremity range of motion and strength, ordered manual therapy to relieve his pelvic obliquity and iliolumbar spasms, prescribed Flexeril, and directed Marrah to continue with naproxen and aspirin. (JE 1, p. 59)

In response to an inquiry from counsel for IES and Zurich, on March 29, 2019, Dr. Fields opined Marrah reached maximum medical improvement for a low back temporary exacerbation on April 19, 2017. (Ex. A, p. 3) Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) (“AMA Guides”), Dr. Fields found under Table 15-3, Marrah qualified as a DRE lumbar category 1 and assigned a zero percent whole person impairment, noting the category is used “for no significant clinical findings; no observed muscle guarding or spasm, no documentable neurological impairment and no documentable alteration in structural integrity or other indication related to the injury or illness with no fractures.” (Ex. A, p. 3)

Farid Manshadi, M.D., conducted an independent medical examination for Marrah on May 10, 2019. (Ex. 3) Dr. Manshadi reviewed Marrah’s medical records and examined him. (Ex. 3) During his interview, Marrah reported he was lifting up to 50

pounds at work. Marrah reported having an upper back injury about 25 years ago, but reported no prior low back injuries. (Ex. 3, p. 4) Dr. Manshadi noted on exam,

there was no atrophy in either lower extremity. He had normal reflexes at 2+ in both lower extremities. However, he had tenderness to palpation over the sacroiliac joints bilaterally. His right leg was longer than his left leg. He had normal sensation to light touch and pinprick in both lower extremities. Patrick's sign was positive bilaterally with the left side being slightly worse than the right side. His lumbar flexion and extension was full; however, lateral bending to the right was much better than to the left. Strength was 5/5 on manual muscle testing in both lower extremities. There was no significant tenderness to palpation over the lumbosacral spinous processes. His gait was mildly antalgic.

(Ex. 3, p. 4) Dr. Manshadi opined Marrah sustained SI joint dysfunction bilaterally as a result of the February 23, 2017 work injury, noting he did not find any records indicating he had any issues with his low back prior to the work injury. On exam he noted tenderness involving both sacroiliac joints, Patrick's sign was positive bilaterally, and he also had a leg length discrepancy. (Ex. 3, p. 4)

Dr. Manshadi opined Marrah reached maximum medical improvement on May 10, 2019, and using Chapter 15, page 384 of the AMA Guides, he found Marrah fell under DRE Lumbar Category 2 and assigned him a five percent whole person impairment. (Ex. 3, p. 4) Dr. Manshadi assigned Marrah a 40 or 50 pound lifting restriction, and imposed restrictions of occasional bending, stooping, and rotating at the waist, noting Marrah may benefit from occasional injections to his SI joints and a shoe lift. (Ex. 3, p. 4) Marrah testified he did not tell Dr. Manshadi he never had prior back injuries and noted there was a big difference between his 2013 injury and the February 2017 work injury. (Tr., p. 64) Marrah reported after the February 2017 injury he developed tightness from one side of his hip to the other hip at the belt line. (Tr., p. 64)

In late April 2020, Marrah requested additional medical care from IES and Zurich. (Ex. 9) IES and Zurich denied the request finding it was not compensable. (Ex. 9)

On May 19, 2020, Marrah attended an appointment with Barnhill complaining of severe spasms in his low back that had increased in severity over the past six weeks. (JE 1, p. 62) Barnhill listed an impression of chronic subacute thoracolumbar strain with associated myofascial spasms. (JE 1, p. 62) On examination, Barnhill noted Marrah had severe spasms in his low back that increased with ambulation and change of position, his walk was normal with discomfort in the iliolumbar region with inverted walk, "[r]ange of motion was restricted by 25% with forward flexion 50% left and right rotation left and right lateral bending and extension," most of the pain was with extension right lateral bending and left lateral rotation, he had good lower extremity strength with positive myofascial pain to the iliolumbar left side greater than the right starting in the lower lumbar section and progressing up to the thoracic area in the vicinity of the rhomboids and suprascapular region. (JE 1, p. 62) Barnhill recommended thoracic and



lumbar spine x-rays with flexion-extension maneuvers, ordered physical therapy for e-stimulation, a home exercise program, and additional modalities, prescribed Flexeril, naproxen and Tylenol 1000 milligrams. (JE 1, pp. 62-64) Marrah received the imaging and the reviewing radiologists listed impressions of mild lumbar spondylosis without acute fracture, dislocation, or evidence of dynamic instability and mid and lower thoracic spondyloarthropathy. (JE 1, pp. 65-66)

Marrah returned to Barnhill on June 30, 2020, after completing physical therapy. (JE 1, p. 72) Barnhill documented Marrah reported his low back pain had improved significantly, but he was complaining of low back pain over the iliolumbar region with significant pain over the L5 approximate transverse process bilaterally. (JE 1, p. 72) Marrah reported he was having difficulty sleeping and that his pain was worse when working and standing for long periods and requested additional injections. (JE 1, p. 72) Barnhill listed an impression of myofascial pain to the bilateral trapezius and bilateral longissimus thoracic region and performed myofascial trigger point injections to the bilateral trapezius and bilateral longissimus thoracic region. (JE 1, p. 72)

On July 27, 2020, Marrah attended a follow-up appointment with Barnhill, reporting more than a 50 percent relief after the injection, but reporting he still had some tender spots. (JE 1, p. 74) Barnhill documented he explained he could do additional trigger point injections in the spots, but he wanted Marrah to receive myofascial therapy from one of the myofascial massage therapists in the office. (JE 1, p. 74) Barnhill performed myofascial trigger point injections in the upper and lower back region and listed a post-procedure injection of fascial pain to the post thoracic area, lower rhomboids, and upper trapezius. (JE 1, p. 74) Marrah testified he received relief from the injections he received from Barnhill. (Tr., p. 38)

Marrah has continued to perform his regular assembly job since Dr. Cooper released him to full duty in April 2017. (Tr., p. 45) Marrah works overtime, 50 to 56 hours per week. (Tr., p. 49) Marrah has a lift table at work to limit his bending, but reported he bends over once in a while to grab parts, but it feels good on his back to stretch it bending over to grab the parts. (Tr., p. 51) Marrah has not looked for work since his February 2017 injury. (Tr., pp. 51-52) Since his work injury his hourly wage at IES has increased. (Tr., pp. 52-53)

Marrah testified he works on stretching every day to help with his back pain. (Tr., pp. 30-31) Marrah testified his ribs resolved 99.9 percent, noting he still feels a little bit in the morning when stretching. (Tr., p. 46) He reported he experiences pain every day at work and that his pain increases during his shift. (Tr., p. 31) Marrah takes Aleve and Tylenol 3 together to help with his pain. (Tr., p. 31) Marrah reported he is able to follow Dr. Manshadi's restrictions while performing his job at IES. (Tr., p. 33)

Marrah testified that since his work injury he cannot ride his motorcycle as far as he could before. (Tr., p. 36) Marrah reported before his work injury he could ride his motorcycle for 750 miles in one day and since the work injury he has not been able to ride more than 250 miles in one day. (Tr., p. 36) He also relayed that he is never

completely comfortable, even when sitting in a chair. (Tr., p. 36) Marrah avoids physical recreational activities including golfing and going on roller coasters and zip lines because he would be too sore if he did. (Tr., pp. 36-37)

During the summer of 2019 Marrah felt sharp, right-sided low back pain when lifting an oven with his brother. (Tr., pp. 56-57) Marrah reported he has had the sharp back pain maybe once since then. (Tr., p. 57)

## **CONCLUSIONS OF LAW**

### **I. Applicable Law**

This case involves several issues, including nature and extent of disability, alternate care, recovery of medical bills and medical mileage, and recovery of costs and interest under Iowa Code sections 85.27, 85.34, 86.40, and 535.3. In March 2017, the legislature enacted changes (hereinafter “Act”) relating to workers’ compensation in Iowa. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code section 85.34 apply to injuries occurring on or after the effective date of the Act. This case involves a work injury occurring before July 1, 2017, therefore, the provisions of the new statute involving extent of disability Iowa Code section 85.34 do not apply to this case.

The calculation of interest is governed by Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant’s Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

### **II. Nature of the Injury – Permanent Impairment**

To receive workers’ compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee’s injuries arose out of and in the course of the employee’s employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs “in the course of employment” when:

it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those

duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

It is well-established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

Marrah contends he sustained a permanent impairment caused by the February 2017 work injury. IES and Zurich deny his contention and allege Marrah did not sustain a permanent impairment. This dispute raises an issue of causation.

Two experts have provided causation opinions in this case, Dr. Fields, an occupational medicine physician who performed an independent medical examination of Marrah for IES and Zurich, and Dr. Manshadi, a physiatrist who conducted an independent medical examination for Marrah. I find the opinion of Dr. Manshadi more persuasive than the opinion of Dr. Fields.

Dr. Fields examined Marrah on December 26, 2017 and noted,

[w]hen I examined Mr. Marrah, he had an essentially normal clinical exam. He did not have any marked tenderness to palpation in his lumbar spine. He had full range of motion in his lower back including full flexion, backwards extension, lateral side bends. He had a negative straight leg raise test bilaterally. He had 5/5 strength in his bilateral lower extremities. He could perform a full squat in clinic, stand on his heels and toes and walk without issue.

(JE 5, p. 8) Dr. Fields opined Marrah reached maximum medical improvement on August 23, 2017, that his right rib contusion had resolved, and he had no impairment or restrictions with chronic, degenerative lower back pain, which was non work-related “and may be related to his facet joints or other chronic degenerative changes.” (JE 5, p. 8)

Pursuant to an inquiry from counsel, Dr. Fields provided an opinion letter on March 29, 2019, finding Marrah experienced a temporary exacerbation of his low back condition and that he reached maximum medical improvement on April 19, 2017. He assigned a zero percent permanent impairment rating based on the absence of significant clinical findings, no observed muscle guarding or spasm, and no documentable neurological impairment or alternation in structural integrity. (Ex. A, p. 3)

Dr. Manshadi examined Marrah on May 10, 2019. (Ex. 3) Marrah reported having an upper back injury 25 years ago, but reported no prior low back injuries to Dr. Manshadi. (Ex. 3, p. 4) Dr. Manshadi documented, on exam,

[h]e had normal reflexes at 2+ in both lower extremities. However, he had tenderness to palpation over the sacroiliac joints bilaterally. His right leg was longer than his left leg. He had normal sensation to light touch and pinprick in both lower extremities. Patrick’s sign was positive bilaterally with the left side being slightly worse than the right side. His lumbar flexion and extension was full; however, lateral bending to the right was much better than to the left. Strength was 5/5 on manual muscle testing in both lower extremities. There was no significant tenderness to palpation over the lumbosacral spinous processes. His gait was mildly antalgic.

(Ex. 3, p. 4) Dr. Manshadi opined Marrah sustained SI joint dysfunction bilaterally as a result of the February 2017 work injury, noting he did not find any records indicating any issues with Marrah’s low back prior to the work injury and on exam he noted tenderness

involving both sacroiliac joints, Patrick's sign was positive bilaterally, and he also had a leg length discrepancy. (Ex. 3, p. 4) Dr. Manshadi then assigned a permanent impairment of five percent and assigned permanent restrictions.

IES and Zurich contend Dr. Manshadi's opinion should be rejected because it is based on an incomplete history, given he did not reference a low back condition from 2013 or 2014 and prior magnetic resonance imaging. No medical records were produced documenting Marrah was diagnosed with SI joint dysfunction bilaterally or that he complained of sacroiliac pain or symptoms before the February 2017 work injury. Marrah sustained an injury to his upper back or thoracic spine in 1991 or 1992 and he received permanent restrictions of no lifting over 50 pounds based on the injury to his upper back or thoracic spine. Marrah reported in 2013 or early 2014 he was experiencing some low back issues and he underwent magnetic resonance imaging, which revealed herniated discs, but his physician could not figure out what was going on. (Tr., p. 46) No new restrictions were imposed at this time. Marrah continued to perform his full duties at work. Marrah continued to work under a lifting restriction from his earlier upper back injury. There is no evidence of a new injury at this time. IES and Zurich did not produce any medical records substantiating Marrah had ongoing sacroiliac symptoms before Marrah worked for IES or before the February 2017 work injury. Moreover, magnetic resonance imaging of his pelvis, thoracic spine, and lumbar spine following the February 2017 work injury did not reveal any herniated discs, but showed osteoarthritis in his hips bilaterally, mild degenerative disc changes in his lumbar spine, and a normal thoracic spine. (JE 2, pp. 11, 13-14) And after receiving Dr. Manshadi's opinion, IES and Zurich did not ask Dr. Fields to comment on Dr. Manshadi's findings.

In February 2017, Marrah fell on a metal bin. When he fell he hit the bin on his right side underneath the bottom of his ribs and his back. After the work injury Marrah complained of significant pain in his lower right thoracic and lumbar areas and right ilium, shooting down his thigh. There is no evidence he had these symptoms or complained of similar symptoms before the work injury. I find Marrah has established he sustained a permanent impairment caused by the February 2017 work injury. I also adopt Dr. Manshadi's work restrictions as Marrah's permanent work restrictions.

### **III. Extent of Disability**

"Industrial disability is determined by an evaluation of the employee's earning capacity." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 852 (Iowa 2011). In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee's "ability to be gainfully employed." Id. at 138.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(v).

At the time of the hearing Marrah was 57. (Tr., p. 8) Marrah graduated from high school. (Tr., p. 9) He has not completed any post-secondary training. (Tr., p. 9) Marrah is able to use a computer to shop and check his e-mail. (Tr., p. 39) Prior to working for IES, Marrah worked as a supervisor and production manager for many years. (Ex. 10, p. 4; Tr., pp. 9-12) Marrah continues to have pain as a result of his work injury. Dr. Manshadi imposed new restrictions of bending, stooping, and rotating at the waist occasionally, which he can follow with his position with IES. (Ex. 3, p. 4) He continues to perform his normal duties at IES. Marrah is able to ride his motorcycle up to 250 miles in a day. There is no indication Marrah's job is in jeopardy and his pay has increased since the work injury. This injury occurred prior to the major changes to the statute in 2017. Considering all of the factors of industrial disability, I find Marrah has sustained a ten percent industrial disability, entitling him to 50 weeks of permanent partial disability benefits, at the stipulated rate of \$481.40, commencing on the stipulated commencement date of February 24, 2017.

#### **IV. Medical Bills and Medical Mileage**

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability"). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

While the employer retains the right to choose the employee's medical care under the statute, the employee is not prohibited from seeking her own care when the employer denies compensability for the injury or the employee "abandons the protections of section 85.27 or otherwise obtains his or her own medical care independent of the statutory scheme." Brewer Strong v. HNI Corp., 913 N.W.2d 235,

248 (Iowa 2018) (quoting Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010)). In Brewer-Strong and Gwinn, the court held the employer's duty to furnish reasonable medical care includes unauthorized care if the employee is able to prove "by a preponderance of the evidence that such care was reasonable and beneficial" under the totality of the circumstances. Id. (quoting Gwinn, 779 N.W.2d at 206). The court further held "unauthorized medical care is beneficial if it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id.

Marrah seeks to recover unpaid medical bills from Regional Medical Center for May 19, 2020, May 21, 2020 through May 29, 2020, June 20, 2020 through June 26, 2020, June 30, 2020, and July 27, 2020, totaling \$3,165.46, and that IES and Zurich be responsible \$883.38 in subrogation from NexClaim. (Ex. 11) Marrah testified the treatment provided him with pain relief. Dr. Manshadi found Marrah may need ongoing injections in the future. While Dr. Fields did not find causation, he also noted Marrah may benefit from injections in the future. I find the care Marrah received on his own to be reasonable and beneficial and that IES and Zurich are responsible for the above medical bills and NexClaim subrogation claim.

Marrah seeks to recover medical mileage set forth in Exhibit 1 for the February 23, 2017 visit from Regional Medical Center to his home, clinic visits at Medical Associates on February 23, 2017, March 2, 2017, March 13, 2017, March 27, 2017, visits to Physical Therapy Solutions on March 15, 2017, March 17, 2017 through March 23, 2017, April 14 through April 20, 2017, and May 21, 2020 through June 26, 2020, to Mercy Medical Center for his pelvis, thoracic spine, and lumbar spine magnetic resonance imaging on March 31, 2017, for an orthopedic consultations with Dr. Cooper on April 12, 2017 and August 23, 2017, for chiropractic visits at Lifetime Chiropractic from April 28, 2017 through June 28, 2017, July 10, 2017 through August 7, 2017, to the pain clinic on August 29, 2017, September 5, 2017, October 2, 2017, October 30, 2017, November 2, 2017, March 26, 2018, May 7, 2018, June 4, 2018, July 2, 2018, September 18, 2018, May 19, 2020, June 30, 2020, and July 27, 2020, for his independent medical examination with Dr. Fields on December 26, 2017, for his independent medical examination with Dr. Manshadi on May 10, 2019, totaling \$435.68. (Ex. 2) Claimants are entitled to recover transportation expenses for medical treatment and examinations necessitated by work injuries. Marrah is entitled to recover \$435.68 in medical mileage.

At hearing Marrah did not request any current medical care from a medical practitioner as part of a request for alternate medical care. He did not request any medical care from a medical practitioner in his post-hearing brief. IES and Zurich remain responsible for all causally related medical care and bills in the future.

## **V. Costs**

Marrah seeks to recover the \$100.00 filing fee, \$13.34 for the cost of service, \$94.30 for the cost of his deposition, \$20.00 for payment of medical records from

Physical Therapy Solutions, \$32.25 for payment of medical records from Regional Health Center, \$10.50 for payment of medical records from Regional Medical Center, \$6.50 for payment of medical records from Regional Medical Center, and \$41.83 for payment of medical records from Medical Associates. (Ex. 1)

Iowa Code section 86.40, provides, “[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.” Rule 876 Iowa Administrative Code 4.33, provides costs may be taxed by the deputy workers’ compensation commissioner for: (1) the attendance of a certificated shorthand reporter for hearings and depositions; (2) transcription costs; (3) the cost of service of the original notice and subpoenas; (4) witness fees and expenses; (5) the cost of doctors’ and practitioner’s deposition testimony; (6) the reasonable cost of obtaining no more than two doctors’ or practitioners’ reports; (7) filing fees; and (8) the cost of persons reviewing health service disputes. The administrative rule expressly allows for the recovery of \$100.00 filing fee, \$13.34 cost of service, and \$94.30 cost of Marrah’s deposition and I find IES and Zurich should be responsible for these costs. The rule does not allow for the recovery of the cost of obtaining medical records. I find Marrah is not entitled to recover the cost of the medical records he obtained.

In his brief, Marrah cites to and discusses Iowa Code section 85.39, which governs independent medical examinations, including cost recovery. Marrah did not request recovery of the cost of an independent medical examination on the hearing report and he did not submit a bill from Dr. Manshadi in his exhibits. Even assuming he did request reimbursement for the cost of the independent medical examination, no physician had provided an impairment rating before Dr. Manshadi conducted his examination, so he is not entitled to recover the cost of the exam under the statute and he did not submit an itemized bill to allow for the recovery of the cost of the report under the administrative rule.

## **ORDER**

IT IS THEREFORE ORDERED, THAT:

Defendants shall pay Claimant fifty (50) weeks of permanent partial disability benefits at the stipulated rate of four hundred eighty-one and 40/100 dollars (\$481.40), commencing on the stipulated commencement date of February 24, 2017.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. Sanchez v. Tyson, File No. 5052008 (Apr. 23, 2018 Ruling on Defendant’s Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue).



Defendants shall reimburse Marrah three thousand one hundred sixty-five and 46/100 dollar (\$3,165.46) for medical bills and are responsible for NexClaim subrogation amount of eight hundred eighty-three and 38/100 dollar (\$883.38), and remain responsible for all causally related medical bills and treatment, including any causally related future treatment.

Defendants shall reimburse Marrah four hundred thirty-five and 68/100 dollars (\$435.68) for medical mileage.

Defendants shall reimburse the claimant one hundred and 00/100 dollars (\$100.00) for the filing fee, thirteen and 34/100 dollars (\$13.34) for the cost of service, and ninety-four and 30/100 dollars (\$94.30) cost of Claimant's deposition.

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

Signed and filed this 14<sup>th</sup> day of July, 2021.

A handwritten signature in black ink, appearing to read 'H. Palmer', is written over a horizontal line.

HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joshua Moon (via WCES)

Edward Rose (via WCES)

**Right to Appeal:** This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.