BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RODNEY PRUISMANN,

Claimant,

vs.

MANPOWER, INC. OF DES MOINES,

Employer,

and

NEW HAMPSHIRE INSURANCE CO./AIG,

Insurance Carrier,
Defendants.

FILED
FEB 27 2015
WORKERS COMPENSATION

File No. 5048068

ARBITRATION DECISION

Head Note Nos.: 1108; 1402.40; 1402.60

STATEMENT OF THE CASE

Rodney Pruismann, claimant, filed a petition in arbitration seeking workers' compensation benefits from Manpower, Inc. of Des Moines, employer, and New Hampshire Insurance Co./AIG, insurance carrier, both as defendants. Hearing was held on January 22, 2015.

Claimant was the only witness testifying live at trial. The evidentiary record also includes claimant's exhibits 1-19 and defendants' exhibits A-Q. The parties submitted a hearing report at the commencement of the evidentiary hearing. On the hearing report, the parties entered into certain stipulations. Those stipulations are accepted and relied upon in this decision. No findings of fact or conclusions of law will be made with respect to the parties' stipulations.

The parties requested the opportunity for post-hearing briefs, which were submitted on February 10, 2015.

ISSUES

The parties submitted the following issues for resolution:

1. Whether the December 19, 2012, injury was the cause of permanent disability to Mr. Pruismann. If so, the nature and extent of such disability.

2. Whether defendants are liable for the December 13, 2013 Unity Point bill in the amount of $1,745.71.

3. Whether claimant is entitled to reimbursement for the independent medical examination (IME) bill in the amount of $3,495.00.

4. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Rodney Pruismann filed a petition alleging injury to his low back, right leg, right elbow, and body as a whole as the result of an injury on December 19, 2012. At the time of hearing, claimant indicated he was only seeking benefits as it related to his back, not his elbow or knee. Defendants stipulate that claimant sustained a compensable injury to his back on December 19, 2012, but dispute his entitlement to any permanency benefits or industrial disability. I find Mr. Pruismann has failed to show by a preponderance of the evidence that he sustained any permanent disability as a result of the December 19, 2012 injury.

Mr. Pruismann was an employee of Manpower, Inc. of Des Moines at the time of the injury. As a Manpower employee Mr. Pruismann was assigned to work at Vermeer in early July of 2012, and was still working there on the date of the injury in question. On December 19, 2012, Mr. Pruismann tripped on something while he was carrying a cylinder he had welded, he fell, and landed on his back. (Testimony)

Shortly after the fall Mr. Pruismann refused an ambulance, but was later seen at Pella Regional Health Care Center by Timothy Dykstra, M.D. (Exhibit 3, page 1) He reported falling at work, twisting, and landing on his right side in an attempt to protect his left wrist, which he had previously fractured. He reported that after the fall he had right knee pain which had gone away by the time he was seen at the medical center. His primary complaint at the time of the appointment was right-sided lower back pain and buttock pain. The doctor's assessment was right lower lumbar strain and mild right knee contusion. He was treated conservatively, given a 15 pound weight restriction, and told to follow-up in 2 weeks. (Ex. 3, p. 1) Mr. Pruismann returned to Vermeer and completed an injury report indicating injury to his back and low back. He also indicated that he had never experienced discomfort with his back prior to December 19, 2012. (Ex. A)

Vermeer was closed on December 20, 2012 due to a snow storm. On Friday, December 21, 2012, Mr. Pruismann was scheduled to start work at 5:00 a.m. At hearing, Mr. Pruismann testified he knew the plant was open that day and that he was required to call in prior to his shift if he was going to be late or absent; he testified he failed to follow this procedure. The plant was then shut-down for the holidays from December 22, 2012 through January 1, 2013. Mr. Pruismann did not seek any treatment during the plant shut-down. On January 2, 2013, he was to report for work at 5:00 a.m. Rather than reporting to work as scheduled Mr. Pruismann drove himself to

the emergency room. Mr. Pruismann did not call Vermeer to advise that he would be late. He was subsequently terminated for violation of company policy for no call/no show. (Testimony)

Mr. Pruismann was seen at the emergency room on January 2, 2013 by Matthew Gritters, M.D. He reported he had time off of work over the holidays and had not done anything strenuous. He said that his pain had been well-controlled until three days ago when he was walking in Walmart and felt pain on the right side of his back. Dr. Gritters' impression was right-sided lumbar back strain with recurrent pain and paresthesias. The doctor recommended he see Dr. Dykstra. (Ex. 4, p. 2) He was seen by Dr. Dykstra, who ordered an MRI on January 4, 2013. (Ex. 3, p. 4)

On January 9, 2013, Mr. Pruismann had his recorded statement taken by the insurance carrier. When asked if he ever had any prior workers' compensation injuries, Mr. Pruismann said he had one previous injury which was an electrical shock while working for Iowa Paint in the 1980's. (Ex. H, p. 2) Mr. Pruismann denied having any problems with his back prior to December 19, 2012. (Ex. H, p. 7) However, the record in this case demonstrates that Mr. Pruismann was not completely honest during this recorded statement. The record shows that Mr. Pruismann had in fact had two prior work-related back injuries. He had an injury on June 6, 1994 to his neck, back, and legs while working for Color Converting Industries and another back injury five years before the December 2012 injury while working for P & M Apparel. (Ex. J and Ex. O, p. 8) He had also sustained work-related injuries to his ankle in 2003 and to his ribs in which required months of hospitalization. (Ex. B, p. 1; Ex. O, p. 8) However, these prior injuries were not made known to the defendants in January of 2013.

The MRI ordered by Dr. Dykstra was performed on January 10, 2013. (Ex. 5, pp. 1-2) Mr. Pruismann followed-up with Dr. Dykstra on January 16, 2013. The doctor noted the MRI showed multiple levels of disk bulging and facet degenerative changes. He referred him to Des Moines Orthopaedic Surgeons, P.C. (DMOS) for further evaluation. Until that time he kept Mr. Pruismann off of work. (Ex. 3, p. 6)

On February 28, 2013, Mr. Pruismann saw Lynn M. Nelson, M.D., at DMOS for the chief complaint of right-sided low back pain. At this appointment, Mr. Pruismann reported to Dr. Nelson that he had been seen for low back pain at Broadlawns approximately three to four years ago. He reported he underwent physical therapy and chiropractic treatment, which brought him complete resolution of his symptoms. Mr. Pruismann reported to Dr. Nelson that at the time of the appointment he had mid-back, right shoulder, right upper extremity, and right lower extremity pain. Dr. Nelson's impression was low back greater than mid-back, right upper extremity, right lower extremity pain complaints. Dr. Nelson felt the pain complaints were myofascial and no surgical treatment was warranted. He stated: "his pain complaints are widespread and considerably greater than one would anticipate given his physical and scan findings." (Ex. 5, p. 11) Given his overall presentation Dr. Nelson did not feel there was an indication for specific work restrictions. (Ex. 5, pp. 10-11)

On March 7, 2013, Mr. Pruismann returned to see Dr. Dykstra for low back pain. At that time, he also reported right knee and right elbow pain which he felt was related to his December fall. The doctor noted he used a cane at this appointment, but that it appeared the need for the cane was due to his knee problems. The doctor's assessment was right lower lumbar strain. He prescribed medication and physical therapy. (Ex. 3, pp. 10-11) Mr. Pruismann continued to follow-up with Dr. Dykstra for his pain complaints. In May of 2013, Dr. Dykstra recommended another opinion because Mr. Pruismann was failing conservative care. He restricted him to no pushing, pulling, or lifting over 20 pounds and no squatting or kneeling. (Ex. 3, pp. 14-17) Mr. Pruismann returned to Dr. Dykstra on May 16, 2013 for his low back pain. He reported he had to walk with a cane most of the time, but did not bring the cane with him to the appointment. Also, the note states "[h]e is very upset today as he states he was talking to his attorney and his attorney advised him that we are being held back at this point for more referrals because of the documentation in Dr. Nelson's notes." (Ex. 3, p. 20) The doctor refilled his Percocet until he could be seen by a specialist. (Id.)

On June 24, 2013, Mr. Pruismann saw Todd Troll, M.D., at the request of Dr. Dykstra. The clinical notes indicate the patient denied prior back problems, but did admit to seeing a chiropractor in the distant past. He also insisted he did not have symptoms in the region prior to his fall. (Ex. 7, p. 3) Dr. Troll noted the patient had "marked pain behavior when asked to move, walk or with muscle strength testing." (Ex. 7, p. 4) Dr. Troll assessed him with lower back pain and physical therapy was restarted. He followed-up with Dr. Troll on July 22, 2013 and reported no improvement in his symptoms. Dr. Troll noted that the patient was no longer using a crutch. He did note "pain behavior with grimacing and guarding." The patient was noted to have normal heel and toe walking. (Ex. 7, p. 8) EMG and nerve conduction studies were carried out and both were normal. (Ex. 7, pp. 9-10) Dr. Troll saw the patient again on September 5, 2013. At that time, Mr. Pruismann reported he felt that he had plateaued and had good days and bad days. He reported that he had "many injuries in the past from which he has recovered and is frustrated that he continues to struggle with back pain." (Ex. 7, p. 13) Dr. Troll ordered a functional capacity evaluation (FCE) to evaluate his physical abilities. In the meantime, Dr. Troll released him to return to work with restrictions on September 5, 2013. (Ex. 7, p. 14)

On October 7, 2013, Dr. Troll noted that the FCE performed on September 26, 2013 was valid and that the recommendation for claimant's maximum work category was medium. The restrictions were 50 pounds maximum occasional waist to floor lifting, 40 pounds maximum occasional waist to crown lift, and 45 pounds maximum occasional bilateral upper extremity carry. He was also limited to occasional squatting or kneeling. He was okay for standing and walking on a frequent basis with positional changes. Dr. Troll placed the patient at maximum medical improvement and assigned permanent restrictions pursuant to the FCE. The patient was told to follow-up as needed. (Ex. 7, p. 15) Dr. Troll felt Mr. Pruismann had a five percent impairment for his back condition. (Ex. 7, p. 18)

Mr. Pruismann returned to see Dr. Troll on January 14, 2014. At that time he reported that he was there for his right knee. He reported that his back pain was stable and chronic with good days and bad. Dr. Troll could not relate his current knee symptoms to his work injury. (Ex. 7, p. 20)

On August 26, 2014, Dr. Nelson answered a series of questions from defense counsel. In his answers, Dr. Nelson indicated that the January 10, 2013 MRI films did not show any acute findings and was unremarkable for a 50-year-old individual. He further stated that Mr. Pruismann's subjective reports of pain were not consistent with the objective findings and that he demonstrated positive Waddell's signs, which can be reflective of an individual malingering. Dr. Nelson also confirmed that he did not recommend any additional treatment nor would he relate the need for any restrictions or impairment to the work injury of December 19, 2012. It is Dr. Nelson's opinion that the December 19, 2012 work injury did not cause or materially aggravate his back causing any permanent injury, impairment, or need for permanent restrictions. (Ex. 5, pp. 13-16)

On December 29, 2014, Dr. Troll responded to a number of questions posed by defense counsel. Dr. Troll indicated that he had reviewed Dr. Bansal's IME report. Dr. Troll stated claimant had reached MMI for the work injury by October 7, 2013. Dr. Troll indicated that he did not have any issue with Dr. Bansal's agreement with the FCE restrictions or his assignment of five percent permanent impairment. Finally, Dr. Troll did not feel any additional treatment was necessary for his back as a result of the December 19, 2012 work injury. Unfortunately, Dr. Troll did not specifically address the issue of causal connection between the work injury and any restrictions or impairment for Mr. Pruismann's back. Thus, even though Dr. Troll agreed that five percent impairment and permanent restrictions were appropriate for Mr. Pruismann's back condition, Dr. Troll did not indicate that there was any relationship between the impairment and restrictions and the December 19, 2012 work injury. (Ex. 7, pp. 22-25)

On December 13, 2013, Mr. Pruismann went to the emergency room at Iowa Lutheran Hospital with back pain. (Ex. 9) At hearing, he admitted that he did not request any additional care from the defendants prior to going to the emergency room nor did he contact Dr. Troll's office to seek treatment. He simply went to the emergency room for treatment. He reported back pain, which was a chronic problem. He reported that his current episode had started the day before with no known injury. The assessment was low back pain radiating to both legs. (Ex. 9, pp. 1-5)

On September 19, 2014, Mr. Pruismann saw his primary care provider, Scott Meyer, PA-C for right knee pain. The clinical note indicates that the patient also had chronic back pain which was "probably stemming from favoring the right knee." (Ex. 13, p. 3) He was referred to David A. Vittetoe, M.D., an orthopedist, for his knee.

He saw Dr. Vittetoe at the end of October for his right knee. Dr. Vittetoe stated that Mr. Pruismann was "considerably limited in his ability to ambulate distances due to his knee symptoms." It was determined that Mr. Pruismann would undergo a total knee replacement. (Ex. 5, pp. 17-19)

Mr. Pruismann saw Sunil Bansal, M.D., for an IME at his attorney's request on November 21, 2014. As a result of that evaluation and review of records provided to Dr. Bansal, he issued a report on December 12, 2014. (Ex. 1) Dr. Bansal opined that Mr. Pruismann had right lateral epicondylitis, aggravation of lumbar spondylosis, and aggravation of right knee arthritis all as a result of the injury he sustained while at work for Manpower on December 19, 2012. (Ex. 1, pp. 16-17) Dr. Bansal stated that on December 19, 2012, "he sustained injuries to his right knee, right elbow, and low back." (Ex. 1, p. 17) He goes on to explain his understanding of the mechanism of injury including that the patient "landed inside the paint cart on his right knee and right elbow." These statements from Dr. Bansal are not persuasive for several reasons as will be discussed below.

On December 2, 2014, Daniel J. McGuire, M.D., who saw Mr. Pruismann at Broadlawns, answered a series of questions from defense counsel. Dr. McGuire indicated that he had reviewed the MRI of the patient's back and it showed unremarkable age appropriate lumbar spondylosis with no acute findings. He further indicated that he would not recommend any surgical intervention for the back complaints. He agreed with Dr. Troll's five percent impairment rating for Mr. Pruismann's back and that he had reached MMI on October 7, 2013. (Ex. 11, pp. 32-33) The issue of causation was not addressed by Dr. McGuire.

On December 29, 2014, Mr. Pruismann was seen for by a pre-operative consultation for his knee surgery which was scheduled for January 26, 2015. Mr. Pruismann also reported he was there to discuss disability as he had sustained injuries to his back, right elbow and right knee due to a work injury two years ago. It was determined he was medically stable for surgery. PA-C Meyers then completed an Iowa Department of Human Services Physician's Statement and indicated that Mr. Pruismann would not be able to perform other types of jobs with appropriate education and training. (Ex. 13, pp. 6-10)

On January 8, 2015, Scott Meyer, PA-C answered a series of questions from defense counsel. He indicated that he had only seen Mr. Pruismann on two occasions and had not reviewed all of the patient's medical records because they were not available for his review. He also indicated that when he saw the patient on September 19, 2014, his primary complaint was right knee pain. He also confirmed that the disability form he filled out on December 29, 2014 was based on the patient's reports of symptomatology and could change based on the upcoming surgical results. (Ex. 13, pp. 11-13)

When viewed as a whole, the record demonstrates that Mr. Pruismann has been less than forthcoming about his medical history and prior workers' compensation claims. Exhibit 19 contains his answer to interrogatory regarding his work history. Mr. Pruismann lists numerous prior employers but he failed to list three of his prior employers. As defendants point out these are the three employers where he alleged prior workers' compensation claims. Mr. Pruismann was working for Color Converting and UPS in June of 1994 when he sought medical treatment for low back, upper back,

and neck pain. He was assigned restrictions. (Ex. C) In August of 1994, Mr. Pruismann filed a petition alleging an April 4, 1994 workers' compensation injury to his neck, back, and legs while working for Color Converting Industries. (Ex. J) He also failed to disclose that he previously worked for TruGreen Chemical Lawn. However, Concentra Medical Centers demonstrates that Mr. Pruismann sprained his ankle on May 8, 2007 while working for TruGreen Chemical Lawn. (Ex. B)

Additionally, Mr. Pruismann had a physical examination at Concentra on June 28, 2012. On that sheet Mr. Pruismann failed to disclose his prior right elbow, right knee, and back problems. (Ex. 12, pp. 1-10) Mr. Pruismann was asked if he was ever off work for more than one day due to job-related illness or injury. He responded he had not. (Ex. 12, p. 4) He also indicated that he did not have prior back pain. (Ex. 12, p. 5) At the end of the questionnaire he indicated that his answers were true and correct. (Ex. 12, p. 5) However, claimant admitted in his answers to interrogatories that he had missed work for a couple of months due to a work-related accident in 2003. (Ex. O, p. 8) Mr. Pruismann had also had a fall from a ladder and injured both of his wrists which caused him to be off work for several years. (Ex. 15, 17, D, E, F and O and Testimony). The evidence also shows that Mr. Pruismann did have prior back problems and had even filed a workers' compensation petition for prior back pain. (Ex. J) He also failed to disclose that he strained his back while working as a screen printer for P & M Apparel. (Ex. O, p. 8) Although Mr. Pruismann was seen for "severe" back and knee pain just seven months before he began working at Manpower, he denied ever having prior back problems. (Ex. 12, p. 5; Ex. 14, p. 11)

I do not find the opinions of Dr. Bansal to be persuasive in this matter. First, Dr. Bansal's opinions are not supported by the medical records in this case. Dr. Bansal's history is not correct. For example, Dr. Bansal believed the right elbow symptoms were causally connected to the work injury due to the "immediate clinical presentation." This is not consistent with the medical evidence in this case because there was no immediate clinical presentation of elbow symptoms. Second, Dr. Bansal causally connects the right elbow and right knee conditions that claimant himself is not even seeking recovery for. Third, Dr. Bansal causally connects claimant's back pain based on claimant's subjective complaints and because he believes there is a mechanistic and temporal basis to relate the back to the injury. However, the record demonstrates that claimant's statements cannot be relied upon. Finally, Dr. Bansal's opinions do not fit with the medical picture as a whole or the opinions of the other experts in this matter.

The preponderance of the evidence simply does not show that Mr. Pruismann sustained any permanent disability as a result of the December 19, 2012 work injury. I find the opinions of Dr. Nelson, a specialist with DMOS, to be the most persuasive in this matter. He has indicated that Mr. Pruismann's subjective reports of pain were not consistent with the objective findings. Dr. Nelson has specifically indicated that the December 19, 2012 incident did not cause or materially aggravate Mr. Pruismann's back condition. (Ex. 5, pp. 13-16) Claimant's assertion that his back problems were caused by the December 19, 2012 work injury is also not supported by the opinion of

PA-C Meyer. PA-C Meyer has indicated that Mr. Pruismann's back condition probably stems from favoring the right knee, which required a total knee replacement. (Ex. 13, p. 3) Neither Dr. Troll nor Dr. McGuire has indicated that Mr. Pruismann has sustained any permanent impairment or requires any restrictions as a result of the work injury. Therefore, I find claimant has failed to carry his burden of proof to show that he sustained any permanent impairment as a result of the December 19, 2012 injury.

The next issue to be addressed is whether Mr. Pruismann is entitled to be reimbursed for the December 13, 2013 visit to Iowa Lutheran Hospital. Based on Mr. Pruismann's own testimony, I find that the case was not authorized care and was also not emergency care. Additionally, there has been no showing that the care was necessitated by the December 19, 2012 injury. Thus, I find claimant has failed to show he is entitled to reimbursement for that visit.

The next issue to be addressed is whether the IME fee of Dr. Bansal is reasonable. The IME bill amounts to $3,495.00. Defendants do not dispute claimant's entitlement to the IME; rather they dispute whether the amount of the bill is reasonable. Defendants argue that Dr. Bansal's fee should be reduced because he evaluated and rated three separate body parts (back, elbow, and knee) however, the only body part Mr. Pruismann is alleging is related to his work injury is his back. I find the ratings and evaluations of claimant's elbow and knee are not related to the December 19, 2012 injury. I also find that it is not reasonable to require defendants to reimburse the full amount for an IME which involved more body parts than are alleged to be related to the work injury. Therefore, I find the IME fee of $3,495.00 is not reasonable.

CONCLUSIONS OF LAW

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

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes

of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

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

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

In this case, I found Dr. Nelson's medical opinions to be the most convincing causation opinions in the record. Accordingly, I found that claimant has not proven he sustained any permanent impairment or loss of earning capacity as a result of the December 19, 2012 work injury. Therefore, claimant failed to prove entitlement to permanent partial workers' compensation benefits.

Having determined that claimant failed to prove he sustained any permanent injury as a result of the work injury, the remaining issues regarding loss of earning capacity are moot.

Claimant is seeking reimbursement for his visit to the emergency room on December 13, 2013. Under Iowa law the employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer has the right to choose the provider of care,

except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975). In the present case, there is no dispute that this was not authorized care. However, in an emergency, even when care is not authorized, defendants could be found liable for the cost of the treatment. However, Mr. Pruismann has not shown that the care he received on that date was due to an emergency. Further, there was no showing that the treatment was necessitated by the December 19, 2012 work injury. Claimant has failed to show by a preponderance of the evidence that defendants should be responsible for the unauthorized care.

Claimant is also seeking reimbursement for the $3,495.00 cost of Dr. Bansal's independent medical examination.

Iowa Code 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).

In the present case claimant is not seeking recovery for his elbow or knee, yet Dr. Bansal evaluated and rated those body parts along with his back. I found it is not reasonable to require defendants to pay the full amount for an IME that evaluated more body parts then are even being alleged to be related to the work injury. Unfortunately, Dr. Bansal's bill does not provide any type of breakdown or itemization. The description of services states: "Independent Medical Examination and report: PRUISMANN, Rodney . . . . . $3,495." (Attachment to hearing report) A reasonable approach is to take the total bill, divide it by the number of body parts he rated, and have defendants reimburse claimant for the number of body parts alleged to be related to the work injury. In the present case, there were 3 body parts that were rated by Dr. Bansal, but in this proceeding claimant has only alleged 1 was work-related. Therefore, I defendants shall reimburse claimant for 1/3 of the total IME bill. Defendants shall reimburse claimant for $1,165.00 of Dr. Bansal's bill.

Pursuant to rule 876 IAC 4.33, 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. Claimant failed

to establish that he is entitled to any additional weekly benefits as a result of the December 19, 2012 injury. Generally, claimant did not prevail in this matter. Therefore, I conclude that it is not appropriate to assess claimant's costs in this action.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take no additional weekly benefits from these proceedings.

Defendants shall reimburse claimant for one-third of the Dr. Bansal IME as set forth above.

Each party shall bear their own costs.

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 27th day of February, 2015.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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EQP/srs

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.