BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERTO AYARD, Claimant, vs. CRYSTAL DISTRIBUTING SERVICES, INC., Employer, and Le MARS INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5054030 REVIEW-REOPENING DECISION Head Note No.: 2905

STATEMENT OF THE CASE

The claimant, Roberto Ayard, filed a petition for review-reopening and seeks workers' compensation benefits from Crystal Distributing Services, Inc., his employer and LeMars Insurance Company, its insurance carrier. The claimant was represented by James Byrne. The defendants were represented by Thomas Reade.

The matter came on for hearing on July 14, 2020, before Deputy Workers' Compensation Commissioner Joe Walsh in Des Moines, Iowa via Court Call. The record in the case consists of joint exhibits 1 through 6; claimant's exhibits 1 through 6; and defense exhibit A. The claimant testified under oath at hearing. Amy Pederson was appointed and served as the court reporter. Astrid Gale served as the qualified Spanish language interpreter. The parties also requested the agency take administrative notice of portions of the agency file. The matter was fully submitted on August 31, 2020, after helpful briefing by the parties.

ISSUES

The parties submitted the following issues for determination:

1. The primary issue in this case is whether the claimant has proven the prerequisites to demonstrate he is entitled to review-reopening benefits under Iowa Code section 86.14.

2. Whether the claimant is entitled to an independent medical examination.

3. Costs are disputed, including the medical evaluation of Sunil Bansal, M.D.

STIPULATIONS

The parties filed a hearing report at the commencement of the review-reopening hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this review-reopening 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.

Through the hearing report, the parties stipulated and/or established in the prior hearing:

1. The parties had an employer-employee relationship at the time of the injury.

2. Claimant sustained an injury which arose out of and in the course of employment on July 25, 2014.

3. This work injury is a cause of both temporary and permanent disability.

4. Temporary disability/healing period and medical benefits are not in dispute.

5. The weekly rate of compensation is $439.09.

6. Affirmative defenses have been waived.

PROCEDURAL HISTORY AND FINDINGS OF FACT

This is a review-reopening case. There have been two previous hearings/snapshots of the claimant's condition. The first hearing occurred on May 20, 2016. An arbitration decision was filed on August 11, 2016, which awarded the claimant a 25 percent industrial disability. This decision was not appealed and became a final agency decision. The claimant filed review-reopening and a second hearing was held on October 26, 2018. A review-reopening decision was filed on January 24, 2019, which increased claimant's award to 40 percent. This decision also was not appealed and became a final agency decision. The two prior final agency decisions are entered into evidence as Claimant's Exhibits 1 and 2. These decisions are the law of the case and not subject to review herein. The third snapshot of the claimant's condition was taken in a hearing before the undersigned on July 14, 2020.

Roberto Ayard resides in Waterloo, Iowa, with his wife Anna. He was 56-years-old at the time of his most recent hearing. Mr. Ayard was born in Mexico and only has three years of formal education. He is not fluent in English. Spanish is his primary language. He has virtually no computer skills. He testified through a Spanish language interpreter and his testimony is found to be generally credible. His testimony was consistent with the other portions of the record and there was nothing about his demeanor which caused the undersigned any concern about his honesty.

May 20, 2016 Hearing/Snapshot, filed August 11, 2016:

Mr. Ayard's personal and work history were outlined at his first hearing.

Ayard was born in Michoacan, Mexico, and at the time of the hearing he was 52. (Transcript, page 13) Ayard is married and is the father of five children. (Tr., p. 12) At the time of his injury, Ayard had three dependent children living with him. (Tr., p. 12) Ayard attended school through the third grade in Mexico. (Tr., p. 13; Exhibit 5, page 148) Ayard does not use tobacco. (Ex. 1, p. 46)

In 1986, Ayard moved to the United States and lived in California. (Tr., pp. 13, 18) Ayard has taken English classes, but he is not able to read or write in English. (Tr., p. 14) Ayard is able to understand simple instructions in English. (Tr., p. 13-14) Ayard does not know how to type or how to use a computer. (Tr., p. 14)

Before moving to the United States, Ayard worked in agriculture planting beans and corn and as a fisherman. (Tr. pp. 16-17) When he worked in agriculture, Ayers lifted containers of beans and corn weighing 10 to 12 pounds each throughout the day and often had to bend and squat. (Tr., p. 16) Ayard was not paid wages and received food in exchange for his labor. (Tr., p. 17) As a fisherman, Ayard lifted stones weighing 60 to 80 pounds used with fishing nets, and he was paid the equivalent of $20.00 per day in pesos. (Tr., p. 18)

After moving to California, Ayard worked in agriculture picking grapes and peaches for one to two years. (Tr., p. 19) Ayard climbed ladders to pick the fruit and placed the fruit in containers he carried on his chest. (Tr., p. 19) Ayard reported the ladders weighed 60 to 80 pounds and the containers weighed 50 to 60 pounds. (Tr., p. 19) Ayard left agriculture and accepted a position in a furniture factory where he assembled, pushed, and lifted furniture for one to two years. (Tr., pp. 19-20) The furniture weighed between 50 and 60 pounds. (Tr., p. 20)

After leaving the furniture factory, Ayard accepted a position with American Racing where he manufactured rims for car wheels. (Tr., p. 20). Ayard worked for American Racing for approximately four years. (Tr., p. 20) Ayard reported the rims came in different sizes and some weighed between 30 and 50 pounds. (Tr., p. 21)

Ayard left American Racing and returned to Mexico where he owned a retail car business and a grocery store. (Tr., p. 21) Ayard reported the beans and corn he sold at the store came in boxes weighing between 50 and 60 pounds, and he also moved bags weighing 80 to 100 pounds. (Tr., pp. 21-22)

> Ayard moved back to the United States and accepted a position peeling pigs' legs for Swift in Marshalltown. (Tr., pp. 22-23) Ayard left Swift to work for Crystal Distributing in November 2001. (Tr., p. 23; Ex. 5, p. 149)
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> Crystal Distributing hired Ayard to pack fresh meat and to stack boxes. (Tr., p. 25) Ayard continued with the position for four to five years until he moved into his current forklift driver position. (Tr., pp. 25, 43-44; Ex. 5, p. 149) The forklift driver position requires Ayard to drive a forklift, unload trucks, run the line, lift boxes, move pallets, and lift trash containers. (Tr., pp. 26, 43) Ayard testified the position requires him to lift boxes weighing 60 to 70 pounds, containers weighing between 50 and 60 pounds, and pallets weighing different amounts. (Tr., p. 26)

(Cl. Ex. 1, pp. 3-4)

The arbitration described his work injury as follows:

> On July 25, 2014, Ayard was stacking boxes of frozen meat at work. (Tr., p. 27) Ayard testified, "[w]hen I grabbed a box, I twisted to the left. That's went I felt a pull and very severe pain in my back. And I dropped the box. It fell to the ground." (Tr., p. 27) Ayard reported the box weighed between 60 and 70 pounds and the pain he experienced was in his low back. (Tr., pp. 27-28) Ayard reported the incident to his supervisor and he was sent to Allen Occupational Health Services in Waterloo. (Tr., p. 28)

(Cl. Ex. 1, p. 4) The arbitration decision described, in detail, the course of treatment Mr. Ayard underwent following his work injury. (Cl. Ex. 1, pp. 4-10)

It is important to note that at the time of the first hearing, the defendants took the position that Mr. Ayard was not at maximum medical improvement from his work injury. (See Cl. Ex. 1, pp. 2, 12) This position was rejected by the Deputy and Mr. Ayard was found to be at MMI. (Cl. Ex. 1, p. 12) The defendants, however, did not dispute medical causation of Mr. Ayard's low back condition. "Crystal Distributing and Le Mars Insurance have accepted responsibility for Ayard's alleged back injury and have agreed to pay all causally related medical bills." (Cl. Ex. 1, p. 2)

Mr. Ayard's course of treatment began shortly after the injury and continued through the date of the first hearing. His primary low back diagnosis was best described by David Segal, M.D.

> Ayard's attorney also sent Dr. Segal a letter on April 19, 2016, providing a summary of Ayard's medical history, and asking Dr. Segal a series of questions concerning his opinions. (Ex. 3, pp. 142F-42K) Dr. Segal agreed that he performed an independent medical examination of Ayard and treated Ayard's back pain. (Ex. 3, p. 142J) Dr. Segal responded he agreed with the following questions:

> 3. Is it correct that your diagnosis is of Mr. Ayard's 7/25/14 work injury is disk herniations at L4-5 and L5-S1 with associated lumbar radiculopathy and chronic back pain, which was either directly caused by his 7/25/14 work injury, or his 7/25/14 work injury substantially aggravated an underlying degenerative condition in his low back?
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> 4. Is it correct that, while you have not yet performed an impairment rating on Mr. Ayard, it is your opinion that given his subjective complaints and the objective imaging, as well as your physical exam, Mr. Ayard has sustained permanent impairment in his back as a result of his 7/25/14 work injury, which is likely at least 13% to his whole person (which could increase if he undergoes back surgery); that permanent restrictions are in order, and you would assign restrictions to include no lifting more than 20 pounds, no repetitive bending or twisting, and no standing more than 1 hour at a time, to be followed by a 15 minute break before standing again?

(Ex. 3, pp. 142J-142K) Dr. Segal did not provide any written narrative with his responses.

Dr. Segal opined Mr. Ayard's condition was causally related to his July 25, 2014, work injury. (Cl. Ex. 1, p. 7)

This arbitration decision further held that Mr. Ayard's injury caused him to need mental health treatment for depression, although at that time, there was no evidence of a permanent mental health condition which was causally related to his work injury.

> Ayard testified he had been experiencing problems with depression for three years before his work injury because his supervisor was mistreating him, by yelling at him, and blaming him for things he had not done. (Tr., p. 35) The record establishes that Ayard experienced an increase in his depressive symptoms after his work injury. When Guse examined Ayard on August 31, 2015, he documented Ayard was "still experiencing extreme difficulty with the pain in his spine which is leading to depression," and that Ayard was "feeling very depressed today and would like some medication to help with his. At his last visit we tried Lexapro but, but [sic] the patient states he does not want to take that medication a longer period instead we will try Zoloft." (Ex. 1, p. 51) Gregersen, a psychiatric nurse practitioner, also diagnosed Ayard with an unspecified depressive disorder and low back pain. (Ex. 4, p. 146D) Gregersen prescribed Cymbalta and gabapentin "for mood, anxiety, and chronic pain" and also prescribed duloxetine. (Ex. 4, pp. 146C-146D)
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> None of Ayard's treating or examining medical practitioners have offered opinions that Ayard has sustained a permanent mental health

> impairment caused by his work injury. While the record supports Ayard's major depression is a sequela of the work injury, the record does not support Ayard has sustained a permanent mental health impairment as a result of the work injury.

(Cl. Ex. 1, p. 13)

After hearing and reviewing all of the evidence, the deputy commissioner accepted the parties' stipulation regarding the injury and found that it resulted in permanent impairment and disability, rejecting the defendants' contention that he was not at MMI. She found that Mr. Ayard had sustained a 25 percent industrial disability providing the following detailed analysis of his condition.

> After reviewing Ayard's medical records and examining him, Dr. Bansal assigned Ayard a five percent whole person impairment based on the AMA Guides and imposed permanent restrictions of no lifting over 35 pounds, and no frequent bending or twisting. (Ex. 2, p. 133) Crystal Distributing and Le Mars Insurance have not presented a contrary opinion.
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> At the time of the hearing Ayard was 52. (Tr., p. 13) Ayard attended school through the third grade in Mexico. (Tr., p. 13; Ex. 5, p. 148) He has taken English classes, but he cannot read or write in English. (Tr., p. 14) Ayard does not know how to type or how to use a computer. (Tr., p. 14) Given his age and limited education, Ayard would have a difficult time with retraining.
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> Ayard's past relevant work required lifting exceeding Dr. Bansal's 35 pound permanent lifting restriction. Ayard is certified to drive a forklift, but he has no other specialized training. Ayard has maintained his employment at Crystal Distributing since his injury and has no loss of earnings. Crystal Distributing has followed Ayard's permanent restrictions and he no longer engages in heavy lifting, bending, or twisting. I do believe if Ayard were to lose his employment with Crystal Distributing, he would likely have difficulty securing employment consistent with his past-relevant work and restrictions. Based on the industrial disability factors, I conclude Ayard has sustained an industrial disability of 25 percent.

(Cl. Ex. 1, p. 14)

<u>October 26, 2018 Hearing/Snapshot, filed January 24, 2019:</u>

The second snapshot of Mr. Ayard's condition was taken in a Review-Reopening hearing on October 26, 2018.

Three months after the first hearing/snapshot, the defendants arranged an independent medical examination (IME) for Mr. Ayard. The deputy described this as follows.

> On December 21, 2016, Jonathan Fields, M.D., an occupational medicine physician conducted an independent medical examination for Crystal Distributing and Le Mars, and issued a two page opinion letter. (JE 4, pp. 104-05) Dr. Fields examined Ayard, but his report does not indicate what, if any medical records he reviewed, or provide any objective measurements he took from his examination of Ayard. (JE 4, pp. 104-05) Dr. Fields documented Ayard informed him his back pain had been "'unchanged' ever since he injured it back in 2014" and noted Ayard was uncertain why he was at the clinic that day. (JE 4, p. 104) Dr. Fields further documented Ayard reported he had experienced no further material aggravation or exacerbation in his condition since he had been placed at maximum medical improvement. (JE 4, p. 105) Dr. Fields opined "[i]t is my medical opinion to a reasonable degree of medical certainty that his current pain is unrelated to his prior work related injury. His current pain symptoms are likely related to chronic spinal stenosis and are not work related in nature" and recommended Ayard receive follow-up care with his primary care provider regarding his chronic spinal condition. (JE 4, p. 105)
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> Ayard testified after Dr. Fields offered his opinion, Crystal Distributing and Le Mars refused to authorize any additional care for his low back condition. (Tr., pp. 33-34) Ayard continued to seek treatment for his back condition from Guse. (Tr., pp. 39-40)

(Cl. Ex. 2, pp. 25-26)

Most of the facts surrounding the second snapshot, therefore, revolved around Mr. Ayard's worsening mental health condition. (Cl. Ex. 2, pp. 25-29) He was seen by several different mental health providers for evaluation and treatment between 2016 and 2018.

Dr. Bansal re-evaluated Mr. Ayard's low back condition in May 2017, which is summarized as follows.

> On May 26, 2017, Dr. Bansal conducted an independent medical examination for Ayard for the review-reopening action, and he issued his report on June 26, 2017. (Ex. 2) Dr. Bansal examined Ayard and reviewed his medical records. (Ex. 2) Dr. Bansal opined,
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> > [s]ince last seen by me, Mr. Ayard has had deterioration of his low back condition. His pain levels have increased, and his functional ability has decreased. He has had further work-up since last seen, indicating lumbar disc bulging and annular tearing, consistent with his continual low back pain with left leg radiculopathy. For maintenance he has been receiving pain management, including epidural injections. This is consistent with his pathology relating to the July 25,

> 2014 injury. Secondary to his decreased functional ability, there are changes to his impairment and restrictions.

(Ex. 2, p. 24) Using the AMA Guides, Dr. Bansal found Ayard meets the criteria for a DRE Category II impairment, with radicular complaints, guarding, and loss of range of motion. (Ex. 2, p. 24) Dr. Bansal assigned a seven percent permanent impairment rating, and recommended restrictions of no lifting over twenty pounds occasionally, no lifting over ten pounds frequently, no frequent bending or twisting, and sitting, standing, and walking as tolerated with no sitting, standing, or walking for more than sixty minutes at a time. (Ex. 2, pp. 24-25) Dr. Bansal recommended for maintenance Ayard would benefit from medications, injections, or other treatment recommended by a pain specialist, and he also recommended a neurosurgical consultation for arthrodesis at L4-L5 and L5-S1. (Ex. 2, p. 25)

(Cl. Ex. 2, p. 27)

The deputy summarized the facts between the first two snapshots as follows.

> At the time of the hearing on the review-reopening action Ayard was still working for Crystal Distributing driving a forklift. (Tr., p. 24) Before his work injury Ayard also lifted boxes and trash containers weighing sixty to seventy pounds. (Tr., p. 25) At the hearing Ayard testified he only drives the forklift. (Tr., p. 25) Ayard testified he could not return to his lifting duties. (Tr., p. 25) Ayard reported he works slower than he did before and he feels very uncomfortable at work. (Tr., p. 49)
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> Ayard testified he has not sustained any other injuries or traumas to his back since the 2016 arbitration hearing. (Tr., p. 48) Ayard testified that since the 2016 hearing his depression is worse and he has severe and constant pain, and anxiety. (Tr., p. 23) Ayard reported his back is worse than ever, "[i]t's constant. Bending down, twisting, lifting heavy things. Any movement that I make, it hurts." (Tr., p. 43) Ayard testified on cross-examination his pain is the same. (Tr., p. 48)
>
> Ayard noted his mental condition is "really bad, also." (Tr., p. 43) Ayard reported he had bad thoughts, a lot of fear, depression, difficulty sleeping and with anxiety, and concentration and memory. (Tr., pp. 43-45) Ayard noted he is easily distracted and it makes it difficult to work and he is worried he will have an accident. (Tr., p. 45)

(Cl. Ex. 2, p. 29)

The deputy found that Mr. Ayard's condition warranted an increase in compensation, relying on the following detailed analysis.

In the original August 11, 2016 arbitration decision, I found Ayard sustained a permanent impairment to his lumbar spine, and while Ayard's major depression was a sequela of the work injury, I concluded the record did not support Ayard had sustained a permanent mental health impairment as a result of the work injury. I also found Ayard had sustained a twenty-five percent industrial disability. The parties did not appeal the August 11, 2016 decision.

In the review-reopening action Crystal Distributing and Le Mars assert there is no causation between the 2014 work injury and Ayard's major depressive disorder, relying on Dr. Tranel's opinion after the August 2016 decision. Causation was determined in the August 2016 decision and the finding on causation is law of the case.

What is to be determined is whether Ayard has established a change in condition following the 2016 hearing. Two physicians have given opinions concerning Ayard's physical condition, Dr. Fields, and Dr. Bansal, both occupational medicine physicians. When considering expert testimony, the trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). 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). I find the opinion of Dr. Bansal more convincing than the opinion of Dr. Fields.

Dr. Bansal examined Ayard both during the original arbitration proceeding, and again in 2017, as part of the review-reopening action. Dr. Bansal reviewed Ayard's medical records for both examinations. Dr. Bansal's 2017 opinion provides he observed a deterioration in Ayard's low back condition, noting Ayard's pain level had increased, his functional ability had decreased, and he was receiving pain management, including epidural injections. (Ex. 2, p. 24)

When he performed his examination of Ayard's lumbar spine in 2015, Dr. Bansal noted Ayard's range of motion for flexion was 66 degrees, extension was 37 degrees, left lateral flexion was 36 degrees, right lateral flexion was 28 degrees, and found sensation in the right and left lower extremities was intact. (2016 Ex. 2, p. 131) When he performed his examination of Ayard's lumbar spine in 2017, Dr. Bansal noted Ayard's range of motion for flexion was 61 degrees, extension was 25 degrees, left lateral flexion was 23 degrees, right lateral flexion was 26 degrees, and he found sensation in the right lower extremity was intact, and there was a loss of two-point sensory discrimination over the lateral foot of the left

> lower extremities was intact. (Ex. 2, p. 23) Dr. Bansal's objective findings show a decline in range of motion and sensory discrimination loss in 2017 from his 2015 examination of Ayard.
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> Dr. Fields opined Ayard's current back pain is not related to his work injury. Dr. Fields did not examine Ayard during the original arbitration proceeding. Dr. Fields's report does not indicate what medical records he reviewed, if any, and his report does not contain any findings concerning range of motion or other objective measurements from his examination of Ayard. (JE 4, pp. 104-05) Dr. Fields brief, summary opinion, does not explain the basis for his determination. Based on the foregoing, I find the opinion of Dr. Bansal more convincing than the opinion of Dr. Fields.
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> When he provided his opinion in 2015, Dr. Bansal recommended permanent restrictions of no lifting over thirty-five pounds, and no frequent bending or twisting and noted Ayard may need intermittent trigger point injections and NSAIDs in the future. Ayard continued to receive treatment for chronic pain related to his back condition following the original hearing. Following his examination of Ayard in 2017, Dr. Bansal recommended new restrictions of no lifting over twenty pounds occasionally, no lifting over ten pounds frequently, no frequent bending or twisting, and sitting, standing, and walking as tolerated with no sitting, standing, or walking for more than sixty minutes at a time. (Ex. 2, pp. 24-25) The record evidence supports a slight worsening in Ayard's physical condition, based on the opinion of Dr. Bansal. I accept his restrictions and opinions.

(Cl. Ex. 2, pp. 30-31)

The deputy also noted that Mr. Ayard's mental health condition had worsened and, at the time of the second snapshot in October 2018, was deemed to be permanent.

> At the conclusion of the arbitration hearing I determined Ayard had sustained major depressive disorder as a result of the work injury, but I also found Ayard had not established he had sustained a permanent mental health impairment. After providing treatment to Ayard, Dr. Iqbal and Fury-Swisher both agreed Ayard's work injury substantially aggravated his preexisting mental health condition, causing major depressive disorder, moderate, anxiety, post-traumatic stress disorder, and chronic pain disorder with associated psychological symptoms, and his conditions are credible, and at least in substantial part related to his work injury and are likely to be long-term, and thus permanent. (JE 3, pp. 101-02; JE 8; Ex. 7, pp. 91-92) Dr. Iqbal and Fury-Swisher further agreed due to his work injury and resultant mental health conditions, Ayard will be more prone to having long-term attendance issues at work, and he will likely suffer from distraction at work, and he will require long-term mental health treatment for his work injury, including, but not limited to psychotherapy, psychiatric consultations, and pharmacological

> management and participation in a comprehensive, multidisciplinary pain management program due to his chronic pain caused by the work injury. (JE 3, p. 102; JE 8)
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> In this review-reopening action, Crystal Distributing and Le Mars aver Ayard has not sustained a mental health sequela injury, relying on the report of Dr. Tranel. Dr. Tranel's report addresses causation with respect to the 2014 work injury. As noted above, I determined causation with respect to Ayard's major depressive disorder in the 2016 decision. The 2016 decision was not appealed and became a final decision. My finding on causation is law of the case. Springer v. Weeks & Leo Co. Inc., 450 N.W.2d 630, 632 (Iowa 1991). Based on the opinions of Drs. Iqbal and Fury-Swisher, I find Ayard has met his burden of proving he has sustained a change of condition with respect to his sequla mental health condition.

(Cl. Ex. 2, pp. 31-32)

The deputy further found that Mr. Ayard's loss of earning capacity at the time of the second hearing was 40 percent. The deputy, again, provided detailed analysis to support this finding.

> In the 2016 arbitration decision, I found Ayard has sustained a twenty-five percent industrial disability, based on his lumbar spine condition only. At the time of the original hearing Ayard was fifty-two. (2016 Arbitration Decision) At the time of the review-reopening action Ayard was fifty-four. (Tr., p. 19) Ayard attended school through the third grade in Mexico. (2016 Arbitration Decision) He had taken English classes, but he could not read or write in English. (2016 Arbitration Decision) Ayard has not completed any additional schooling. (Tr., pp. 19-20) Ayard did not know how to type or how to use a computer during the original hearing, or at the time of the review-reopening hearing. (Tr., p. 14; 21) Given his age and limited education, I again find Ayard would have a difficult time with retraining.
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> In 2015, Dr. Bansal recommended permanent restrictions of no lifting over thirty-five pounds, and no frequent bending or twisting. In 2017, following his personal examination, Dr. Bansal increased Ayard's restrictions. Dr. Bansal has recommended no lifting over twenty pounds occasionally, no lifting over ten pounds frequently, no frequent bending or twisting, and sitting, standing, and walking as tolerated with no sitting, standing, or walking for more than sixty minutes at a time. (Ex. 2, pp. 24-25) I find Dr. Bansal's restrictions appropriate.
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> Ayard has also developed problems with his concentration and memory related to depression, which he testified impairs his ability to work. Dr. Iqbal and Fury-Swisher agreed Ayard will be more prone to having long-term attendance issues at work, and he will likely suffer from

> distraction at work due to his depression. (JE 3, p. 102; JE 8) There was no evidence presented at hearing Ayard's job is in jeopardy because of his absences or distraction problems.
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> At the time of the original hearing Ayard was working for Crystal Distributing. At the time of the reviewing-reopening hearing Ayard was still working for Crystal Distributing, performing the same job he was performing at the time of the 2016 hearing. Ayard is certified to drive a forklift, but he has no other specialized training. Ayard has maintained his employment at Crystal Distributing since his injury and he has no loss of earnings. Crystal Distributing has followed Ayard's permanent restrictions and he no longer engages in heavy lifting, bending, or twisting. I do believe if Ayard were to lose his employment with Crystal Distributing, he would likely have difficulty securing employment consistent with his past-relevant work, functional limitations, and residual capacities.

(Cl. Ex. 2, pp. 32-33) She also awarded a variety of medical bills related to Mr. Ayard's low back and mental health conditions. (Cl. Ex. 2, p. 34)

The defendants did not appeal this decision and it became a final agency decision.

July 14, 2020 Hearing/Snapshot:

Mr. Ayard filed a new review-reopening petition on or about June 28, 2019. He presented for a third hearing on July 14, 2020. He testified under oath through a Spanish language interpreter. His testimony was generally credible.

Much happened since his October 2018 hearing. Not long after the October 2018, hearing, Mr. Ayard returned to Ashar Afzal, M.D., on November 12, 2018. Dr. Afzal documented his past treatment of Mr. Ayard, including epidural steroid injections. Mr. Ayard's condition at that time was also documented.

> Still continues to experience lower back pain. That is across the present on both sides. Described as a dull and aching sensation which may become sharp and shooting at times. Pain is present throughout the day. Worse with any activities especially at his work where is [sic] difficult for him to stand for longer duration. At times he complains of numbness and tingling going down the legs.

(Jt. Ex. 1, p. 1) Dr. Afzal recommended a repeat MRI and a discussion of surgical options, which Mr. Ayard "was not very enthusiastic" about. (Jt. Ex. 1, p. 1) It appears claimant never followed up with this.

In May 2019, Mr. Ayard resumed treatment with Unity Point, Jeffrey Guse, ARNP. These records document that "over the past couple years this [back symptoms] is worsened" and "he is experiencing extreme difficulty with his back and having

problems with working." (Jt. Ex. 2, p. 5) Mr. Ayard was provided a shot of Toradol and an MRI was recommended.

On June 17, 2019, Crystal Distribution laid off Mr. Ayard.

> This letter confirms out discussion today that you are being laid off from your employment with Crystal Distribution Services effective immediately. Unfortunately, economic conditions in the Industry have resulted in slow sale and loss of customers.

(Cl. Ex. 5, p. 66) There is no information in this layoff/termination letter regarding the possibility of being recalled to work. Mr. Ayard testified that prior to his layoff, his supervisor had been pressuring him to work faster. (Tr., pp. 45-46) Mr. Ayard testified he believed he was actually terminated because of his low back condition. He further testified that the only other employee laid off the same time as him was eventually recalled to work. He testified that the employer has been hiring individuals to work other shifts. (Tr., pp. 47-49) The employer did not call any witnesses to explain the layoff/termination.

In July 2019, Mr. Ayard underwent an MRI, and by September 2018, he was referred to Russell Buchanan, M.D. for a surgical consultation. (Jt. Ex. 3, pp. 18-19; Jt. Ex. 2, pp. 8-12) His records with Unity Point further document declining mental health during this period. (Jt. Ex. 2, p. 8) Dr. Buchanan evaluated Mr. Ayard on September 18, 2019. The following is documented.

> The patient complains of: Roberto is a new patient here with his daughter as a translator for consultation for low back pain that has been constant since an injury from lifting and twisting at work in July 2014. The back pain is constant and has not improved since the onset. He also gets numbness in the posterior thighs and feels like the legs are weak. He has tried physical therapy and injections that only gave relief for a couple of hours. He says he is not comfortable in any position. He is no longer working and has been laid off after working 20 years at his job.

(Jt. Ex. 4, p. 24) Dr. Buchanan did not recommend surgery. He recommended pain management treatment. As a result, Mr. Ayard returned to Unity Point Clinic who referred him back to Ted Bonebrake, M.D., for pain management care.

Mr. Ayard was evaluated by Dr. Bonebrake on October 4, 2019. Dr. Bonebrake diagnosed lumbar radiculopathy, neural foraminal stenosis of lumbar spine and severe episode of recurrent major depressive disorder, without psychotic features. (Jt. Ex. 5, p. 28) He recommended medical cannabis use. He returned to Dr. Bonebrake in November 2019 and asked to return to a neurosurgeon. (Jt. Ex. 5, p. 30) His depression score was even worse at that time. He followed up again in December 2019. All of his medications were reviewed at that time and some were modified. Prior to hearing, he last saw Dr. Bonebrake in February 2020. Dr. Bonebrake ended up

referring him back to Unity Point, Jeffrey Guse, ARNP. (Jt. Ex. 5, pp. 41-43) Mr. Ayard testified that none of the treatment really helped.

The defendants had Mr. Ayard evaluated by Robert Broghammer, M.D. on April 6, 2020. Dr. Broghammer reviewed the entire course of Mr. Ayard's treatment and examined him. Dr. Broghammer rendered the following opinion regarding why Mr. Ayard is currently experiencing low back pain:

> I believe Mr. Ayard's low back pain is multifactorial in nature. I believe that some of Mr. Ayard's low back pain may be related to the degenerative changes in the lumbar spine. However, this is uncertain, as individuals with similar findings do not experience low back pain. In fact, the kinds of findings seen on Mr. Ayard's lumbar spine in an individual his age are quite common with up to 80 percent of the asymptomatic population having similar types of findings. . . .
>
> Mr. Ayard's chronic ongoing low back pain is likely in large part substantially contributed to by his psychological comorbidities, including his anxiety and depression. Individuals with anxiety and depression do have higher levels of low back pain. It is also highly likely that a proportion of Mr. Ayard's low back pain is due to over reporting of subjective symptoms as referenced to in Dr. Tranel's report with Dr. Tranel noting over two years ago that validity measures were inconsistent and that Mr. Ayard's reported symptoms were likely overstated.
>
> Furthermore, individuals involved with Workers' Compensation claims for low back injuries are also known to have difficulties with resolution of pain. Again I refer you to the attached reference list. In my medical opinion, there is likely a component of symptom magnification. In my medical opinion to a reasonable degree of medical certainty, Mr. Ayard's ongoing low back pain complaints are unrelated to the alleged injury of July 25, 2014 and are instead due to his psychological comorbidities, his Workers' Compensation claim, and possibly his degenerative findings.

(Def. Ex. A, pp. 17-18) He went on to opine that "what he suffered at most was a musculoligamentous strain, which would reasonably expected to resolve within 8 to 12 weeks." (Def. Ex. A, p. 18)

Dr. Broghammer's expert opinion is rejected. It is contrary to the law of the case and specifically the findings of the two prior arbitration decisions. It is actually contrary to the stipulation on medical causation by the defendants. This shall be discussed further in the Conclusions of Law below. What is important as it relates to my factual findings herein, is that Dr. Broghammer did not take a snapshot of Mr. Ayard's decision since his October 2018, hearing, but rather, he reassessed his entire condition from the beginning of the case, reaching an ultimate conclusion similar to that of Dr. Fields, whose opinion was rejected in an earlier arbitration decision. Importantly, Dr. Broghammer did not allege that there was any type of intervening or superseding cause

of Mr. Ayard's current condition. On the contrary, he opined that Mr. Ayard's low back pain was primarily related to his mental health condition (which existed at the time of both previous hearings and, in fact, was found to arise out of and in the course of his employment).

Shortly after Dr. Broghammer evaluated Mr. Ayard, he underwent a valid functional capacity evaluation with Short Physical Therapy. The study was deemed valid. (Cl. Ex. 3, pp. 40-41) Restrictions were recommended including no lifting more than 10 pounds occasionally or 20 pounds rarely.

In May 2020, Dr. Bansal evaluated Mr. Ayard again, updating his earlier opinions from the past two snapshots. He documented the following:

> Since Mr. Ayard was last evaluated, his lumbar spine condition has deteriorated and is symptomatically manifested as increased bilateral leg weakness secondary to his worsened bilateral leg radiculopathy. Specifically, the worsened bilateral radiculopathy is reflected in his imaging changes from 2015 to 2019, showing advancing disc space collapse and neural foraminal narrowing.

(Cl. Ex. 4, pp. 60-61) He assigned an 8 percent whole body impairment rating and more severe permanent restrictions, which were essentially in line with the FCE.

In May 2020, Mr. Ayard also commenced pain management treatment with Cedar Rapids Pain Associates (CRPA). (Jt. Ex. 6) CRPA has assumed care for Mr. Ayard and has provided trigger point injections, a lumbar support brace, a TENS unit and some medications. (Jt. Ex. 6, pp. 46-49) Mr. Ayard testified, just prior to hearing an epidural steroid injection was tried.

At the time of his hearing, Mr. Ayard testified that he was still on several medications including hydrocodone, amitriptyline, and marijuana-based medications. Since being separated from work, he has made little effort to secure a new job. He did testify that he looks in the newspaper and asks friends about positions, but it is evident from the record that Mr. Ayard does not believe he is employable in the condition he is in. He testified his back pain, depression and anxiety are worse now than ever.

CONCLUSIONS OF LAW

The primary question is whether the legal elements for review-reopening have been met in light of the findings of facts set forth above. Mr. Ayard alleges that his low back and mental health conditions, have both worsened causing an increase in industrial disability. The defendants argue that his condition has not changed significantly. The defendants further argue that even if his condition has worsened, the claimant cannot prove that his current condition is causally related to the original injury.

In a proceeding to reopen an award for payments or agreement for settlement as provided by section 86.14, inquiry shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so

awarded or agreed upon. Iowa Code section 86.14(2) (2017). In order to demonstrate eligibility for an increase of compensation under section 86.14(2), the claimant must demonstrate what her physical or economic condition was at the time of the original award or settlement. At a subsequent review-reopening hearing, claimant has the burden to prove that there is a substantial difference in such condition which warrants an increase in compensation. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387 (Iowa 2009). The difference can be economic or physical. Blacksmith v. All-American Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). Essentially, snapshots of the claimant's condition are taken; one in each hearing or settlement. The claimant must prove that there is something substantially different between the two snapshots such that it warrants an increase in benefits. Gosek v. Garmer & Stiles Co., 158 N.W.2d 731, 735 (Iowa 1968).

The principles of res judicata apply and the agency should not reevaluate facts and circumstances that were known or knowable at the time of the original action. Kohlhaas at, 392. Review-reopening is not intended to provide either party with an opportunity to relitigate issues already decided or to give a party a "second bite at the apple." The agency, however, is forbidden from speculating as to what was contemplated at the time of the original snapshot. Id.

The burden remains upon the injured worker to prove by a preponderance of the evidence that the current condition is proximately caused by the original injury. Kohlhaas, 777 N.W.2d at 392. When a work-related injury causes another injury to the worker, this new injury (sequela) may also be considered as a work-related injury under Iowa's workers' compensation laws.

When an employee suffers from a compensable injury and another condition or injury arises that is the consequence or result of the previous injury, the sequelae rule applies. If the employee suffers a compensable injury and later suffers further disability, which is the proximate result of the original injury, such further disability is compensable. If the employee suffers a compensable injury and thereafter returns to work and, as a result, the first injury is aggravated and accelerated so that the employee is more greatly disabled than they were before returning to work, the entire disability may be compensable. The employer is liable for all consequences that naturally and proximately flow from the accident. Oldham v. Scofield & Welch, 222 Iowa 764, 767-68, 266 N.W. 480 (1936).

Having reviewed all of the evidence in this file, I find that claimant has met his burden of proof that his condition now warrants an increase in compensation.

In order to apply the facts to the law, the snapshots of claimant's condition must be contrasted and compared. In this case, there are three snapshots, however, the most relevant snapshots are those from October 2018 and July 2020, the two most recent hearings. In October 2018, Mr. Ayard was fully employed in a position driving a forklift full-time for the employer. The work was generally within his restrictions, which were no lifting more than 20 pounds.

In July 2020, his symptoms were worse, as testified to by Mr. Ayard, and reflected in the medical notes. Mr. Ayard was laid off in June 2019. The employer stated that the reason for the layoff was economic downturn within the industry. While this may be true, Mr. Ayard alleged that another worker laid off at the same time was eventually recalled and the employer eventually began to hire again. No one testified on behalf of the employer to refute this. In any event, at the time of the most recent snapshot, Mr. Ayard no longer has a job. He has been under active medical care essentially since he lost his job, making reemployment much more challenging. At the time of the July 2014, hearing, his restrictions were more restrictive as verified through a valid FCE. Importantly, this FCE was deemed valid and provided a more objective basis for assigning permanent restrictions. He is only to lift 20 pounds rarely and 10 pounds occasionally. He is now essentially limited to light or sedentary work. His impairment rating was increased by 1 percentage point as well, which, while not terribly significant, adds to his claim of a worsening condition.

There is little doubt in this record, that Mr. Ayard's condition is worse now than it was at the previous hearing both economically and medically.

In their argument, the defendants did not particularly dispute whether Mr. Ayard's condition had worsened, rather they focused their defense on medical causation. In support of this, defendants cite agency case law which suggests that the claimant always bears the burden of proof that the change in their condition was caused by the original work injury. (Def. Brief, page 1) Of course, this is the law. The defendants then go on to argue that Dr. Bansal never said the magic words, that the worsening of Mr. Ayard's condition is related back to the original work injury. (Def. Brief, pp. 1-5) Therefore, the defendants argue, they must prevail.

I find the greater weight of evidence supports a finding that claimant has met his burden of proof that his current condition is related to his original work injury. This finding is based upon the two previous agency decisions, as well as the medical records in this case. The defendants are correct that no medical expert specifically went back to rehash the earlier causation decision. This is because the issue of medical causation had previously been decided in his favor. Importantly, there was nothing new between the October 2018, snapshot or the July 2020, snapshot. There was no new work injury, auto accident, or personal injury. There was no newly discovered diagnosis. There was no superseding or intervening incident of any type. The claimant's condition was the same diagnosis in the same anatomical location. It was just worse.

In attempting to raise the medical causation issue in this review-reopening, the defendants are actually attempting to relitigate issues which have been decided and are now the law of the case. I rejected as a matter of fact, the expert opinions of Dr. Broghammer because his opinions are inconsistent with the law of the case. Dr. Broghammer opined that Mr. Ayard's low back condition was never anything more than a "musculoligamentous strain, which would reasonably expected to resolve within 8 to 12 weeks." (Def. Ex. A, p. 18) This position was rejected in both the first and second snapshots of Mr. Ayard's condition.

It is important to clarify here that, had there been an intervening incident which defendants contended superseded his condition, the outcome of this case could be different. For example, had Mr. Ayard suffered a motor vehicle accident which resulted in a substantial worsening of his condition, the defendants would have a solid argument. Or if Mr. Ayard had suddenly developed neck pain which he claimed resulted from his 2014, accident, the matter may be different. The defendants, however, did not raise any such argument (and any such argument is not supported by the facts, herein).

In addition, I note that the defendants did not raise medical causation as an issue to be decided at hearing in the hearing report. Specifically, the defendants stipulated the following: "(b) The alleged injury is a cause of permanent disability." (Hearing Report, par. 3(b)) While the defendants could argue that they had to stipulate to this because of the prior decisions, this is precisely the point. Moreover, this stipulation makes it abundantly clear why Dr. Broghammer's expert opinion must be rejected both as a matter of fact and law. His expert opinion conflicts not only with the law of the case, but also with the defendants' own position as reflected in this stipulation. Dr. Broghammer insisted that Mr. Ayard never sustained anything more than a temporary "musculoligamentous strain, which would reasonably expected to resolve within 8 to 12 weeks." (Def. Ex. A, p. 18)

The next issue is the extent of Mr. Ayard's permanent disability.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the Legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

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

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

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co.,

288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

Although claimant is close to a normal retirement age, proximity to retirement cannot be considered in assessing the extent of industrial disability. Second Injury Fund v. Nelson, 544 N.W. 2d 258 (Iowa 1995). However, this agency does consider voluntary retirement or withdrawal from the work force unrelated to the injury. Copeland v. Boones Book and Bible Store, File No. 1059319, (Appeal November 6, 1997). Loss of earning capacity due to voluntary choice or lack of motivation is not compensable. Id.

The refusal of defendant-employer to return claimant to work in any capacity is, by itself, significant evidence of a lack of employability. Pierson v. O'Bryan Brothers, File No. 951206 (App. January 20, 1995). Meeks v. Firestone Tire & Rubber Co., File No. 876894, (App. January 22, 1993); See also, 10-84 Larson's Workers' Compensation Law, section 84.01; Sunbeam Corp. v. Bates, 271 Ark. 609 S.W.2d 102 (1980); Army & Air Force Exchange Service v. Neuman, 278 F. Supp. 865 (W.D. La. 1967); Leonardo v. Uncas Manufacturing Co., 77 R.I. 245, 75 A.2d 188 (1950). An employer who chooses to preclude an injured worker's re-entry into its workforce likely demonstrates by its own action that the worker has incurred a substantial loss of earning capacity. As has previously been explained in numerous decisions of this agency, if the employer in whose employ the disability occurred is unwilling to accommodate the disability, there is no reason to expect some other employer to have more incentive to do so. Estes v. Exide Technologies, File No. 5013809 (App. December 12, 2006).

Mr. Ayard contends he is permanently and totally disabled while the defendants contend that he has no disability.[1] The defendants also argue that the extent of Mr. Ayard's disability is difficult to ascertain because of his failure to perform a proper work search.

At the time of the third snapshot of Mr. Ayard's condition, he was 56-years-old with minimal education and limited to non-existent English skills. He has no real computer skills. His primary work history is in manual labor although he is a skilled forklift driver. He has chronic pain in his low back and recurrent depression and anxiety. His physical low back impairment is assessed at 8 percent and his lifting restrictions

[1] As set forth in the previous issue, the defendants' position is somewhat conflicting. They concede in the hearing report that claimant has permanent disability which is causally connected to the work injury and they have paid him 200 weeks as a result of the two previous agency decisions. Their chosen expert, however, contends that none of claimant's ongoing disability is related to his stipulated work injury.

place him in the light to sedentary work classification. He testified he has looked for work by checking the newspaper and talking to family and friends, however, it is evident from this record that he does not believe he is capable of working. This does, obviously, complicate a finding of permanent total disability. This would be an easier case is Mr. Ayard were to have engaged in and documented an active, vigorous work search. Mr. Ayard, however, has been under active medical treatment essentially since the time of his termination. While the claimant has stipulated that he is not seeking healing period benefits, the reality is, his condition has been so symptomatic over the year prior to hearing it would be difficult to imagine him working anywhere. Yet, prior to his termination/layoff, he did work. The employer contends Mr. Ayard was laid off for business reasons, which may be true. The employer, however, apparently recalled another worker and has hired since Mr. Ayard's layoff, but has made no effort to recall or reemploy him. This is strong evidence that since his work injury, he is not as valuable as he was prior to his injury. Mr. Ayard testified credibly that, prior to his employment separation, his supervisor wanted him to work faster and that he could not.

In the prior review-reopening decision, the Deputy stated the following in her analysis of extent of disability: "I do believe if Ayard were to lose his employment with Crystal Distributing, he would likely have difficulty securing employment consistent with his past-relevant work, functional limitations, and residual capacities." (Cl. Ex. 2, p. 33) I find this assessment to be highly accurate.

Having reviewed all of the appropriate factors in assessing extent of industrial disability, I find that the greater weight of evidence supports a finding that Mr. Ayard is permanently and totally disabled. Benefits shall commence as of the date claimant filed her petition for review-reopening. Verizon Business Network Services, Inc. v. McKenzie, 823 N.W.2d 418 (Iowa Ct. App. 2012) (Table).

The final issue is IME and costs.

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). Iowa Code section 86.40 states:

> **Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> **Costs.** Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

Defendants shall pay the costs of the case set forth in Claimant's Exhibit 6, including the cost of Dr. Bansal's IME report.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall pay permanent total disability benefits at the rate of four hundred thirty-nine and 09/100 ($439.09) per week commencing from the date the review-reopening petition was filed, June 28, 2019.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay accrued weekly benefits in a lump sum together with interest as set forth in Iowa Code section 85.30.

Defendants shall be given credit for the weeks previously paid.

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

Costs are taxed to defendants as set forth in this decision.

Signed and filed this 15th day of March, 2021.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Byrne (via WCES)

Thomas Read (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.