BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MIKE DARRAH, Claimant, vs. DUPONT-PIONEER, Employer, Self-Insured, Defendant.	FILED JAN 17 2019 WORKERS COMPENSATION	File No. 5063438 ARBITRATION DECISION Head Note No.: 2500; 2700

STATEMENT OF THE CASE

Mike Darrah, claimant, filed a petition in arbitration seeking workers' compensation benefits from his employer, DuPont-Pioneer.

The matter proceeded to hearing on September 13, 2018. The parties submitted post-hearing briefs on October 24, 2018, and the matter was considered fully submitted on that date.

The evidentiary record includes: Joint Exhibits JE1 through JE11; Claimant's exhibits 1 through 6, along with a separate statement of costs; and, Defendants' Exhibits A through G. Claimant, provided testimony, as did his spouse, Darcy Darrah.

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

The parties submitted the following disputed issues for resolution:

1. Whether claimant's need for ongoing medical care is causally related to the stipulated work injury of February 28, 2017.
2. IME reimbursement, Iowa Code section 85.39.
3. Costs.

FINDINGS OF FACT

After a review of the evidence presented, I find as follows:

The parties agree that the issues of temporary disability and permanent partial disability are not ripe for determination at this time. The primary issue is whether claimant, Mike Darrah, is entitled to continued medical care and treatment as a result of his stipulated work injury.

A few years before this work injury, claimant's physician described claimant as suffering from "seasonal affective depression." (Ex. JE1, p. 2)

Claimant sustained a stipulated work injury on February 28, 2017, when he fell off a ladder and struck his head. (Hearing Report, p. 1; Tr. p. 19) Claimant does not recall falling off the ladder, but does recall walking around the ladder after he fell. (Tr. pp. 19, 23, 25) However, he does not recall driving home after the incident, nor does he recall his wife, Darcy Darrah driving him to the emergency room later that evening. (Tr. pp. 25-26)

Claimant asserts that he sustained a physical-mental injury as a result of the fall. Defendants dispute that claimant's current mental condition is related to the stipulated work injury.

Claimant was seen at the emergency room on the day of the injury where it was reported that he fell four (4) feet and had pain in the back of his head, which he rated as 8/10. (Ex. JE2, p. 8) The diagnosis was a "[c]oncussion with loss of consciousness." (Ex. JE2, p. 11) Claimant's wife reported that claimant had a headache, swelling on the back of his head, and he was acting odd and his mind seemed "foggy." (Ex. JE3, p. 14)

Claimant was sent to an occupational medicine doctor by the employer, Daniel Miller, D.O. (Ex. JE3) On March 8, 2017, claimant reported continued headaches, difficulty sleeping, confusion and tearfulness. (Ex. JE3, p. 16) Dr. Miller found on March 10, 2017, that claimant had normal neurological exams and was "making appropriate improvement." (Ex. JE3, p. 19) An MRI of the brain showed no abnormality. (Ex. JE3, p. 20; Ex. JE4, p. 28) Although he showed general improvement, Dr. Miller referred claimant to a neurologist. (Ex. JE3, pp. 22, 24, 27) Dr. Miller stated that, "I think many of his symptoms are due to anxiety, which he states he has a tendency towards. I do not believe the work related head trauma is the cause of his anxiety but is a temporary exacerbating factor." (Ex. JE3, p. 19) I find that Dr. Miller, an occupational medicine physician is not in the best position to assess the issue of causation as it relates to claimant's current mental condition and I chose to rely on the opinion of the more specifically trained specialists in this case as discussed below.

On April 12, 2017, claimant was seen Steven Adelman, D.O., of Mercy Ruan Neurology Clinic. (Ex. JE5, p. 29) Dr. Adelman, noted claimant's "continual" headaches that have improved somewhat over the past 6 weeks, and his "profound emotional lability." (Id.) He "appears to be agitated at times," he will pace the floor which can "help his headaches and his agitation," and he becomes "tearful without explanation." (Id.) Dr. Adelman noted no family history of psychiatric illness and "no prior history of similar type problem." (Id.) He and his wife also reported significant memory disturbance and lack of concentration and focus. (Ex. JE5, pp. 29, 31) Dr. Adelman's diagnosis was: cerebral concussion; post-traumatic headache; emotional lability; and memory disturbance. (Ex. JE5, p. 31) Dr. Adelman noted that although claimant "may have had a history of anxiety prior to this episode this certainly appears to be different and therefore we would presume this to be causally related." (Id.) It was recommended that claimant cut back on alcohol consumption which "could contribute to some of his problems." (Ex. JE5, p. 32)

On May 17, 2017, Dr. Adelman stated that claimant's "emotional lability and memory disturbance with lack of concentration and focus . . . interfered with his ability to do the work he had been doing previously." (Ex. JE5, p. 33) Dr. Adelman noted a history of "heavy alcohol consumption," and recommended neuropsychological testing to assess "the presence or absence of cognitive dysfunction," and also recommended "treatment by a mental health professional for his emotional lability." (Ex. JE5, p. 35) Although Dr. Adelman noted alcohol consumption as a possible contributing factor, he did not indicate it was a "likely" contributing factor.

On June 21, 2017, claimant underwent a neuropsychological evaluation with James Levy, Ph.D., who noted the testing was valid and stated that claimant's "neurocognitive profile is marked by significant and severe anxiety, depression, and overall level of stress," and that his score was "in the borderline impaired range." (Ex. JE5, p. 39) Dr. Levy stated that claimant likely had a "premorbid, but largely silent/dormant, predisposition to convert the physical stress of the post-concussion syndrome into psychological distress." (Id.) Although claimant did not have significant concentration or memory issues in a neutral and encouraging environment, "the real world is not always neutral and encouraging, especially Mr. Darrah's work setting. As a result, the anxiety, agitation, and depression come out and they block his ability to focus and encode new information." (Id.) Dr. Levy recommended that claimant see a counselor/therapist.

Claimant returned to work during a period of time when the plant was in "shutdown mode" and claimant was given the job of painting lines in the warehouse, putting lids and tags on crates when they were full, and doing a lot of sweeping. (Tr. pp. 21-22) Claimant testified that he "messed up" repeatedly doing what he described as simple tasks. (Tr. p. 22)

On October 4, 2017, claimant was seen by a therapist at Hearthstone Counseling Associates, P.C., who recommended treatment with a head trauma specialist and further assessment regarding psychotropic medication to manage his symptoms. (Ex. JE8, p. 56)

On October 5, 2017, claimant was seen by James Gallagher, M.D., who is a Diplomate with the American Board of Psychiatry and Neurology with a Subspecialty Certification in Forensic Psychiatry, for the purpose of an independent psychiatric evaluation at the request of claimant's counsel. (Ex. JE9, p. 57) Dr. Gallagher noted that since his work incident and resulting head injury, claimant has had "headaches, disorganized executive cognitive functioning, numbness, and confusion," and "[s]uch problems continue unabated and he has not received treatment thus far for his emotional and cognitive symptoms." (Id.) Dr. Gallagher stated that claimant denied "heavy alcohol consumption" reported in Dr. Adelman's records and further noted that Dr. Adelman did not identify how this was assessed, and described the conclusion as unverified. (Ex. JE9, pp. 59, 61) Dr. Gallagher stated that the "[a]nxiety and depression are prominent and seem to be a product of the injury of February 28, 2017." (Ex. JE9, p. 66) He opined that limiting claimant's treatment to counseling alone would be insufficient to address claimant's current presentation. (JE9, p. 67)

On October 16, 2017, Dr. Gallagher recommended that claimant be off work and continue with treatment, including anti-depressant medication. (Ex. JE9, pp. 68, 70) On November 18, 2017, Dr. Gallagher noted that claimant had "improved some and this is a function of taking time off, resting his 'brain,' and not taxing his executive functioning or frontal lobe functions." (Ex. JE9, p. 73)

Claimant struggled with being distracted/forgetful and Dr. Gallagher recommended a neuropsychological evaluation to try to determine if this is based in anxiety or something else. (Ex. JE9, p. 76)

On February 12, 2018, claimant was seen by Derek Campbell, Ph.D., for the purpose of a neuropsychological evaluation and diagnostic interview upon a referral from Dr. Adelman. (Ex. JE11, p. 96) Dr. Campbell concluded that claimant sustained post-concussion syndrome and a mild traumatic brain injury as a result of the February 28, 2017 work injury. Dr. Campbell also noted claimant had made a strong recovery in multiple cognitive realms, although "[a]n assessment of psychological functioning suggests a high level of neurosis," and his evaluation suggested severe depression with anxious features. (Ex. JE11, p. 99) The evaluation also suggested "prominent emotional lability, dysphoric mood, low energy, persistent excessive worry, low self-esteem, and indecisiveness," which can correlate with "poor concentration and memory." (Ex. JE11, p. 100) However, the exam suggested only "very mild cognitive dysfunction," which "does not substantiate his experience of severely compromised mentation in daily life," which is an inconsistency that "supports a strong psychogenic element to [his] complaints." (Id.) Dr. Campbell also concluded that:

> The strong influence of psychological maladjustment in this case notwithstanding, the overall pattern of results does not yield compelling evidence of conscious symptom fabrication and/or magnification. Furthermore, there is not sufficient evidence to suggest he had this degree of psychological suffering prior to the accident. Thus, continued treatment in the workers' compensation system appears appropriate.

(Ex. JE11, p. 100)

On May 8, 2018, Robert Rondinelli, M.D., Ph.D. of Pinnacle IME Services, LLC, issued a letter to claimant's counsel following an independent medical evaluation (IME) of claimant. (Ex. 3) Dr. Rondinelli agreed that claimant sustained a mild traumatic brain injury from the work incident along with post-concussion syndrome, and a generalized anxiety disorder or depression, which are all causally related to the February 28, 2017 work injury. (Ex. 3, p. 50) Dr. Rondinelli noted that claimant had not been experiencing any signs or symptoms of mild head injury or significant anxiety and/or depression prior to the fall on February 28, 2017, and there was "no compelling evidence that this resulted from any conscious symptom fabrication on the part of the claimant." (Ex. 3, p. 51) He also recommended continued care with Dr. Gallagher and his therapist, along with probable psychotropic and anxiolytic medications indefinitely. (Id.)

On August 26, 2018, C. Scott Jennisch, M.D., Board Certified in Adult Psychiatry, of Iowa Psychiatry, LLC, issued a letter to defense counsel following an independent medical examination (IME) of claimant on June 1, 2018. (Ex. A) Dr. Jennisch argues that in years prior to the work injury, claimant had noted in his medical records of psychiatric conditions and medication. (Ex. A, p. 18) However, claimant testified that the primary concern was seasonal depression. (Tr. p. 53; Ex. JE1, p. 2) Although Dr. Jennisch noted other mental health concerns prior to the work injury, claimant appears to have worked steadily prior to February 28, 2017, and has not been able to do so since the injury. In addition, claimant has had different and more significant complaints post-injury, including difficulty with organization, focus and memory that he stated has affected his ability to work. (Tr. pp. 20-22) Dr. Jennisch also identified alcohol use disorder prior to and after his work injury. (Ex. A, p. 19) He speculated in his report concerning the pre-injury and post-injury impact of alcohol use on claimant's work without significant direct evidence on the subject. (Id.) Dr. Jennisch then curiously suggests that marijuana use should be considered as a potential factor, while also stating that "there was nothing in current records suggesting [marijuana] use." (Id.) Dr. Jennisch stated that based on the results of neuropsychological testing, claimant "does not have ongoing cognitive impairment related to the concussion and mild traumatic brain injury" from the 2017 work injury. (Ex. A, p. 20) He further opined that:

> It is possible that he experienced an exacerbation of underlying depressive and anxiety symptoms after the fall and while recovering from the concussion. However, this is complicated by and obscured by these other issues. Mr. Darrah's ongoing depressive and anxiety conditions are not the result of the February 28, 2017 fall."

(Ex. A, p. 20) Dr. Jennisch, seems to agree that claimant sustained a work injury, which was a concussion that had an impact on his depression and anxiety. However, he opined that claimant's perception of his treatment at the workplace "may be a factor" in his ongoing mental health issues. (Ex. A, p. 21) He also stated that claimant's workplace issues may have been exacerbated by alcohol abuse. (Id.) The undersigned finds that the alleged "alcohol abuse" is speculative and does not appear to be based on significant objective data. Also, the suggestion that marijuana use might also be a complicating factor is beyond speculation and according to Dr. Jennisch himself, there were no current records suggesting any use. Dr. Jennisch appears to be reaching for alternatives to the more obvious conclusion that claimant's work injury caused the exacerbation of his depression and anxiety. Dr. Jennisch agreed that claimant should continue off work, but related this to his perception of his workplace environment, not to the work injury of February 2017. (Ex. A, p. 21)

I find Dr. Jennisch's opinion to be speculative and unpersuasive and I give it little weight.

It was clear at hearing that claimant felt badly about his ability, or lack of ability, to do his job and felt the he was under increased scrutiny from his employer after returning to work following his injury. (Ex. D; Ex. 2; Tr. pp. 21-22, 39-40) However, he also testified that despite being placed in what he described as menial jobs upon his return to work, he desired to continue working. (Tr. pp. 38-39)

Claimant continued to treat with Dr. Gallagher at the time of the hearing. (Ex. JE9, p. 92: Ex. 6, p. 61; Tr. p. 15)

Criticism of claimant in his performance reviews prior to the work injury largely dealt with attendance issues. Although he had "not technically violated the location PTO policy," the manner in which he used PTO was considered disruptive to the production schedule. (Ex. B, p. 27) The performance reviews also discussed claimant's alleged poor attitude and his impact on morale in the work environment and his need for improvement in those areas. (Ex. B).

After the work injury, claimant's spouse described claimant as not being the same person anymore. (Ex. JE9, p. 82)

Claimant testified that he is still an employee of defendant, although he has not worked since approximately October 2017. (Tr. pp. 14-15)

Claimant attributes problems with focus and memory to his fall. He also described a general difficulty with thinking through the process of setting up machines at work and general problem solving. (Tr. p. 21)

Concerning causation, I find the opinions of Dr. Adelman, Dr. Gallagher, Dr. Campbell and Dr. Rondinelli to be more well-reasoned, logical and persuasive. Based upon these opinions, I find that claimant's current mental health condition is causally related to his work injury of February 28, 2017.

Claimant filed a complaint with the Iowa Civil Right Commission in June, 2018. (Ex. G) He complained of harassment, an undesirable assignment or transfer, and inappropriate discipline based on a real or perceived disability, described briefly as a head injury with cognitive impairment. (G, pp. 40-41)

CONCLUSIONS OF LAW

1. Whether claimant's need for ongoing medical care is causally related to the stipulated work injury of February 28, 2017.

The primary disputed issue in this case is whether claimant's ongoing mental health conditions are related to his February 28, 2017 work injury, which would entitle him to ongoing medical care for those issues.

However, defendant argues that claimant's workers' compensation claim is preempted by the Iowa Civil Rights Act (ICRA) and that the Iowa Workers' Compensation Commissioner therefore lacks subject matter jurisdiction. (Employer Post-Hearing Brief, p. 6)

I note that the affirmative defense of preemption was not included as an issue on the Hearing Report in this matter. Neither was it raised on the record as an issue for determination during the hearing. Also, claimant did not address the issue in his brief, suggesting that he was unaware that the issue existed. Finally, the Hearing Report states that defendant has specifically waived any affirmative defenses. (Hearing Report, p. 2) Therefore, I determine that the issue of preemption has been waived by defendant.

However, defendants have also couched their preemption argument in terms of a lack of subject matter jurisdiction. Subject matter jurisdiction may be raised at any time. State v. Ambrose, 861 N.W.2d 550 (Iowa 2015). Further, subject matter jurisdiction cannot be waived, even by consent. St. Clair v. Faulkner, 305 N.W.2d 441, 445 (Iowa 1981). Therefore, the issue of subject matter jurisdiction remains a viable question for determination.

In support of their argument, defendants rely on Ottumwa Housing Authority v. State Farm Fire, 495 N.W.2d 723, 729 (Iowa 1993), for the proposition that the workers' compensation claim is preempted by the Iowa Civil Rights Act, and the Iowa Workers' Compensation Commissioner therefore lacks subject matter jurisdiction when the claims presented in a workers' compensation claim and in a parallel Iowa Civil Rights claim are "grounded upon the same facts." (Defendant's Post-Hearing Brief, p. 7)

I will consider the issue of subject matter jurisdiction despite the authority cited by defendant being rooted in preemption, which is a defense that I have determined above was waived by defendants.

The case of Ottumwa Housing Authority v. State Farm Fire, 495 N.W.2d 723, is unique. It is certainly not an ordinary workers' compensation claim. This case involves an employer suing their workers' compensation insurance carrier in a civil action to attempt to enforce coverage for a claim made by an employee against the employer in a civil rights action under the Iowa Civil Rights Act (ICRA). The employer's theory was that the alleged sexual harassment complained of in the civil rights action amounted to a work injury, and workers' compensation insurance should provide coverage. The conclusion of the Court was that the claim made in state and federal courts "were based on the same acts of sex discrimination that she had alleged in her workers compensation proceeding," and that the workers' compensation claims were preempted by ICRA. Ottumwa Housing Authority, 495 N.W.2d 723, 729 Therefore, the Court concluded that a worker's compensation claim grounded in the same facts of discrimination is preempted by ICRA.

Defendants also rely on Louvar v. City of Cedar Rapids, File Nos. 5048373, 5052473, 5055075, 5055076, (April 9, 2018). In that case, claimant alleged that the employer's actions caused emotional distress resulting in a cumulative effect of harassment and pled a mental-mental injury in a workers' compensation claim. Claimant then pled the same injury in a suit filed in the Iowa District Court under ICRA. The deputy found that the claims in the ICRA civil suit "precisely mirror the claims" in his workers' compensation claim. (Louvar, Arb. p. 8, File No. 5048373, et. al., (April 9, 2018)). The deputy found under the Ottumwa Housing Authority case that "when the basis for a workers' compensation claim is grounded upon the same discrimination claims, the workers' compensation claim is preempted." (Louvar, Arb. p. 10, File No. 5048373, et. al., (April 9, 2018)).

I note that unlike the case at bar, neither Ottumwa Housing Authority or Louvar involved a physical injury that occurred at work. Both cases involve workers' compensation cases with only a mental-mental claim, and the parallel civil rights claims were, in essence, a duplicate of the same claim.

In the case of Cargill, Inc. v. Conley, 620 N.W.2d 496 (Iowa, 2000), claimant filed a workers' compensation claim alleging multiple injuries to his back resulting in industrial disability. Claimant also filed a civil action in federal court under the Americans with Disabilities Act (ADA) alleging that the employer engaged in discriminatory practices related to his disability. The deputy awarded 20 percent industrial disability in the workers' compensation claim. The decision was affirmed by the commissioner. On judicial review, the district court stated that is was improper for the deputy to consider anything in the assessment of industrial disability that was part of claimant's discrimination claim. Claimant appealed. The Court stated that unlike the

Ottumwa Housing Authority case, wherein it was the employer's discriminatory actions that were the direct cause of the alleged injury, in Conley, claimant "potentially has viable claims for both workers' compensation benefits and civil damages. See 2A Arthur Larson & Lex K. Larson, The Law of Workmens' Compensation section 68.34(e), at 13-261 (1994)" (which states that "a claimant may have a workers' compensation remedy for so much of his injury as the compensation act was designed to cover, and still have his typical civil rights remedies for any other injuries or losses stemming from the employment discrimination.") Cargill, 620 N.W.2d at 501-502. The Court in Cargill stated that "[a]lthough there may very well be an overlap between these two claims that might affect the determination of industrial disability in the workers' compensation action, this overlap is not a problem of subject matter jurisdiction." Cargill, at 502.

The case at bar involves a claim for a physical-mental injury, that is to say an injury that arises from a physical trauma and results in a physical injury and a mental injury. This is similar to Conley and distinguished from Ottumwa Housing Authority and Louvar. In the present case, claimant's physical injury that occurred when he fell off the ladder is not compensable in his pending civil rights complaint.

Further, it is significant that at the time of the hearing, the parties agreed that claimant remained in a healing period and the issue for determination was entitlement to medical benefits under Iowa Code section 85.27, not the extent of disability. This is uniquely distinguishable from Ottumwa Housing Authority and Louvar.

Concerning the pending issue of entitlement to medical benefits, Iowa Code section 85.27 provides a unique statutory compulsion upon the employer to provide reasonable medical care to the injured worker and affords the employer the right to direct such care in most circumstances. Also, claimant has a right to seek to compel the employer to provide medical care when the care offered by the employer is absent or otherwise unreasonable. This remedy for the provision of contemporaneous medical care at the expense of the employer is not available under ICRA. Therefore, the nature of the "damages" being sought in the case at bar compared to the "damages" available under ICRA are not the same.

I conclude based on Cargill, Inc. v. Conley, 620 N.W.2d 496 (Iowa, 2000) that the Iowa Workers' Compensation Commissioner has subject matter jurisdiction in this case, despite the pending civil action. (Ex. G)

It is necessary to also specifically consider the issue of causation because if the current condition is not causally related to the work injury, then claimant is not entitled to ongoing medical care under Iowa Code section 85.27.

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).

When an expert opinion is based upon an incomplete history, the opinion is not necessarily binding upon the commissioner. The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire & Casualty Co., 526 N.W.2d 845 (Iowa 1995).

I have found above that claimant's current mental condition is causally related to his February 28, 2017 work injury based on the causation opinions of Dr. Adelman, Dr. Gallagher, Dr. Campbell and Dr. Rondinelli, and therefore remains compensable under the Iowa workers' compensation statute.

Claimant is entitled to ongoing medical care for his current mental health condition and continued treatment with Dr. Gallagher and any treatment he may recommend related to his work injury.

2. IME reimbursement, Iowa Code section 85.39.

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).

On March 10, 2017, Dr. Miller an occupational medicine physician saw claimant and concluded that claimant's current mental condition was not related to his work injury. This is understood to be zero percent impairment.

On May 8, 2018, claimant was seen for an independent medical examination (IME) with Dr. Rondinelli who issued a letter/report to claimant's counsel concluding that claimant suffered from a "cognitive sequelae of mild traumatic brain injury consistent with post-concussion syndrome." (Ex. 3, p. 50) He also identified an impairment rating but stated that the same should not be applied at this time because claimant had not yet reached maximum medical improvement (MMI).

I conclude that Dr. Miller's conclusion that claimant's current mental health condition was not related to the work injury was the equivalent of a zero percent permanent impairment rating and fulfilled the condition precedent of an employer retained physician's evaluation of permanent disability.

Claimant is therefore entitled to reimbursement of the reasonable cost of Dr. Rondinelli's IME, which was in the amount of $4,000.00.

3. Costs.

The final issue is costs. Assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. I conclude that claimant was generally successful in this claim and therefore exercise my discretion and assess costs against the defendants in this matter.

Costs as sought by claimant include the filing fee ($100.00), the cost of claimant's deposition transcript ($127.75), and the cost of obtaining the September 12, 2018, report from Dr. Gallagher, ($717.50) I conclude that these costs are allowed and appropriate under 876 IAC 4.33 and defendants are hereby ordered to pay the same, which total $945.25.

ORDER

IT IS THEREFORE ORDERED:

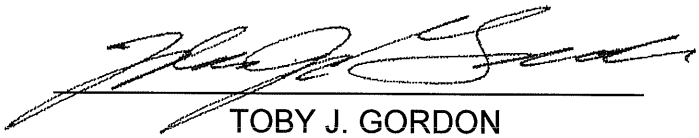
Claimant is entitled to ongoing medical care for his current mental condition, defendants shall promptly provide authorization for Dr. James Gallagher to treat claimant, and any additional treatment he may recommend related to his February 28, 2017 work injury.

Defendants shall reimburse claimant for the cost of the Dr. Rondinelli IME in the amount of four thousand and no/100 dollars ($4,000.00).

Defendants shall pay costs in the amount of nine hundred forty-five and 25/100 dollars ($945.25).

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

Signed and filed this 17th day of January, 2019.



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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.