BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DANIEL POLE,

Claimant,

vs.

BROCK HOLDINGS III,

Employer,

and

STARR INDEMNITY & LIABILITY CO.,

Insurance Carrier,
Defendants.

File No. 5063514

ARBITRATION

DECISION

Head Notes: 1108.10, 1402.30, 2502

STATEMENT OF THE CASE

Claimant, Daniel Pole, filed a petition in arbitration seeking workers' compensation benefits from Brock Holdings III (Brock), employer, and Starr Indemnity & Liability Company, insurer, both as defendants. This case was heard in Des Moines, Iowa on March 29, 2019 with a final submission date of April 30, 2019.

The record in this case consists of Joint Exhibits 1-13, and the testimony of claimant, claimant's wife, Lisa Pole, and David Neal. Mr. Neal testified by telephone.

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.

ISSUES

1. Whether claimant sustained an injury that arose out of and in the course of employment.

2. The extent of claimant's entitlement to temporary benefits.

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

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

5. Whether claimant is entitled to reimbursement for an independent medical evaluation (IME) under Iowa Code section 85.39.

FINDINGS OF FACT

Claimant was 63 years old at the time of hearing. Claimant graduated from high school. Claimant worked for a beverage company. He also worked as a janitor. (Joint Exhibit 7; Deposition pages 14-15)

Claimant began working as a helper for insulators. Claimant worked as an apprentice for approximately five years. For 17 years he has worked as a journeyman insulator. (Transcript p. 14)

Claimant lives in Chicago. Claimant testified that beginning in 2013 he began to work a lot of jobs out of the state of Illinois.

On October 10, 2016 claimant began working as an insulator on a job site in Marshalltown. The job site was a power station. Claimant testified he worked the second shift at the Marshalltown power station.

Claimant testified in deposition and at hearing, he performed insulation duties the entire first day. He said he also applied insulation all day the second day he worked. (Jt. Ex. 7; Depo. p. 25; Transcript p. 51)

David Neal testified he was a site safety manager at the Marshalltown power plant for Brock where claimant worked as an insulator. Brock was a subcontractor on the power station job. In that capacity, Mr. Neal testified he was familiar with claimant's workers' compensation claim and with claimant's activities the two days claimant was employed at the Marshalltown power station.

Mr. Neal testified the first day claimant was on the job site claimant underwent approximately three to four hours of orientation with the general contractor. He said the remainder of the first day, claimant would have undergone orientation with Brock. Mr. Neal testified no employee could work at the job site without going through both orientations. (Tr. pp. 77-81)

Mr. Neal testified that on the second day, claimant would have finalized any other orientation and gotten fitted with a safety harness. He said claimant's tools also would have been tethered. Mr. Neal testified claimant would have likely begun performing insulator job duties around lunchtime in the middle of his shift on the second day on the job. (Tr. p. 83)

On rebuttal, claimant testified he did not recall going through an orientation on the first day. When asked, on rebuttal, if he attended orientation claimant testified "It's hard to say. I don't know." (Tr. p. 115)

Claimant testified in deposition he worked on the fourth floor of the Marshalltown power station. (Jt. Ex. 7; Depo. p. 31) He testified at hearing he worked on the second floor of the Marshalltown power station. (Tr. 20)

Mr. Neal testified claimant worked on the second floor of the power station project. (Tr. pp. 86-87)

Claimant testified in deposition he walked up and down stairs on the fourth floor approximately four times a day. (Jt. Ex. 7; Depo. p. 31) At hearing, claimant said he walked up and down stairs at least seven times a day. He said he had to climb 60-80 stairs to get to the second floor. (Tr. pp. 21-22, 48)

Mr. Neal testified claimant had to climb approximately 20-22 stairs to get from the first floor to the second floor. (Tr. 87)

Claimant testified in deposition he routinely worked multi-story buildings, on various job sites, and walking up stairs was typical. (Ex. 7, p. 45; Depo. p. 45

At hearing and at deposition, claimant testified that at the Marshalltown plant he insulated a large pipe approximately 36-38 inches in diameter. (Jt. Ex. 7; Depo. p. 17; Tr. p. 15) Mr. Neal testified that at the Marshalltown plant claimant worked on a pipe that was approximately 20 inches. (Tr. p. 89)

At deposition, claimant said each sheet of insulation that was wrapped around the pipe weighed between 30-60 pounds. (Jt. Ex. 7; Depo. p. 18) At hearing, claimant testified the insulation weighed approximately 35-40 pounds per sheet. (Tr. p. 16) Mr. Neal testified each sheet of insulation weighed approximately 12-13 pounds. (Tr. pp. 89-90)

At hearing, claimant testified he carried a five-gallon bucket that had between 30-40 pounds of tools and a tool belt. He also said he carried a harness that weighed between 20-25 pounds. He said at the end of the day, he carried all of his tools and his harness, down the stairs from his work area. He said he put the tools and the harness in the fabrication trailer. (Tr. pp. 24-25)

Mr. Neal testified that an insulator's tools weighed between five to seven pounds and the safety harness weighed approximately 12-15 pounds. (Tr. 84)

Claimant testified in deposition that following his second day on the job site, he went to a trailer to wait to be released from the work site. He said he punched out on the time clock and walked to a car with two coworkers. He said he recalled taking his boots off. His next recollection was waking up in the hospital. (Jt. Ex. 7; Depo. pp. 28-30)

An accident report, prepared by Mr. Neal, indicates claimant was in the back seat of a car with his coworkers. Claimant was not responsive to coworkers, who found claimant was turning blue. Claimant's eyes were rolled backwards. Claimant's coworkers took claimant back to the plant where he was shocked by an AED. (Jt. Ex. 12, p. 199)

Claimant was taken from the Marshalltown plant by an ambulance to a hospital in Marshalltown. Records indicate claimant had finished his shift and was walking with coworkers to a car in the parking lot. Claimant was breathing heavily and complained of shortness of breath. Claimant bent over to take off his boots and became unresponsive. Claimant was pulseless and foaming at the mouth. Claimant was shocked several times by a nurse and regained a pulse. (Jt. Ex. 2, p. 4)

Claimant was kept at the hospital in Marshalltown for several days. He was assessed as having a cardiac arrest. He was admitted to intensive care. (Jt. Ex. 2, pp. 5-19)

On October 14, 2016 claimant underwent a left heart catheterization and a coronary angioplasty. Surgery was performed by Grace Ayafor, M.D. Claimant was assessed as having severe coronary artery disease with chronically occluded RCA. Claimant was transferred to Mercy Medical Center for coronary artery bypass grafting. (Jt. Ex. 2, pp. 16-17)

Claimant was transferred to Mercy Medical Center in Des Moines on October 21, 2016. Claimant was assessed as having coronary artery disease. Claimant underwent coronary artery bypass surgery. The surgery was performed by Ganga Prabhakar, M.D. (Jt. Ex. 3, pp. 27-29)

Claimant was discharged from Mercy on October 26, 2016. Notes from claimant's discharge note an angiogram showed triple vessel coronary artery disease. Claimant was recommended to follow up with a cardiologist in Chicago. (Jt. Ex. 3, p. 30)

On November 11, 2016 claimant was evaluated by Dilap Shah, M.D. Claimant indicated he was doing well until three to four days prior when he began having right knee joint pain. Claimant was assessed as having sepsis and drainage from a bypass surgery site, and acute right knee swelling. Claimant was treated with IV antibiotics. (Jt. Ex. 4, pp. 33-34)

On November 13, 2016 claimant was seen by Vsevolod Tikhomirov, M.D. Claimant was assessed as having a post-surgical wound infection. He was treated with dressings and IV antibiotics. (Jt. Ex. 4, pp. 60-61)

On January 24, 2018 claimant was evaluated by Derrick Brown, PA, an orthopedic surgery physician's assistant. Claimant had a revision of his prior right knee replacement and was doing well. (Jt. Ex. 6, p. 10)

In a June 27, 2018 report Sunil Bansal, M.D. gave his opinions of claimant's condition following an IME. Claimant no longer had chest pain and his infection had healed. Claimant was easily fatigued. Claimant had moderate right knee pain. Claimant was using a cane. (Jt. Ex. 8, pp. 115-122)

Claimant told Dr. Bansal he was working on a 46-inch pipe at the Marshalltown Power Station. Claimant said he had to walk six to seven flights of stairs that were 25-30 steps per flight. He said he had to go up and down stairs three to four times for a 12-hour shift. Claimant was carrying approximately 60 pounds of supplies before and after his shift. Claimant had to lift bundles of insulation every 10-15 minutes. The bundles of insulation weighed between 45-50 pounds per piece. (Jt. Ex. 8, pp. 123-124)

Dr. Bansal assessed claimant as having a myocardial infarction and a right knee infection of a knee prosthesis. Dr. Bansal opined claimant's work was a substantial contributing factor for his myocardial infarction. Dr. Bansal noted,

> Specifically, it was his exertional activities that he performed within the hour of his heart attack that were the most crucial. Mr. Pole had just went down multiple flights of stairs carrying supplies and his tools that weighed in combination at least 30 pounds. Shortly afterwards he had a heart attack. This physical exertion served as a trigger for his heart attack. The fact that it occurred shortly after the exertion, this trigger makes the association all the more compelling.

(Jt. Ex. 8, p. 125)

Dr. Bansal also quoted a 1993 study from the New England Journal of Medicine suggesting an increased risk of acute myocardial infarction during strenuous activities or within a one-hour period. (Jt. Ex. 8, p. 125) That journal study is not made a part of the record in this case.

Regarding the right knee, Dr. Bansal opined claimant's chest wound from his coronary bypass surgery became infected leading to sepsis, leading to infection, and causing two revision surgeries for the knee. Dr. Bansal found claimant had a 10 percent permanent impairment to the body as a whole due to his heart attack. He opined claimant was not at maximum medical improvement (MMI) for his right knee. He limited claimant to lifting 10 pounds occasionally and no prolonged walking or standing more than 20 minutes. (Jt. Ex. 8, pp. 125-127)

In an August 6, 2018 letter Dr. Shah indicated he had reviewed Dr. Bansal's report and agreed the work claimant performed at Brock Industries was a substantial contributing factor towards his myocardial infarction. (Jt. Ex. 5, p. 82)

On September 17, 2018 claimant underwent an IME with Paul Conte, M.D. Dr. Conte specializes in general vascular surgery. He opined claimant's cardiac event was

not caused by his employment. This is because claimant had preexisting hypertension, hyperlipidemia, diabetes, was obese, had COPD, sleep apnea, was an active smoker, and had a family history of coronary artery disease. He opined these significant risk factors for myocardial infarction essentially made Mr. Pole almost certain to have a heart attack. He indicated it was just a question of when that heart attack would occur. (Jt. Ex. 9, p. 140)

Dr. Conte noted claimant had worked for years as an insulator. He did not believe the work made claimant more susceptible to a myocardial infarction. He believed claimant was a high risk for myocardial infarction solely because of his personal health risks. (Jt. Ex. 9, pp. 140-141)

Dr. Conte opined claimant's surgical wound infection led to an infection in his right knee, which led to the need for knee surgery. (Jt. Ex. 9, p. 141)

Dr. Conte opined claimant had a 10 percent permanent impairment to the body as a whole regarding his cardiac event. He did not believe claimant could return to his prior occupation, but could return to work at a less physically active job. (Jt. Ex. 9, p. 141)

In deposition, Dr. Conte indicated two to three risk factors would be a significant number of risk factors for a person to have a heart attack. He noted claimant had at least seven risk factors. (Jt. Ex. 10; Depo. pp. 18-19) Dr. Conte opined given the high number of risk factors, claimant was going to have a heart attack and it was only a question of when that heart attack would occur. (Jt. Ex. 7; Depo. p. 31)

Claimant followed up with Dr. Shah on December 4, 2018. Claimant had gained 40 pounds and was found to be obese. Claimant was not following diet recommendations, not exercising, and was again smoking. He was assessed as having coronary artery disease, unchanged, and ischemic congestive cardiomyopathy that was deteriorating. (Jt. Ex. 5, pp. 89-95)

In a December 14, 2018 supplemental report, Dr. Bansal further opined regarding claimant's condition. Dr. Bansal disagreed with Dr. Conte's analysis. He agreed claimant had several independent risk factors for heart disease. He believed claimant's physical exertion at work was a triggering event that brought about the myocardial event. (Jt. Ex. 8, pp. 127-129)

In a January 14, 2019 note, Dr. Shah noted,

> Mr. Pole had several risk factors of coronary artery disease. Myocardial infarction occurs often with activity of daily living, sexual activity in the early morning hours, both with and without risks.

> Heavy physical work, even in those who are used to doing it, can trigger excessive catecholamine secretion and plaque rupture leading to a myocardial infarction. It is however, difficult to prove exact causation.

(Jt. Ex. 5, p. 100)

Claimant testified he cannot return to work as an insulator. He says he can lift up to 30 pounds. He says he can stand between 15-20 minutes. He says he can only walk half a block before he has to stop.

Lisa Pole testified she is claimant's wife. Ms. Pole testified since his heart attack and knee surgery, claimant no longer mows the lawn. She testified claimant has minimal household chores. She said claimant could only walk half a block. She says claimant has difficulty going up and down stairs at home due to his condition.

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant's injury arose out of and in the course of employment.

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

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

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

Iowa claimants with preexisting circulatory or heart conditions are permitted, upon proper medical proof, to recover workers' compensation benefits where the employment contributes something substantial to increase the risk of injury or death. The employment contribution must take the form of an exertion greater than nonemployment life. Sondag v. Ferris Hardware, 220 N.W.2d 903 (Iowa 1974). The comparison, however, is not with the employee's usual exertion in employment, but with exertions of normal nonemployment life of this or any other person. Id., at 905. These exertions may be physical or emotional. Swalwell v. William Knudson & Son, Inc., II Iowa Industrial Commissioner Report 385 (App. Dec. 1982). The Sondag rule is favored by Professor Larson in his treatise on workers' compensation. See 2-46 Larson's Workers' Compensation Law, Section 46.03. According to Professor Larson, the causation test is a two-part analysis. First, medical causation must be established. That is, medical experts must causally relate the alleged stress, whether emotional or physical, to the heart injury. Second, legal causation must be established. That is, the fact-finder must determine whether the medically-related stress is more than the stress of everyday nonemployment life.

In Iowa, the legal causation component of the analysis is satisfied under one of three circumstances. The first situation is when heavy exertion, ordinarily required by the work, is superimposed on a defective heart, aggravating the preexisting condition. The second situation involves instances of unusual strenuous employment exertion imposed on a pre-existing diseased condition. The final situation supporting compensation is when damage results from continued exertion required by the employment after the onset of the heart attack. Riley v. Oscar Mayer Foods Corp., 532 N.W.2d 489,492(Iowa Ct. App. 1995).

The parties agree claimant sustained a heart attack on October 11, 2016 while in the parking lot of the job site where he worked. The parties dispute the level of exertion claimant underwent prior to the heart attack, and whether that exertion caused claimant's heart attack.

Claimant testified in deposition and on direct exam at hearing he performed insulation tasks for two days straight, on the two days he worked for Brock. (Jt. Ex. 7; Depo. p. 25; Tr. p. 51)

Mr. Neal testified claimant underwent orientation the first full day he worked at the job site. Mr. Neal testified it was not until after lunch, on the second day, that claimant actively performed any insulation duties. (Tr. pp. 77-81)

On rebuttal, claimant was asked if he actually underwent training the first full day on the job site. Claimant responded, "It's hard to say. I don't know." (Tr. p. 115)

Claimant's description of the stairs he had to climb to get to his work area varies.

Claimant testified in deposition he worked on the fourth floor of the power station. (Jt. Ex. 7; Depo. p. 21) At hearing, claimant testified he worked on the second floor of the power station. (Tr. p. 20)

Claimant testified in deposition he walked up and down stairs on the fourth floor four times a day. (Jt. Ex. 7, p. 21) At hearing, claimant said he went up and down stairs seven times a day. He said he had to climb 60-80 stairs to get up to the second floor. (Tr. pp. 21-22, 48)

Claimant told Dr. Bansal he had to walk six to seven flights, consisting of 25-30 stairs per flight. In other words, claimant told Dr. Bansal he walked between 150-210 stairs three to four times per shift. (Jt. Ex. 8, p. 124)

Mr. Neal testified claimant worked on the second floor at the power station. He said claimant had to walk between 20-22 steps to get to the second floor. (Tr. p. 87)

Claimant testified he worked on a 36-inch pipe. Mr. Neal testified claimant worked on a 20-inch pipe. (Tr. pp. 15-89)

Claimant testified he carried between 30-40 pounds of tools and a work harness weighing between 20-25 pounds. In brief, claimant testified he carried between 50-60 pounds of tools and equipment. (Tr. pp. 24-25) Claimant told Dr. Bansal his tools and supplies weighed approximately 60 pounds. (Jt. Ex. 8, p. 123) Mr. Neal testified claimant's tools probably weighed between 5-7 pounds, and the safety harness weighed between 12-15 pounds. (Tr. p. 84)

In deposition claimant said each sheet of insulation weighed between 30-60 pounds. (Jt. Ex. 7; Depo. p. 18) At hearing claimant testified each sheet weighed between 35-40 pounds. (Tr. p. 16) Mr. Neal testified each sheet of insulation weighed approximately 12-13 pounds. (Tr. p. 89-90)

Claimant's testimony regarding the actual time he spent performing insulation duties while working on the power station job varies. On direct exam claimant testified he worked a full 12-hour shift the first day on the power station job. On rebuttal he

testified he was unsure if he actually did any insulation duties through the first day on the job. His testimony regarding the floor he worked on, and the number of stairs he had to climb varies. The record indicates claimant has given different estimates of weight for the tools and supplies he had to carry. The record indicates claimant has given different weights for the insulation materials he used to insulate pipes. Claimant was on the Marshalltown job site for just two days. Mr. Neal was the site lead safety manager at the Marshalltown plant.

Mr. Neal's testimony regarding claimant's job duties and the exertion he had on his job was far more consistent than claimant. Mr. Neal has far greater experience with the Marshalltown job site than claimant. Given this record, it is found Mr. Neal's testimony regarding the exertion claimant had on his job with Brock is more convincing than the testimony of claimant. Claimant's testimony regarding the exertion he spent on the Marshalltown job is found unconvincing. Given this record, Mr. Neal's testimony regarding the time claimant worked, the stairs claimant climbed, the weight of the tools and materials claimant worked with, and the exertion claimant had to undergo on the job, is found to be more convincing than the testimony of claimant.

Three experts have also testified regarding causation of claimant's heart attack.

As noted above, Dr. Bansal opined claimant's heart attack was caused by the exertion claimant underwent from walking multiple flights of stairs and carrying tools and supplies that weighed at least 30 pounds. Dr. Bansal bases his opinion on the understanding claimant went up and down 150-210 stairs and carried 45-50 pounds. (Jt. Ex. 8, p. 124)

Dr. Bansal's opinion regarding the exertion claimant worked and the causation of his heart attack is based upon unreliable information regarding the physical requirements of claimant's job. As noted above, claimant's description of the exertion required on his job as insulator is found not credible. In brief, Dr. Bansal bases his opinion of causation on an unreliable description of the physical requirements of claimant's job.

Because of this, it is found Dr. Bansal's opinions regarding causation are found not convincing.

Dr. Shah is a cardiologist who actively treats claimant. Initially, Dr. Shah opined he agreed with the causation opinion of Dr. Bansal. In a January of 2014 note Dr. Shah noted, "It is however, difficult to prove exact causation." (Jt. Ex. 5, p. 100)

Dr. Conte opined that a person with two to three risk factors would have significant risk factors for a heart attack. Dr. Conte noted claimant had at least seven risk factors. Dr. Conte did not believe claimant's work made claimant more susceptible to a heart attack.

Dr. Bansal's opinions regarding causation are based upon an unreliable description of the exertion requirements of claimant's jobs. Dr. Bansal's opinion is found not convincing. Dr. Shah's last opinion regarding causation noted it is difficult to prove exact causation. Dr. Conte opined claimant had a number of significant risk factors for his heart attack and that claimant's work did not cause his heart attack. Given this record, it is found claimant has failed to carry his burden of proof his heart attack arose out of and in the course of his employment.

As claimant has failed to carry his burden of proof his heart attack arose out of and in the course of employment, all other issues, except for the reimbursement of the IME, are moot.

The final issue to be determined is whether claimant is entitled to reimbursement for Dr. Bansal's IME.

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

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Regarding the IME, the Iowa Supreme Court provided a literal interpretation of the plain language of Iowa Code section 85.39, stating that section 85.39 only allows the employee to obtain an independent medical evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 847 (Iowa 2015).

Under the Young decision, an employee can only obtain an IME at the employer's expense if an evaluation of permanent disability has been made by an employer-retained physician.

Dr. Bansal, the employee-retained expert, issued his report on June 27, 2018. Dr. Conte, the employer-retained physician, issued his opinions regarding claimant's impairment in a report dated September 17, 2018. Based on the chronology of the reports, claimant has failed to prove he is entitled to reimbursement for the Bansal IME under Iowa Code section 85.39.

ORDER

Therefore, it is ordered:

That claimant shall take nothing from these proceedings.

That both parties shall pay their own costs.

Signed and filed this 15th day of May, 2019.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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