BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LAWRENCE ECHOLS,

Claimant,

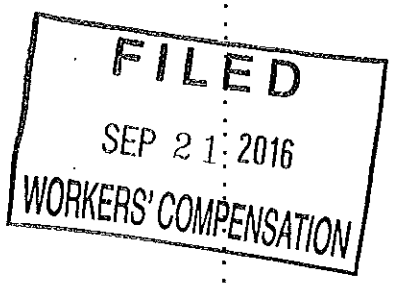
vs.

ELITE STAFFING, INC.,

Employer,

ACE AMERICAN INSURANCE CO.,

Insurance Carrier,
Defendants.



File No. 5047498

ARBITRATION

DECISION

Head Note Nos. 1108; 1803; 1804; 2500; 3000

STATEMENT OF THE CASE

Lawrence Echols filed a petition for arbitration seeking workers' compensation benefits from Elite Staffing, Inc., and Ace American Insurance Company.

The matter came on for hearing on May 7, 2015, before deputy workers' compensation commissioner Joseph L. Walsh in Des Moines, Iowa. The record in the case consists of Claimant's Exhibits 1 through 33; Defendants Exhibits A through U; as well as the sworn testimony of the following witnesses: Lawrence Echols, Alicia McDonald, Letha Larson and Scott Shellenberger. Ms. Larson and Mr. Shellenberger were managers from Waste Management. No representatives from the employer or insurance carrier testified. There were numerous objections and the record was held open for a significant amount of time to ensure a full record. The parties briefed this case and the matter was fully submitted on August 19, 2015.

STIPULATIONS

Through the hearing report, the parties agreed to the following stipulations which are hereby accepted.

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

2. The claimant sustained an injury in February 2014, which arose out of and in the course of employment. While the defendants concede that an injury occurred, the defendants allege that the claimant only injured his left elbow and further contend the actual incident date was February 8, 2014.

3. The defendants have waived affirmative defenses.

4. The parties agree there is no issue concerning credit.

ISSUES

1. Whether the stipulated injury is a cause of any temporary or permanent disability.

2. Whether the claimant is entitled to any temporary or healing period benefits. Claimant seeks a running award. Defendants deny that claimant has any disabling medical condition causally related to the work injury. The defendants alternatively contend the appropriate maximum medical improvement (MMI) date is July 10, 2014.

3. Whether the claimant is entitled to any permanent disability benefits.

4. The rate of compensation is in dispute. Defendants challenge every element.

5. Whether the claimant is entitled to medical expenses as set forth in Claimant's Exhibit HR-2. Defendants contest these costs primarily upon the basis of causal connection, however, they also challenge whether the bills were reasonable, necessary and authorized.

6. Whether the claimant is entitled to independent medical evaluation (IME) expense as set forth in Claimant's Exhibit HR-3. Defendants contest this expense on the basis that the claimant did not injure his back in the fall.

7. Whether the defendants should be sanctioned for spoliation of evidence. Claimant contends the defendants destroyed a surveillance video of claimant on the stairs at the time of the work-related injury.

FINDINGS OF FACT

Lawrence Echols was 59 years old as of the date of hearing. He has numerous barriers to employment, including a past felony conviction, incarceration, and a 10th grade education. While in formal education, he participated in special education classes and testing shows he does not function at a high level in reading or math. (*See* Defendants' Exhibit A, page 6) He has had significant difficulties with alcoholism and substance abuse. Mr. Echols has also had degenerative low back problems for several years. In spite of these barriers, he has worked most of his life.

Mr. Echols fell at work in February 2014. The central question in this case is whether that fall, which is an admitted fact of the case, caused any damage to the claimant. He contends this fall significantly aggravated his preexisting low back injury and mental conditions, while defendants contend he had a long, preexisting history and there is no solid evidence he aggravated or lit up his low back or mental problems. Thus, a central issue in this case is the claimant's credibility. I watched the claimant testify live and observed his demeanor while testifying. There was nothing about his

demeanor which caused me any concern. I reviewed his testimony and compared it to his deposition testimony and the medical records. (*See* Defendants' Exhibit L) The claimant is not a good historian. His memory is poor. He had specific inconsistencies in his recalling of his injury which shall be addressed herein. I find, however, that Mr. Echols is generally credible. He testified honestly at hearing within his abilities. There is certainly nothing in this record which leads me to believe he was attempting to be dishonest.

Mr. Echols had a long history of symptoms of disability in his low back. The documentation of his condition is fairly spotty. This reflects the fact that claimant had received very little formal treatment for his low back at various times prior to this work injury. He was diagnosed with a low back strain in 1979. (Def. Ex. A, p. 3) He was released from medical care without restrictions for his back in 1980. (Def. Ex. A, p. 3) There is no evidence he received any type of treatment or that his low back impaired his ability to work between 1980 and 1993. In 1993, emergency records from Lutheran Hospital demonstrate he had acute low back pain for a period. (Def. Ex. B) There is no record of any follow up. In 1994, he reported he was in good physical health. (Def. Ex. A, p. 6)

Mr. Echols claimed he suffered a back injury in 2001, while working for Action Warehouse. (Def. Ex. M) He alleged a tractor tire rolled over his left foot and he injured his back in the process. (Def. Ex. M, pp. 155, 167) X-rays showed multi-level degenerative disc disease in his back. (Def. Ex. M, p. 167) He eventually did have an MRI of his low back in 2001, which was normal, although he complained of ongoing back pain. (Cl. Ex. 12, p. 3) He eventually had surgery on the left foot and settled his claim through a special case settlement. He apparently stopped receiving any treatment on the low back during this process. I can find no records in this file between 2001 and 2010, which document any back treatment or ongoing complaints of back pain.

In March 2010, Mr. Echols had a bout of significant, acute low back pain following the performance of some yard work. (Def. Ex. C, p. 32) The pain was radiating into his legs from this episode. (Def. Ex. C, p. 32) His x-rays were negative. (Def. Ex. C, p. 38) In September 2010, he had an onset of acute low back pain while carrying a pan of ribs. (Def. Ex. C, p. 41) There was little follow up after this injury.

Mr. Echols also underwent a pre-employment physical with an employer in March 2012, which released him to work without any formal medical restrictions. (Cl. Ex. 10, pp. 1-5) The testing results were quite specific and documented his ability to bend and lift without difficulty at that time. (Cl. Ex. 10, p. 5)

Mr. Echols visited Broadlawns Medical Center in May 2013. The following is documented:

> States he has back problems, asthma, arthritis all over, and carpal tunnel syndrome. Reports things are going well. Has adequate medications from the

walk-in clinic. Does need a physical therapy referral for his back.

Needs some sort of statement for his disability with regards to his back and other pains. States that he lost letter and I asked him to get another one so we know exactly what is required. Voiced understanding. It sounds like a functional evaluation is needed and he voiced understanding. We'll arrange for that in the physical therapy.

(Def. Ex. C, p. 50)

Based upon the records in evidence, I find that the claimant had a history of chronic, although primarily episodic, low back pain. His symptoms waxed and waned over the years but were manageable for the most part. He was able to work and be productive. Mr. Echols made no attempt to cover up his prior condition.

Mr. Echols also has a history of psychological issues. (Def. Ex. A, p. 7) Based upon the record before the agency, it appears his conditions were largely untreated other than when he was imprisoned. In 1994, a psychological report from the Iowa Medical and Classification Center diagnosed antisocial personality disorder and alcohol dependence. (Def. Ex. A, p. 5)

Mr. Echols was hired by Elite Staffing in August 2013. Elite Staffing is a staffing agency which provides labor to employers. Mr. Echols was placed at Waste Management as a sorter. As a sorter he inspected materials and sorted items. (Cl. Ex. 20.1, p. 3) The position required the performance of a variety of light to medium tasks. (Cl. Ex. 20.1, pp. 13-14) There are very few personnel documents in the record; however, it appears that his only placement was with Waste Management. Mr. Echols performed the duties of a sorter without any restrictions between August 2013 and February 8, 2014.

As a sorter, Mr. Echols earned $9.00 per hour and was deemed full-time. He often worked more than 40 hours per week. Waste management officials alleged he was inconsistent in reporting for work due to transportation and other personal issues. I have reviewed defendants' exhibit G in comparison to claimant's exhibit 13. Considering the totality of evidence, I find the claimant's average weekly earnings were $450.00 per week. (Cl. Ex. 13, p. 1) This calculation excludes weeks where claimant worked less than 40 hours per week, however.

Based upon the tax returns in the record, reluctantly I find the claimant was single and entitled to two exemptions for income tax purposes in 2014. While there is conflicting testimony and evidence, I find this is the best evidence in the record. (Cl. Ex. 15)

Mr. Echols did have significant attendance issues which caused Waste Management to temporarily cease using him for a period of time in January 2014. He met with his supervisor (who was employed by Waste Management, not Elite Staffing),

Letha Larson, in January 2014, and he continued his employment thereafter. At hearing, Mr. Echols described personal family problems as the primary reason for his absences during this period of time.

On February 8, 2014, Mr. Echols was working for Elite Staffing at his assignment at Waste Management. He testified that he and a co-worker named Tony had picked up brooms to start sweeping downstairs. (Transcript, p. 62) While he was descending a flight of stairs to sweep, he slipped backward on the slick stairs and fell or slid to the bottom. (Tr., p. 62) It was an outdoor area and the stairs were metal. (Cl. Ex. 17) Eventually, he met with Ms. Larson in the office where he reported the injury. Certain facts regarding this incident are in dispute, however, most of those facts are comparatively insignificant.

It is not disputed that the claimant slipped and fell down a flight of metal steps. He slipped backward while holding the rail and slid down. Mr. Echols testified that his co-worker, Tony, went to get Ms. Larson and she helped him to the office. Ms. Larson denied this. Tony did not testify although claimant made efforts to locate Tony and other witnesses. (Cl. Ex. 16, p. 3) One witness to the injury, William Walker, did provide a hearsay statement to an investigator which corroborated the claimant's story. (Cl. Ex. 16, p. 1) Mr. Echols testified that he told Ms. Larson his back hurt and that she looked at his back. Ms. Larson denied this. She testified that the claimant specifically told her he only hurt his elbow. This is supported by the injury report which she filled out.

> Lawrence was coming down the stairs to sweep, lost his footing on the slick stairs, and slid all the way to the bottom. He contacted his left elbow on the stairs on his way down. There is a bump and some swelling but he can move it freely with no pain. I suggested he takes [sic] Ibuprofen tonight and tomorrow for pain. He did not injure his back. He was holding onto the railing as he was going down (3 points of contact). He was carrying a red broom in his left hand and dropped it when he slipped. He did not take the red broom up with him, he was only taking it back down. Going to cover with both shifts NOT to take the red brooms upstairs anymore since we have the smaller ones already up there.

(Cl. Ex. 20.1, p. 2)

Ms. Larson testified that she did not turn this injury in to Elite Staffing because she deemed it a "first-aid-only injury" which would not require any medical treatment. (Tr., p. 111) Consequently, no investigation was performed, other than Ms. Larson did attempt to review the video. She testified she did this while claimant was in the room with her. (Tr., p. 129) She testified that nothing could be seen on the video. (Tr., p. 118) Since nothing was on the video and it was a "first-aid-only injury", she made no attempt to preserve the video. Specifically, she testified that the video did not show the entire staircase and he could not be seen on the video at all after he descended the first few steps. Claimant testified that he requested treatment. Ms. Larson denied this.

Claimant's testimony was supported to some degree by the testimony of Alicia McDonald. Ms. McDonald has lived with the claimant for the past four years. She picked Tony and Mr. Echols up from work on February 8, 2014. She testified that he was walking with a limp and both Tony and Mr. Echols reported the injury to her. (Tr., pp. 36-37) Based upon her observations she believed he injured his back. She testified his memory is not great.

According to Ms. Larson, Mr. Echols reported to work over two hours late on February 10, 2014. According to Ms. Larson, however, he did perform work that day and she did not recall him complaining about his injury or any issues completing his work assignments. (Tr., p. 123) Mr. Echols did not report to work at all on February 11, 2014. Apparently, this was due to ongoing transportation issues. The employer's notes indicated Mr. Echols had called in: "no van – getting a ride." (Cl. Ex. 20.1, p. 6) There is no record of contact between the employer and Mr. Echols after that notation.

Ms. Larson testified she left employment at Waste Management in April 2014. At the time she left, she still had no idea Mr. Echols was claiming that he had injured his back during the fall. (Tr., p. 131)

For his part, Mr. Echols testified that he needed treatment on his low back and eventually sought treatment on his own. On March 14, 2014, he was seen by Primary Health Care, Inc. The following history is recorded by David Yurdin, P.A.

> Lawrence is a 57 Years Old Male who presents for the above stated chief complaint. [urine frequency, back injury] The patient complains of back pain since fall at work, fell down stairs 2-15-14. He did not go to ER. There has been no improvement, pain continues. He has asthma and needs albuterol for nebulizer. See the review of systems for more details.

(Cl. Ex. 6, p. 4) X-rays were ordered and a follow up appointment was set. Symptoms of depression were also noted in the notes. He returned to the clinic on April 14, 2014. On that date, Mr. Echols asked for a referral to a specialist.

> Pt had a fall at work on 2-15-14, he fell down icey stairs at work. Pain originates in lower back and shoots up his back. Pain is constant, worse with movement. Pain is improved with sitting still and laying on R side. Not relieved by ibuprofen or tylenol. Pt would like referral for the back pain today.

(Cl. Ex. 6, p. 10) Symptoms of depression and anxiety were again noted in the records. The clinic prescribed nabumetone and scheduled physical therapy.

Mr. Echols returned to the clinic on May 6, 2014. She noted that he had begun physical therapy but his pain had remained constant. (Cl. Ex. 6, p. 19) He was also having left hip pain at the site of a previous hip dislocation in addition to the low back pain. His back and hip were extremely stiff in the mornings. His medications were

adjusted (meloxicam and tramadol) and he was instructed to continue physical therapy. (Cl. Ex. 6, p. 19) An MRI was recommended but did not get approved. On this date, he was provided restrictions of no lifting more than 15 pounds and no extended sitting. (Cl. Ex. 6, p. 17)

Mr. Echols went to some physical therapy appointments in May 2014. (Cl. Ex. 8, pp. 1-9) His symptoms seemed to be improving, however, he ceased attending appointments toward the end of May apparently due to transportation problems. At one point, he told the therapist his "back was doing okay." (Cl. Ex. 8, p. 8) There are no further details in that note for context.

A review of the record demonstrates a petition was filed in this matter on May 29, 2014.

In June 2014, Mr. Echols began receiving mental health treatment through Eyerly Ball Community Mental Health Services. He was consistently treated for depression at Eyerly Ball through the date of hearing. The notes repeatedly and consistently documented his chronic pain and poverty from not working as the primary stressors in his life. (Cl. Ex. 7, pp. 1-36)

On July 1, 2014, Mr. Echols returned to the clinic again, indicating the new medications prescribed in May were not working. He noted that he had been living in a tent for the last two months and this was making his asthma worse. (Cl. Ex. 6, p. 23) His medications were adjusted again. He was placed on tramadol and hydrocodone. (Cl. Ex. 6, p. 29)

On July 10, 2014, Mr. Echols was evaluated by Lynn Nelson, M.D. The following excerpt is from Dr. Nelson's evaluation report.

> HISTORY OF THE PRESENT ILLNESS: Lawrence Echols is a 57 year old male seen at the recommendation of Dr. Megan Mortenson for evaluation of a chief complaint of mid to low back pain. The patient also reports pain in multiple other locations including bilateral buttock, posterior thighs and shoulders. He reports his pain has been going on for approximately 14 years. The patient states "the pain has been going on for a long time, and the fall made it worse." The patient states he had a reported work injury on 2/15/14 when he reportedly fell on to his back while going down steel stairs at work. The patient states he can walk approximately five blocks before needing to stop due to his left sided low back pain.
>
> He reports his pain as being a very severe pain in nature which is the same throughout the day and worse with lying down, sitting, standing, walking, lifting, twisting, bending forward, bending back, coughing, sneezing and sleeping. He reports nothing improves his pain. Since onset he states his pain has rapidly worsened. He reports intermittent

> numbness into his right foot. He denies significant bowel or bladder problems. He reports pain that wakes him from sleep.

(Def. Ex. F, p. 60) After evaluating Mr. Echols, Dr. Nelson went on to diagnose mid to low back, bilateral buttock and thigh pain, L4-5 spondylolisthesis, multilevel lumbar spondylosis and mild bilateral hip OA. (Def. Ex. F, p. 61) Dr. Nelson recommended Mr. Echols "continue symptomatic treatment." (Def. Ex. F, p. 61) He also stated, that no "work restrictions were given." (Def. Ex. F, p. 61)

Mr. Echols continued treatment with Primary Health. He was provided a medical incapacity report on July 15, 2014, Megan Mortenson, ARNP. She indicated his diagnosis was lumbar back pain with radiation due to contusion. (Cl. Ex. 6, p. 30) She indicated pain management and physical therapy was the appropriate treatment and provided restrictions to work 10 or fewer hours per week which should avoid lifting, lifting bending or prolonged standing. (Cl. Ex. 6, p. 30)

In September, Mr. Echols returned to Primary Health again. His pain continued. He asked to see a new specialist and restart physical therapy. (Cl. Ex. 6, p. 32) He was restarted on the meloxicam on a daily basis. (Cl. Ex. 6, p. 33) He returned again a few weeks later in September 2014, to be seen for numbness and pain in his wrists. (Cl. Ex. 6, p. 40) He again followed up in October 2014, noting he was unable to follow through with physical therapy due to lack of transportation. (Cl. Ex. 6, p. 45) His medications were again reviewed and he was provided with hydrocodone "until he can see new provider." (Cl. Ex. 6, p. 46)

On October 4, 2014, Mr. Echols reported to Unity Point Health clinic and was evaluated by Kathryn Clifton, PA-C, for dental pain. In the Review of Systems section, it was noted that claimant was negative for "back pain, joint swelling, and gait problem." (Def. Ex. B, p. 28) It is unclear how PA Clifton reached this conclusion. The defendants suggest that claimant specifically reported he had no back pain, and fits with his pattern of essentially faking his low back injury. This, however, seems unlikely. It is more likely that this was an oversight due to the fact claimant presented for the evaluation for dental issues.

In December 2014, he again followed up at the clinic. At this time, he had right hip pain which had begun three weeks earlier when he twisted on the ice. (Cl. Ex. 6, p. 49) He complained that the medications were not helping with the pain. X-rays were taken of the hip which did not show any fracture or acute issues. (Cl. Ex. 6, p. 53) He returned again in February 2015, complaining primarily of hip pain, however, the records are obviously dealing with his low back pain as well. (Cl. Ex. 6, pp. 63-65) An MRI was recommended in addition to a referral to a specialist and physical therapy. (Cl. Ex. 6, p. 65)

The claimant was evaluated by Robin Sassman, M.D., on March 9, 2015, and the report was issued April 2, 2015. (Cl. Ex. 1) Dr. Sassman is Board Certified in Occupational Medicine and an Independent Medical Examiner. (Cl. Ex. 2, p. 3) On

March 26, 2015, Mr. Echols obtained an MRI, which was ordered by Daniel Miller, D.O., (explained further below) with the following findings:

> At the L4-L5 level, grade 1 anterolisthesis of the L4 on L5 noted, related to ligamentous laxity and advanced bilateral facet joint DJD. Shallow diffuse disc bulging seen centrally without traversing L5 nerve root compromise. On sagittal images, upward directed right far lateral disc does have mass effect upon the exiting right L4 nerve root within the neural foramina as well.
>
> At the L3-L4 level, right lateral/far lateral disc bulge does have mild mass effect upon the traversing right L4 nerve root as well as touches the exiting right L3 nerve root within the neural foramina. Minimal left-sided disc bulging seen as well though without any nerve root compression or displacement.
>
> At the L2-L3 level, mild right greater than left diffuse disc bulging seen without nerve root compression or displacement.
>
> At the L1-L2 level, left greater than right mild diffuse disc bulging seen without nerve root compression or displacement.
>
> Shallow posterior directed disc bulges seen at the T12-L1, T11-T12, and T10-T11 levels without spinal cord or obvious nerve root compromise. Diffuse idiopathic skeletal hyperostosis changes noted through the thoracolumbar spine.

(Cl. Ex. 5) The report was provided to Dr. Sassman.

Dr. Sassman's evaluation was extraordinarily thorough. Dr. Sassman painstakingly reviewed his medical records and fully understood Mr. Echols' medical history. (Cl. Ex. 1, pp. 1-4) She performed a thorough and comprehensive physical examination. (Cl. Ex. 1, pp. 5-6) She diagnosed lumbago and right hip pain and stated the following with regard to medical causation.

> It is my opinion that the incident that occurred on or about February 8, 2014, was a substantial aggravating factor in Mr. Echols current symptoms of low back pain. It was on this date that Mr. Echols slipped and fell down 13 steps. He subsequently had bruising on his back and right arm. . . . This mechanism is certainly consistent with his injuries. While it is true that Mr. Echols had previous complaints of back pain prior to this injury, he indicated to me that his prior symptoms were intermittent in nature. They would worsen at times and then subside. After this injury on February 8, 2014, his pain was more severe and more consistent in nature. This indicates a worsening of his symptoms after the injury in question.

(Cl. Ex. 1, p. 6) She made similar opinions regarding the right hip but noted that further workup was necessary to fully assess it. (Cl. Ex. 1, p. 7) She recommended further care for the claimant as well and opined that he was not at maximum medical improvement. (Cl. Ex. 1, p. 7)

Dr. Sassman then provided a detailed impairment rating using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, and assessed his permanent impairment at 16 percent whole person for his low back and 3 percent for his right hip. (Cl. Ex. 1, pp. 7-8)

> I would recommend that Mr. Echols limit lifting, pushing, pulling and carrying to 20 pounds occasionally from floor to waist, 20 occasionally from waist to shoulder, and 20 occasionally over shoulder height. He should limit sitting to standing and walking to an occasional basis. I would recommend rarely bending and squatting.

(Cl. Ex. 1, p. 8)

Mr. Echols saw Daniel Miller, D.O., on March 9, 2015, the same day he saw Dr. Sassman. Dr. Miller is board certified in family medicine. He is not an occupational medicine physician, nor is he board certified as an Independent Medical Examiner. (Def. Ex. G, p. 90a; Cl. Ex. 29, p. 1)

Dr. Miller understood the history to be that Mr. Echols indeed slid down the stairs. He was apparently informed by the defendants that Mr. Echols "did not injure his back." (Def. Ex. G, p. 84) He further incorrectly believed that Mr. Echols had a "history of severe back pain since 2010." (Def. Ex. G, p. 88) This is objectively not true. Dr. Miller reviewed the medical records of the recent treatment through Primary Health Care. It appears Dr. Miller examined him, although Mr. Echols denied this. (Def. Ex. G, pp. 87-88) Dr. Miller concluded that the claimant experienced an acute back strain which fully healed. "Based on record review, Mr. Echols underwent examination for the work-related injury diagnosis of acute back strain. Evidently he reached MMI on July 10, 2014 per Dr. Nelson when he declared there were no restrictions." (Def. Ex. G, p. 88) This was also based upon his understanding that Mr. Echols had "a history of severe back pain since 2010." (Def. Ex. G, p. 88) He ultimately concluded that claimant's "current back signs and symptoms are due to chronic degenerative disk disease and were not exacerbated by the work injury of February 8, 2014." (Def. Ex. G, p. 88)

He again returned to Primary Health Care in April 2015, and again, reported his ongoing back pain and symptoms of disability. His medications were continued. (Cl. Ex. 6, pp. 68-75)

Both Dr. Sassman and Dr. Miller prepared supplemental reports after reviewing additional information, including at a minimum, the other expert's report. I have reviewed these additional reports which add little value to the fighting disputes in the case. (Def. Ex. G, p. 90; Cl. Ex. 1, p. 14)

Just prior to hearing, a psychological report was prepared by Eva Christiansen, Ph.D. Dr. Christiansen evaluated Mr. Echols on January 20, 2015, but did not submit her report until April 8, 2015. Dr. Christiansen provided the following opinions. Mr. Echols suffers from symptoms of depression and anxiety. (Cl. Ex. 3, pp. 2-3) She opined his work injury and pain substantially aggravated or contributed to these diagnoses. (Cl. Ex. 3, p. 3) She recommended further treatment and opined that these conditions are independently disabling. (Cl. Ex. 3, p. 4)

For a variety of reasons, the record was held open to allow the defendants to obtain a report to rebut the opinions of Dr. Christiansen. Philip Ascheman, Ph.D., produced an expert report dated July 18, 2015, which contained numerous expert opinions relevant to this case. (Def. Ex. U) He opined that claimant suffers from several mental health conditions which are unrelated to his work injury. (Def. Ex. U, p. 249)

Mr. Echols has searched for some work intermittently and he has applied for Social Security Disability. As of the date of hearing, he had not received a decision. I find that given his age, educational background, past work history and qualifications, his condition and medical restrictions, he is likely unable to secure any gainful employment in the competitive job market.

CONCLUSIONS OF LAW

The primary fighting issue in this case is whether the admitted February 8, 2014, work injury caused any impairment (either temporary or permanent) other than a minor, "first-aid-only" elbow injury. Thus, while the injury is admitted, the defendants have tied their defense to the proposition that the claimant only injured his elbow in that fall. They contend that he later, after missing work while on a final warning, decided to claim that he also injured his back, when that in fact, was false. For his part, claimant insists he knew his back was injured immediately and that the employer essentially covered up the entire back injury, including destroying video evidence of the same. Thus, while the issue is posed as a causal connection issue, it is quite unusual in that the defendants' defense mostly relies upon the assertion that the low back injury is manufactured and faked.

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). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

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

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

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

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).

This is a close case. Based upon the record before the agency, I find that Mr. Echols fell down the stairs on February 8, 2014, as he described at hearing. I find that he suffered an injury to his elbow and his low back, however, his elbow may have been worse than his back at the time. I do not have sufficient information in this file to conclude that Letha Larson was attempting to cover up this injury. Based upon the record before me, it appears she believed the injury was minor (first-aid-only) which would not require any doctor visits. It is likely that Ms. Larson preferred to take a "wait and see" approach to determine if this was merely a minor, insignificant workplace trauma. While this would be a much cleaner case had she immediately turned in the claim to the employer and performed a full investigation, the greater weight of evidence lends to a finding that this was a mistake, not some type of intentional cover up of an injury by the client employer. With the benefit of hindsight, this is a cautionary tale for employers and staffing agencies. It certainly would have been in everyone's interest had the client-employer, Waste Management, or the staffing agency, followed up with Mr. Echols shortly after his separation to check on the injury.

The greater weight of evidence supports the finding that the claimant did injure his back in the fall. He may not have known the severity of the injury on February 8, 2014, however, the medical evidence supports a finding that the fall did, in fact, light up or otherwise aggravate the claimant's pre-existing degenerative low back conditions which required the need for treatment and a permanent worsening of his condition. In particular, the medical reports from the treating physicians at Primary Health Care are found to be compelling. From his first visit in March through his last visit just prior to hearing, the claimant alleged low back pain from a fall at work. His low back complaints were consistent.

In order to find for the defendants, I would have to find that the claimant deliberately concocted his story and maintained the mirage of a back injury with his treating physicians from March 2014, through the date of hearing. While this is possible, I do not believe this is the most likely scenario. It is highly unlikely that Mr. Echols has the attention to detail, and skill to deliberately fake an injury in this way for this length of time. Rather, I believe it is more likely that he injured himself in the fall and that he miscommunicated with Ms. Larson regarding the precise nature of the injury at the time. He ceased working a couple days later, after working less than one full day and neither party followed up with the other due to the fact Mr. Echols had been on his final attendance warning.

Moreover, having witnessed the claimant testify live, I believe he was trying to be honest. It is noted that he is a poor historian of the facts. It is also noted that there is some evidence in this record which does not support his claim. I do not conclude, however, that Mr. Echols was lying when he testified before the agency, and I further conclude that he is not submitting a fraudulent claim.

The admitted injury itself is the type of injury one would expect to aggravate a low back condition. At the time of the injury, Mr. Echols was 58 years old with a well-documented history of low back complaints. I do not find it surprising at all that such a fall would light up or otherwise aggravate a chronic, underlying condition in his low back.

I find the expert opinions of Dr. Sassman to be compelling. She rendered the following opinions.

> It is my opinion that the incident that occurred on or about February 8, 2014, was a substantial aggravating factor in Mr. Echols current symptoms of low back pain. It was on this date that Mr. Echols slipped and fell down 13 steps. He subsequently had bruising on his back and right arm. . . . This mechanism is certainly consistent with his injuries. While it is true that Mr. Echols had previous complaints of back pain prior to this injury, he indicated to me that his prior symptoms were intermittent in nature. They would worsen at times and then subside. After this injury on February 8, 2014, his pain was more severe and more consistent in nature. This indicates a worsening of his symptoms after the injury in question.

(Cl. Ex. 1, p. 6)

In light of the factual findings made herein, this opinion makes perfect sense. Based upon the record before me, I find this to be the most credible evidence of medical causation in the record.

The opinion of Dr. Miller is far less compelling. It is noted that he is not as qualified in occupational medicine or disability examination as Dr. Sassman. More importantly, Dr. Miller somehow believed that claimant had a "history of severe back pain since 2010." (Def. Ex. G, p. 88) This is objectively inaccurate or grossly overstated. The claimant had undoubtedly experienced episodes of low back pain dating back through the 1980's. He clearly had degenerative issues which made him more susceptible to episodes of low back pain from trivial issues such as carrying a pan of ribs. To equate this with a history of severe low back pain since 2010 is, however, a dramatic misstatement which essentially disqualifies his entire opinion. Mr. Echols had, in fact, passed a rather detailed pre-employment physical examination in 2012, which showed he was unrestricted and qualified for any work for his low back. (Cl. Ex. 10, p. 5).

For all of the reasons stated above, I find that Mr. Echols suffered an injury to his low back which arose out of and in the course of his employment on February 8, 2014. This injury lit up or otherwise substantially aggravated the condition in his low back.

The next set of issues revolves around the nature and extent of the claimant's injury. The claimant alleges entitlement to a running award while he obtains further treatment. He further claims that he developed mental issues associated with his

severe pain and the stress from the work injury. The defendants assert that claimant's back was never injured. Alternatively, however, they assert that claimant was fully healed from this work injury as of July 2014, when Dr. Nelson released him without any restrictions. They deny any mental injury on the basis of a report from their expert.

Medical Causation for Claimant's Mental Claim

The claimant alleges that the stipulated work injury aggravated his underlying mental conditions. Specifically, counsel argues that the symptoms of pain and disability caused by the work injury aggravated his depression and anxiety.

When an injury occurs in the course of employment, the employer is liable for all of the consequences that "naturally and proximately flow from the accident." Iowa Workers' Compensation Law and Practice, Lawyer and Higgs, section 4-4. The Supreme Court has stated the following. "If the employee suffers a compensable injury and thereafter suffers further disability which is the proximate result of the original injury, such further disability is compensable." Oldham v. Scofield & Welch, 222 Iowa 764, 767, 266 N.W. 480, 481 (1936). The Oldham Court opined that a claimant must present sufficient evidence that the disability was naturally and proximately related to the original work injury.

I find the medical causation evidence regarding the mental claim to be equivocal. The claimant presented an expert opinion from Dr. Christiansen, who opined that the claimant's pain aggravated and otherwise substantially caused his depression and anxiety symptoms. The defendants presented evidence from Dr. Ascheman, who opined claimant has suffered from several diagnoses for a period of several years and that other significant stressors, such as current living arrangements, have aggravated his conditions. I have reviewed all of the medical opinions in comparison with the lay evidence in the record and I cannot find that claimant has met his burden of proof. While it is a close case, this portion of the claim is denied, including mental health medical expenses.

Maximum Medical Improvement

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Of course, the claimant never returned to work after February 10, 2014, when he worked a partial day. He had been on a final warning for attendance since January 2014, so when he missed work, he was no longer employed. Since he never returned

to work, the critical issue is whether he is capable of returning to substantially similar employment or whether he has ever reached maximum medical improvement.

The claimant was first placed on medical restrictions at a medical appointment on May 6, 2014, and he has remained on restrictions through the date of hearing. On May 6, 2014, he was provided restrictions of no lifting more than 15 pounds and no extended sitting. (Cl. Ex. 6, p. 17) Prior to May 6, 2014, restrictions were not even discussed one way or the other. I find this is likely because the claimant was not working during this time frame and the physicians, who were not authorized by defendants, saw no reason to address the issue.

The defendants and Dr. Miller have placed a significant emphasis or importance upon Dr. Nelson's statement regarding restrictions in July 2014. Dr. Nelson diagnosed mid to low back, bilateral buttock and thigh pain, L4-5 spondylolisthesis, multilevel lumbar spondylosis and mild bilateral hip OA and recommended Mr. Echols "continue symptomatic treatment." (Def. Ex. F, p. 61) He also stated, that no "work restrictions were given." (Def. Ex. F, p. 61) Defendants and Dr. Miller argue that this statement demonstrates Dr. Nelson's opinion that the claimant had reached maximum medical improvement and that he had essentially fully recovered from the effects of his work injury at that time. While it is possible that is what Dr. Nelson meant, that is not what he wrote. I read his report to mean that the claimant was not a surgical candidate for his low back and that he should continue pain management treatment for his symptoms until he improves. He essentially provided a surgical opinion (of no surgery) and then released the care back to the treating physicians. Furthermore, he never stated that the claimant did not need medical restrictions, he simply stated that he was not going to provide restrictions for him. It is possible that this is because he believed claimant did not require restrictions. It is more likely that he simply believed the restrictions should be assessed by the treating physicians and that he did not feel the need to be involved with that.

The treating provider from the clinic did provide restrictions a few days later and the restrictions were severe. He was provided a medical incapacity report on July 15, 2014, by Megan Mortenson, ARNP. She indicated his diagnosis was lumbar back pain with radiation due to contusion. (Cl. Ex. 6, p. 30) She indicated pain management and physical therapy was the appropriate treatment and provided restrictions to work 10 or fewer hours per week which should avoid lifting, lifting bending or prolonged standing. (Cl. Ex. 6, p. 30) The expected duration of his treatment was "up to 12 months." (Cl. Ex. 6, p. 30) Primary Health Care clinic had never officially released any of his restrictions prior to hearing.

The claimant relies upon the opinion of Dr. Sassman to support the conclusion that he is not at maximum medical improvement. She recommended further care for claimant's low back and hip and opined that he was not at maximum medical improvement until he received the additional treatment. (Cl. Ex. 1, p. 7) While I respect this opinion, I read her report to be primarily focused upon additional treatment for the right hip, not the low back. Based upon this record, I simply do not believe it is likely

that the claimant will significantly heal from this injury. My finding is bolstered by the fact that Dr. Sassman felt comfortable in providing a permanent impairment rating. Dr. Sassman provided a detailed impairment rating using the AMA Guides, Fifth Edition and assessed his permanent impairment at 16 percent whole person for his low back and 3 percent for his right hip. (Cl. Ex. 1, pp. 7-8)

> I would recommend that Mr. Echols limit lifting, pushing, pulling and carrying to 20 pounds occasionally from floor to waist, 20 occasionally from waist to shoulder, and 20 occasionally over shoulder height. He should limit sitting to standing and walking to an occasional basis. I would recommend rarely bending and squatting.

(Cl. Ex. 1, p. 8)

Therefore, I reject the claimant's position that he is still in healing period and should be provided a running award. I find he reached maximum medical improvement a year after the injury and it is most likely that any further treatment he attains will be palliative.

The next issue is whether the claimant is entitled to any healing period, permanent partial or permanent total disability benefits.

Since the injury is to claimant's low back, it is to the body as a whole.

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 R. Co., 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 R. Co., 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).

I find that Mr. Echols is permanently and totally disabled as a result of his February 8, 2014, low back injury. Lawrence Echols has had a hard life. He was 59 years old at the date of hearing. He has a 10th grade education and he does not function at a high level in reading or math, although I do not find that he is developmentally disabled. His entire working life has been in manual labor positions. His employment universe is dramatically limited due to his past felony convictions and prison time. With his background, this is a man who needs physical abilities to survive and thrive in the workforce. Prior to his work injury, at age 59, the best employment he could locate was sorting recyclable garbage through a temporary staffing agency at $9.00 per hour.

Having adopted the opinions of Dr. Sassman regarding his low back impairment and restrictions, Mr. Echols no longer has the ability to perform any type of significant manual labor.

> I would recommend that Mr. Echols limit lifting, pushing, pulling and carrying to 20 pounds occasionally from floor to waist, 20 occasionally from waist to shoulder, and 20 occasionally over shoulder height. He should limit sitting to standing and walking to an occasional basis. I would recommend rarely bending and squatting.

(Cl. Ex. 1, p. 8) He is not a likely candidate for retraining. Having reviewed all of the factors of industrial disability, I find the claimant permanently and totally disabled. Disability benefits shall commence from the date of injury. Iowa Code section 85.34(3) (2015).

The next issue is the claimant's rate of compensation.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6)(e).

All of the elements of the rate are in dispute.

The claimant's marital status and dependents to which he is entitled are disputed in this case. This agency has long held that the manner in which a worker files his or her taxes essentially creates a rebuttable presumption of his or her status. Mr. Echols testified that he is married to Lisa Echols and he has two minor children. (Tr., p. 44) While his 2014 Income taxes are not in the record, his 2013 taxes (filed in March 2014) are. At that time, he listed himself as single with one adult dependent, Alicia McDonald. (Cl. Ex. 15, p. 4) His 2012 Income taxes listed himself as single, however, he claimed his two dependent children. There is no explanation in this record as to why they are not claimed and why he did not list himself as married in either return.

This entire record causes me apprehension regarding the claimant's actual marital status and his true number of dependents. The burden rests squarely upon the claimant to prove these factors by a preponderance of evidence. I find, based upon this record that the best evidence is in the 2013 Income tax returns. Therefore, Mr. Echols is deemed to be single and entitled to two exemptions for rate calculation purposes.

Regarding the average wages, the claimant was paid hourly and his rate is calculated pursuant to Iowa Code section 85.36(6) (2015). I have reviewed defendants' exhibit G in comparison to claimant's exhibit 13. Considering the totality of evidence, I find the claimant's average weekly earnings were $450.00 per week. (Cl. Ex. 13, p. 1) This calculation excludes weeks where the claimant worked less than 40 hours. I believe this is consistent with the language in section 85.36.

With weekly earnings of $450.00 and assuming the claimant was single with two exemptions, the claimant's appropriate rate of compensation is $298.20 per week.

The next issue is whether the claimant is entitled to medical expenses. Claimant seeks payment of past medical expenses as set forth in claimant's exhibit HR-2. Claimant seeks alternate medical care as set forth in the treatment recommendations by Dr. Sassman. Claimant seeks IME expenses under section 85.39.

Past Medical Expenses

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 shall also allow reasonable and necessary transportation expenses incurred for those services. 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).

Claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See, Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP, Inc., File No. 1020226 (App., February 27, 1995).

The claimant seeks past medical expenses as set forth in claimant's exhibit HR-2. I have denied the claimant's claim for mental injury on the basis that he failed to prove medical causation by a preponderance of evidence. The remaining bills from Primary Health Care and Accelerated Rehabilitation are all compensable and are awarded at this time, including the mileage.

Alternate Medical Care

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

The defendants are required to provide medical care for the claimant. I find that the claimant is at maximum medical improvement, however, based upon the recommendations of Dr. Sassman, I find that further medical treatment is likely necessary for the claimant's low back and hip. The defendants shall authorize a treating physician, other than a physician previously retained by the employer for this case, within 30 days from this decision by written notice to claimant's counsel. Failure to designate a treating physician within this timeframe shall be deemed an abandonment of care.

Independent Medical Evaluation

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).

I find the claimant is entitled to an IME under Iowa Code section 85.39. The bill of Dr. Sassman set forth in claimant's exhibit HR-3 in the amount of $2,448.00 is fair and reasonable.

The final issue the parties have submitted for determination is whether the defendants should be sanctioned for spoliation of evidence. The definitive spoliation case in Iowa is State v. Langlet, 283 N.W.2d 330 (Iowa 1979). In Langlet, the Court noted the general principle is that if evidence is intentionally destroyed, then the fact finder may draw the inference that the evidence would have been unfavorable to the party responsible for destroying the evidence.

For a variety of reasons, I need not address this issue in detail. In summary, I found that the claimant did injure his back in his fall down the steps and the injury resulted in permanent disability in his low back. In other words, without applying any sanction or inference, I have already reached the conclusion claimant seeks. Moreover, I find that Waste Management is not a party in this case and, in any event, Waste Management officials did not intentionally destroy evidence related to the case. The video was only destroyed as a standard practice because of an unusual and unfortunate timeline of circumstances. The Waste Management manager did not attempt to preserve the video because she mistakenly did not believe the claimant's injury was serious.

ORDER

THEREFORE IT IS ORDERED:

The defendants shall pay claimant permanent total disability benefits at the stipulated and adjudicated rate of two hundred and ninety-eight and 20/100 ($298.20) commencing from the date of injury

Defendants shall pay any past due amounts in a lump sum with interest.

Defendants shall pay past medical expenses of Primary Health Care and Accelerated Rehabilitation as set forth in Claimant's Exhibit HR-2, including medical mileage. Defendants are not responsible for mental health bills.

Defendants shall authorize a treating physician to provide treatment for claimant's back and right hip within 30 days from this decision via correspondence to claimant's counsel. Failure to authorize a physician in this timeframe shall be deemed an abandonment of care and claimant may seek treatment with a provider of his choice.

Defendants shall pay the IME of Dr. Sassman in the amount of two thousand four hundred forty-eight and no/100 dollars ($2,448.00) as set forth in Claimant's Exhibit HR-2.

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

Costs are taxed to defendant.

Signed and filed this 21st day of September, 2016.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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