BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
APR 08 2015
WORKERS' COMPENSATION

CHARLES L. VEST, Claimant, vs. ALLEGIS GROUP, d/b/a AEROTEK, Employer, and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Insurance Carrier, Defendants.	File No. 5043614 ARBITRATION DECISION Head Note Nos.: 1800, 1803; 1806; 2500

STATEMENT OF THE CASE

This is a proceeding in arbitration. The contested case was initiated when claimant, Charles L. Vest, filed his original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on April 19, 2013. Claimant alleged he sustained a work-related injury on January 25, 2012. (Original notice and petition.)

Allegis Group, Inc. d/b/a AEROTEK, and its workers' compensation insurance carrier, Indemnity Insurance Company of North America, filed their answer on May 7, 2013. They admitted the occurrence of the work injury. A first report of injury was filed on January 31, 2012.

The hearing administrator scheduled the case for hearing on April 17, 2014 at 8:00 a.m. The hearing took place in Cedar Rapids, Iowa, at the Iowa Department of Workforce Development. The undersigned appointed Ms. Angela Maddux, as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified on his own behalf. Ms. Misty Vest, spouse, also testified on behalf of claimant. Ms. Susan McBroom, a vocational rehabilitation counselor, testified on behalf of defendants.

The parties offered exhibits. Claimant offered exhibits marked 1 through 41 and 43. Defendants offered exhibits marked A through P. All proffered exhibits were admitted as evidence in the case. Post-hearing briefs were filed on June 25, 2014. The cases were deemed fully submitted on that date.

It is important to note that from September 9, 2014 through February 15, 2015, Governor Branstad had appointed the undersigned, acting workers' compensation commissioner. This deputy was unable to write the decision as the acting workers' compensation commissioner.

STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged injury.

2. Claimant sustained an injury on January 25, 2012, which arose out of and in the course of his employment;

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

4. Temporary benefits are no longer at issue;

5. The commencement date for any permanent partial disability benefits that may be awarded is September 25, 2012;

6. The weekly benefit rate for which benefits should be paid is $322.00 per week;

7. Defendants have waived any affirmative defenses they may have had available; and

8. The parties are able to stipulate to the costs allowed by law.

ISSUES

The issues presented are:

1. The extent of permanent disability benefits to which claimant is entitled;

2. Whether claimant is entitled to certain medical expenses pursuant to Iowa Code section 85.27;

3. Whether defendants are entitled to a credit of eighty-one weeks of benefits paid at the rate of $322.00 per week;

4. Whether apportionment is appropriate;

5. Whether claimant's recent complaints are causally connected to the original work injury;

6. Whether either party is responsible for the cost of the opposing party's vocational rehabilitation reports; and

7. To whom the costs of the litigation should be assessed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This deputy, after listening to the testimony of claimant and to the other two witnesses at hearing, after judging the credibility of all, and after reading the evidence, and the post-hearing briefs, makes the following findings of fact and conclusions of law:

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

Claimant is a 50 year-old married father of grown children. Currently he resides in rural Keota, Iowa on a small acreage. Keota has a population of approximately 1,000 people and is located in Keokuk County. Claimant holds a current license to drive a motor vehicle in Iowa.

Claimant is a chronic abuser of tobacco products. He smokes approximately 2 and ½ packs per day. He is right hand dominant. He has suffered from obesity for numerous years and has led a very sedentary lifestyle. Claimant has suffered from hypertension since at least 1997.

Claimant walks without the use of any assistive devices. He testified he normally wears Sketchers or boots. He is not fitted for orthotics.

Claimant testified he attended an alternative school in Wellman, Iowa. However, he did not graduate. Claimant obtained a GED in 2000. Claimant testified he does not understand what he reads. He is capable of reading newspapers or comic books. Claimant testified he is competent in math and bookkeeping.

There is no question; claimant has had periodic episodes of back pain throughout the course of his adult life. There are records dating back to June 15, 1992 when claimant presented to Arun Lakhanpal, M.D., a neurologist in Quincy, Illinois. Claimant reported;

> [A] sudden onset of pain in the left low back which was localized, sharp, stabbing, and continuous for that day and when he woke up the next day it had extended to the left hip region without any distal radiation.

(Exhibit E, page 24)

A CT scan of the lumbar spine demonstrated a small disc herniation at L4-5 left of the midline and partially obscuring the left L5 nerve root and there was a questionable small disc bulge to the left posteriorly at L5-S1. The physician read the CT scan to show facet joint narrowing, sclerosis and osteophytes on the left at L4-5 and L5-S1

Dr. Lakhanpal recommended physical therapy, pelvic traction, a TENS unit, 10 mg of Toradol, and an excuse from working. (Ex. E, p. 26) No other testing was recommended.

On January 28, 1995, claimant was involved in a "barroom brawl" with another individual. Claimant reported, among other conditions, "He states also mild thoracic back pain. He has had back pain in the past." (Ex. C, p. 8) Bruce Stoops, D.O., diagnosed claimant with "Thoracic back strain." (Ex. C, p. 8)

On August 29, 2000, claimant sustained a work-related injury while he was employed at ADECCO as an inspector at Titan Tire. (Ex. E, p. 34) Claimant was carrying an 80 to 100 pound tire and placing it in a rack. As he was twisting, he felt an immediate pop in his back. He experienced discomfort in his low back. Dana J. Windhorst, M.D., prescribed Ibuprofen, ice therapy, exercise, walking and home massage. (Ex. E, p. 34) Several days later, the physician prescribed Vioxx and Darvocet N 100. (Ex. E, p. 36) Claimant was encouraged to walk and to alternate ice and heat therapy. (Ex. E, p. 36) Claimant was not working during this time frame. (Ex. E, p, 36) Claimant reported no improvement by September 6, 2000. He indicated his pain was 9 out of 10 on an analog pain scale. (Ex. E, p. 38) Dr. Windhorst diagnosed claimant with:

1. Lower back pain.

2. Symptom magnification with an examination inconsistent with the amount of disability described. He is a Waddell 4/5.

(Ex. E, p. 38) The treating physician restricted claimant from lifting over 35 pounds, from pushing or pulling greater than 45 pounds and from engaging in repetitive bending of the back. (Ex. E, p. 38) Claimant's symptoms had nearly resolved on September 11, 2000. He had returned to work. (Ex. E, p. 38)

It should be noted for the record, in 2001, claimant underwent prior left hand surgery. (Ex. C, pp. 12-13) Claimant experienced a left de Quervain's release and the removal of a ganglion cyst. (Ex. C, p. 12) Craig L. Olson, M.D., opined claimant had a permanent impairment to the left hand due to sensory loss on the left dorsal radial aspect of the left hand. (Ex. E, p. 44)

Claimant reported to the emergency room in Quincy, Illinois on October 3, 2001 "with complaints of increasing lumbar back pain." (Ex. C, p. 14) Dr. Stoops diagnosed claimant with "Lumbar strain." (Ex. C, p. 14) The physician prescribed medications.

On November 5, 2001, claimant was involved in a motor vehicle accident. (Ex. C, p. 5) Claimant reported neck pain and headache pain. (Ex. C, p. 15) He underwent x-rays of the cervical spine. He indicated there was stiffness. (Ex. C, p. 16) The results showed:

> PROMINENT SUPERIOR ARTICULATING FACET OF C5 WITH COMPROMISE OF THE C4-5 NEURAL FORAMEN ON THE RIGHT.

(Ex. C, p. 16)

On October 7, 2003, Arif Z. Chaudhry, M.D., examined claimant for probable lumbosacral strain as a cause for low back strain. (Ex. E, p. 46) The back pain was located right of the midline in the lower back. The pain had persisted for approximately 5 weeks. (Ex. E, p. 45) The physician prescribed Celebrex 200 mg. Dr. Chaudhry interpreted MRI testing of the lumbar spine as showing "degenerative changes and disc bulging of L5-S1 with left foraminal compromise." The doctor diagnosed claimant with "L5-S1 disc bulge – this is probably the cause of his pain." Dr. Chaudhry prescribed Vioxx, physical therapy, heat, ultrasound, William's flexion exercises, and electrical stimulation. (Ex. E, p. 47)

On February 26, 2004, claimant returned to Dr. Chaudhry. Claimant reported feeling something large in his esophagus. (Ex. E, pp. 48-49) Dr. Chaudhry reiterated the diagnosis of degenerative disk disease of the lumbo-sacral spine with L5-S1 disk disease. (Ex. E, p. 50)

On October 25, 2004, claimant returned to the doctor with back complaints after cranking on a trailer. He felt a pop in his back. Claimant described his pain as across his left lower back. (Ex. E, p. 51) David F. Arndt, D.O., diagnosed claimant with acute low back strain and degenerative arthrosis of the low back. (Ex. E, p. 51) The physician prescribed drug therapy.

In September of 2005 claimant experienced low back pain while he was employed at Ottumwa Machine Works. (Ex. F, p. 52) Claimant underwent MRI testing of the lumbar spine on November 16, 2005.

Eventually, claimant was referred to Chad D. Abernathey, M.D., a neurosurgeon. Dr. Abernathey examined claimant on January 13, 2006. The neurosurgeon reviewed MRI test results of the low back. He opined the results showed:

> MRI of the lumbosacral spine demonstrates modest degenerative change consistent with age without significant neural compromise.

(Ex. F, p. 52)

Dr. Abernathey recommended:

> Mr. Charles Vest clinically presents with chronic lumbosacral strain following a work related injury. I do not recommend an aggressive neurosurgical stance due to a paucity of clinical and radiographic findings. I favor further conservative management in this setting. We discussed his options and mutually felt that he may benefit from an epidural steroid injection. We subsequently made the necessary arrangements for him. I advised the patient to contact me should he develop any new neurologic symptoms or signs in the future and I would be happy to see him in additional consultation.

(Ex. F, p. 52)

On January 30, 2006, Shashi Sanghvi, M.D., administered a lumbar epidural steroid injection to claimant at L3-L4. The patient tolerated the procedure well. (Ex. H, p. 62)

On June 1, 2006, claimant underwent the standardized Isernhagen Functional Capacity Evaluation. Claimant demonstrated consistency of permformance. Claimant was placed in the medium category of work as determined by the U.S. Department of Labor Physical Demand Characteristics of Work Chart. As a result, claimant was qualified to lift 20 to 50 pounds on an occasional basis, lift 10 to 25 pounds on a frequent basis and lift 10 pounds on a constant basis. (Ex. G, p. 54) Mr. Paul Riggs, P.T., administered the FCE. The therapist noted claimant's significant abilities and deficits at the time of the evaluation. They were detailed in the report as:

SIGNIFICANT ABILITIES:

1. The client is able to lift a maximum of 60 pounds from the floor up to waist level.

2. The client can lift 50 pounds from waist to overhead level with good arm strength.

3. The client can do a horizontal lift or a two-handed from carry with 80-90 pounds again on a rare or very infrequent basis.

4. The client has good one-handed carrying capacity up to about 70 pounds on either hand and equally well on either side with no real obvious change in back pain with either side.

5. The client has good hand strength with 130-140 pounds of grip strength and just a little bit stronger on the right hand than the left.

6. The client has relatively good trunk rotation mobility both sitting and standing although he did report some increased pulling discomfort on the right side of his back when rotating to the left.

7. The client has good balance ability especially with walking on a 2x4 or doing a narrow type of stance.

8. The client has at least average hand coordination and dexterity between 90-100 with 70-100 being the average score.

SIGNIFICANT DEFICITS: The following limited the client's functional capabilities:

1. The client has increased low back pain especially with lifting from the waist to overhead which limited him from doing frequent lifts although he was able to lift 40-50 pounds at least on a rare basis.

2. The client was limited with frequent low types of lifting or bending activities due to back and knee pain and again was able to do 60 pounds from floor to waist but could not do this on a real frequent or continuous basis.

3. The client was able to perform the elevated work tasks for five minutes but did have increased low back pain with this.

4. The client was limited with forward bent type of tolerances, especially standing more so than sitting but again could only go for a couple of minutes before having increased low back pain when in a bent forward posture.

5. The client is limited with low types of posture such as crawling, kneeling, crouching and squatting due to mainly knee pain although he was able to perform the FCE test items in these positions but did have difficult tolerating due to pain. Crawling actually was more painful in the back than in the knees probably due to some increased extension type of stress to the back.

6. The client was limited with both sitting and standing tolerances due to increased low back pain although again he was able to perform these for 30 minutes but started having increased cramping or back pain about half the way through the task.

7. The client was able to walk a quarter-mile at a relatively slow pace of 1.5 to 1.8 miles per hour and he had to lean on the railing with his arms and still had increased lower back pain towards the end of the walk.

8. The client was limited with climbing activities such as climbing 100 stairs of the stepladder due to mainly knee pain and he felt like his knees were unstable and he had to hold on to the railings with both hands or onto the stepladder for security. Otherwise he did not actually fall or lose his balance and was able to go up with either foot first but again slowly and with knee pain.

(Ex. G, pp. 54-55)

The physical therapist opined claimant was unable to return to Ottumwa Machine Works as a welder. (Ex. G, p. 56) However, Mr. Riggs opined claimant was capable of lifting 40 to 50 pounds if that was the maximum lift amount on an occasional or rare basis. (Ex. G, p. 56) Finally, the therapist opined, "It sounds like his back condition is staying about the same or getting a little bit worse but otherwise is not really able to handle any other surgical or injection type of procedures and has probably gained about maximum benefit of therapy or exercise at this time." (Ex. G, p. 56)

Claimant had been off work for eight to ten months. (Transcript, p. 80) After claimant had been released to return to work, he attempted to regain his position with Ottumwa Machine Works. However, the owner, "Dan," said he could no longer employ claimant. (Tr., pages 40-41) Claimant's employment with Ottumwa Machine Works ended in 2006.

On March 22, 2010, claimant sought medical attention for low back pain. The pain had existed for two to three days. (Ex. D, p. 22) A nurse practitioner diagnosed claimant with "muscle-skeletal pain." (Ex. D, p.23) The nurse practitioner prescribed 10 mg Flexeril and 200 mg Ibuprofen. (Ex. D, p. 23) Claimant had no recall as to the event leading up to his need for medical attention in 2010. (Tr., p. 84)

On September 26, 2011, claimant commenced employment with AEROTEK, a temporary employment agency. Prior to that date, he had been unemployed since July of the same year. Management assigned claimant to work on the paint line at Williamsburg Manufacturing. (Tr., p. 74) Claimant handled car parts and inspected them for quality assurance. (Tr., p. 74) He did not actually paint any car parts. (Tr., p. 75)

On January 25, 2012, a co-worker at AEROTEK accidently struck claimant in the low back with a car part. (Ex. 1, p. 1) Claimant reported the incident to his superiors at AEROTEK on the following day.

The employer sent claimant for medical treatment at St. Luke's Hospital in Cedar Rapids. Claimant reported the incident in the following fashion:

> The pain just about dropped him to his feet. He only had 15 minutes left in his shift, so he finished that out and then went home. He had increased pain as the evening went on. He states that the impact of the blow was

> from the right upper thoracic in a diagonal pattern down to the left costovertebral angle region. If he takes a deep breath or coughs, he gets increased pain in his back, down into his low back, and sometimes down into the hips and lateral legs. He has noticed some intermittent numbness and tingling in his lateral thighs and toes.

(Ex. 10. p. 1)

Ann C. McKinstry, M.D., diagnosed claimant with thoracic and lumbar back pain. The treating physician ordered x-rays and drug therapy. (Ex. 10, p. 2) The x-rays were negative. (Ex. 10, p. 3) MRI testing was ordered.

David H. Segal, M.D., a neurosurgeon, interpreted the MRI test results as:

> His lumbosacral spine MRI was significant for retrlisthesis of L5 on S1 with diffuse broad-based disc bulging, abutment of the left S1 nerve root, L4-L5 disc bulge with displacement of the left nerve root, diffuse severe facet arthropathy. His thoracic spine MRI showed a moderate disc bulge at T4-T5 and a fairly large disc bulge at C6-C7 with central cord flattening.

(Ex. 10, pp. 5-6)

On May 10, 2012, claimant presented for a preoperative evaluation with Tracy Reittinger, M.D. Claimant related the following history concerning his cervical condition to the physician.

> The patient is a 47-year old gentleman without significant medical illness, who presents for preoperative evaluation prior to undergoing spinal surgery of his neck. The patient reports that he was injured in January on the job when something struck in the head and he has been having difficulties with neck pain since that time.

(Ex. 12, p. 8)

On May 16, 2012, Dr. Segal performed an anterior cervical fusion on claimant's spine from C-5 through C-7. The patient tolerated the procedure well. (Ex. 12, pp. 6-7) Post surgery claimant underwent several radiographs. The one taken on June 26, 2012 showed there was no visualization of any acute complications following the cervical fusion. (Ex. 12, p. 11)

Post- surgery, claimant complained of feeling a lump in his throat when swallowing. (Ex. 14, p. 17) Dr. Segal informed claimant such a condition was normal following surgery. (Ex. 14, p. 7) Dr. Segal referred claimant to Kevin M. Carpenter, M.D., a specialist in ears, nose and throat. Dr. Carpenter recommended an esophagram and CT scan. (Ex. K, p. 73) The throat specialist diagnosed claimant with "Dysphagia, Unspecified." (Ex. K, p. 74) The esophagram was negative. (Ex. 12, p. 12) Claimant underwent a video pharyngo-esophagram to assess claimant's ability to

swallow safely. (Ex. 12, p. 15) The test was analyzed by Ms. Sarah K. Eastman, a speech and language pathologist. The study showed:

> Conclusions and Need for Services: The patient demonstrated no vocal fold penetration or tracheal aspiration at any time during this study. No further swallowing treatment is recommended at the time.

(Ex. 12, p. 17) Dr. Carpenter certified there was no additional need for services concerning claimant's throat issues. (Ex. 12, p. 17)

Also subsequent to the fusion surgery, claimant voiced complaints of tingling in the left hand. Claimant presented to the Physicians' Clinic of Iowa, P.C. (Ex. 14, p. 23) Claimant underwent EMG/NCV testing on September 17, 2012. (Ex. 14, p. 23) The test results showed "Mild bilateral median mononeuropathy across the wrist." (Ex. 14, p. 23) Shereen J. Chang, M.D., informed claimant, since the study results showed bilateral carpal tunnel syndrome, the physician did not believe the condition could be explained by the cervical fusion. (Ex. 14, p. 23).

On October 11, 2012, claimant participated in a functional capacity evaluation at Progressive Rehabilitation Associates. (Ex. L, p. 75) Claimant gave maximum effort. (Ex. L, p. 75) Justin Plum, LPT, conducted the FCE. The therapist noted claimant had the following limitations:

> Client demonstrated limited tolerance to prolonged forward bending, deep squat/crouch positions, kneeling, prolonged walking, and prolonged overhead work. Claimant demonstrated lack of trunk muscle endurance, lack of bilateral lower extremity endurance lack of bilateral shoulder endurance, decreased bilateral ROM, and decreased left shoulder strength.

(Ex. L, p. 76) Mr. Plum opined claimant was capable of working in the medium category of labor as defined by the U.S. Department of Labor. (Ex. L, p. 76) The therapist indicated claimant would be able to work for eight hours per day and five days per week. (Ex. L, p. 76) This was the same category of work level as described suitable for claimant in June of 2006.

On November 15, 2012, claimant presented to the University of Iowa, for an independent medical examination with Patrick G. Hartley, M.D., Professor of Clinical Internal Medicine. Dr. Hartley authored his report on December 7, 2012. Dr. Hartley opined:

> **ASSESSMENT:**
>
> It is my opinion that Mr. Vest is at maximum medical improvement with regard to his cervical spine injury and subsequent surgery (C5-C6 and C6-C7 anterior cervical discectomy and fusion), and his lumbar injury. It is my opinion that he does have permanent impairment of both his cervical spine

and lumbar spine, as a consequence of his injury. In addition, I note that he has persistent sensation of something lodged in his throat and intermitted choking since his surgery that, in my opinion should be further evaluated with an oropharyngeal motility study (OPMS)/ cookie swallow.

Impairment Rating:

Impairment is determined according to the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, hereinafter referred to as the "Guides."

Due to the 2-level cervical decompression and fusion, and associated loss of motion of a cervical motion segment, it is my opinion that he meets the criteria for Diagnosis Related Estimate (DRE) Cervical Category IV (Table 15.6 on page 392 of the Guides). His case is similar to the examples 15-15 on page 394 of the Guides. It is my opinion that Mr. Vest has a 25% impairment of the whole person is a consequence of the cervical fusion.

It is my opinion, to a reasonable medical certainty, that Mr. Vest is at maximum medical improvement with regard to his lumbar injury. Referencing table 15-31 page 384 of the Guides, and the examples cited on page 385-387, it is my opinion that Mr. Vest has a 5% impairment of the whole person is a consequence of a diagnosis related estimate (DRE) lumbar category II impairment.

He has non-anatomic left upper extremity sensory symptoms which in my opinion is nonratable. Furthermore, he has electromyographic (EMG) and nerve conduction velocity (NCV) testing revealing bilateral carpal tunnel syndrome, which in my opinion is not related to his work injury.

The 25% whole person impairment as a consequence of his cervical fusion is combined with the 5% whole person impairment due to his chronic lumbar pain, using the combined values chart on pages 604-606 of the Guides. This results in a combined 29% impairment of the whole person.

(Ex. 16, pp. 5-6)

Dr. Hartley imposed permanent work restrictions based on a functional capacities evaluation that was performed on October 11, 2012. Dr. Hartley restricted claimant from lifting more than 30 pounds between floor and head-height on an occasional basis and claimant was restricted from lifting greater than 20 pounds on a frequent basis. Claimant was precluded from engaging in repetitive bending, twisting, stooping, squatting or kneeling. He was restricted from repetitively working with his arms above shoulder height and he was restricted from lifting above his head. Because claimant had restricted range of motion of his neck he was not to perform work that required him

to gaze upward or to extend his neck. Finally, claimant was restricted from engaging in prolonged walking. (Ex. 16, p. 6) Dr. **Hartley specifically recommended a home exercise program for claimant.** (Emphasis added) (Ex. 16, p. 7)

Dr. Segal, the authorized treating neurosurgeon, examined claimant for the final time on April 18, 2013. The surgeon deemed claimant at maximum medical improvement on that date. Dr. Segal did not recommend any additional surgical procedures. Dr. Segal indicated in his clinical notes for the same date:

> I discussed with Mr. Vest that the new MRI looks pretty good and I do not believe further surgery is indicated or would work, especially for his type of pain. I discussed that the surgery did take the pressure off the spinal cord and did relieve some of his pain. The facet injections did not help. Unfortunately, I do not have any other options to offer him, and I discussed that he has reached maximum medical improvement. I have discussed this with him in great detail and answered all questions. I will see him now prn.

(Ex. 14, p. 29)

Claimant exercised his right to an independent medical examination pursuant to Iowa Code section 85.39. Claimant presented to the office of Robert W. Milas, M.D., on June 6, 2013. Dr. Milas diagnosed claimant with: "cervical myelopathy, secondary to herniated cervical discs at the C5-C6 and C6-C7 levels." (Ex. 19, p. 2) Dr. Milas restricted claimant to a sedentary occupation. (Ex. 19, p. 2) The evaluating physician rated claimant as having a 35 percent permanent partial impairment using the combined values chart of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. Dr. Milas opined claimant had reached maximum medical improvement on June 6, 2013. The evaluating physician saw no likelihood of improvement. (Ex. 19, p. 2)

The parties have stipulated claimant has sustained a permanent injury to his 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.

Claimant's work history is detailed in exhibit 9. Exhibit 9 is adopted into this decision as though fully set out herein.

Claimant also testified on both direct and cross-examination about the variety of jobs he had held prior to his employment with AEROTEK. Many of claimant's jobs were with employment agencies where he would be assigned as a temporary worker at a given location. Other jobs were of short duration of one year or less. Claimant also had periods where he was unemployed for consecutive months at a time. He had been intermittently employed over the course of his work history. On occasion he had collected unemployment insurance benefits which contributed to claimant's gross income.

Claimant's tax returns and W-2 forms were presented in Exhibit 29. They showed claimant earned:

2008 $4,766.00

2009 $10,082.00

2010 $21,925.00

2011 $20,542.00

2012 $1,466.00

2013 $0.00

(Ex. 29) Claimant was not a high wage earner during the course of his years of employment. He often earned between $10.00 and $14.00 per hour.

Claimant has a GED. The remainder of his training has been on the job. He works best when shown how to perform a given task. The likelihood of claimant returning to school is nil.

Two vocational experts provided opinions for the case. Mr. Kent Jayne was the expert for the claimant. Predictably, Mr. Jayne opined:

> As he is clearly unable to return to any of his previous occupations given his current limitations, the combination of his limitations as currently

> understood would preclude Mr. Vest from obtaining or retaining competitive employment in the labor market at the present time.

(Ex. 21, p. 13)

Ms. Susan K. McBroom, another vocational expert, also opined in a predictable manner. (Ex. 23) She ultimately opined:

> In light of all of the information it is the opinion of this consultant that Mr. Vest should be able to secure employment with some assistance of preparing a resume, registering at job service and possibly some interviewing skills and techniques with a wide range between $9.00 - $14.00 per hour.

(Ex. 23, p. 13)

Both vocational experts are qualified in their respective fields. Neither expert was retained to provide job seeking skills for claimant. The testimony of each expert is given equal weight. No one expert's opinion is more persuasive than the other expert's opinion.

Claimant has applied for some jobs post-surgery. He applied for a job at O'Reilly Auto Parts on April 2, 2013; he applied for a position with Wal-Mart on April 12, 2013; he applied for two positions on April 23, 2013; he applied at Ace Hardware on April 29, 2013; he applied at Hy-Vee on May 2, 2013; at a service station on May 6, 2013; he tried to apply at D & T Auto on May 13, 2013 but the owner did not believe claimant was capable of performing the job. On May 29, 2013, claimant applied for two more positions. He did not apply for work again until October 23, 2013 when he applied for three jobs. Claimant applied for a job at Family Video on November 5, 2013. On December 27, 2013, claimant applied for employment at McDonald's. Three days later, claimant applied for work at two different pizza restaurants. Then claimant did not apply for employment again until February of 2014. He applied at K-mart on February 5, 2014; he applied at Gordman's Department Store on February 6, 2014; he applied at Staples Office Supply Store on February 16, 2014. On February 17, 2014, claimant applied at another pizza restaurant and finally on February 18, 2014, claimant applied at Paul's Discount Department Store. (Ex. 20, pp. 1-9) Claimant testified the listed applications have been the only jobs for which he has applied. (Tr., p. 89) He did not register at Iowa Workforce Development for any assistance with job seeking skills.

No doctor has indicated claimant is unable to work. The restrictions imposed place claimant in the light, sedentary or medium categories of work. It appears claimant is vastly deconditioned. It is most likely claimant is in the sedentary or light classifications of labor.

By his own admission, claimant testified he does little, if anything, throughout the course of his day. It is obvious; he is not following the home exercise program, various medical providers have suggested. Claimant has been advised to walk to strengthen and condition his spinal condition. He has been less than compliant. Claimant's personal decision to continue smoking tobacco has decreased his chance of lessening his pain. His morbid obesity has probably added to a de-conditioned spinal condition. Nevertheless, claimant does have a permanent cervical and spinal condition. The condition resulted from his work-related injury on January 25, 2012.

After considering all of the factors relating to industrial disability; it is the determination of the undersigned; claimant has a permanent partial disability in the amount of 65 percent. Claimant is entitled to 325 weeks of compensation benefits at the stipulated weekly benefit rate of $322.00 per week and commencing from the stipulated date of September 25, 2012. Defendants shall take credit for all benefits paid prior to the date of the decision.

In arbitration proceedings, interest accrues on unpaid permanent disability benefits from the onset of permanent disability. Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174 (Iowa 1979); Benson v. Good Samaritan Ctr., File No. 765734 (Ruling on Rehearing, October 18, 1989). Defendants requested apportionment. Under the new Iowa Supreme Court case, Roberts Dairy and Crawford & Company v. Bullick, No. 13-1009, filed April 3, 2015, apportionment is not applicable to the present case.

The next issue for resolution is the matter of medical benefits pursuant to Iowa Code section 85.27.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 1975).

Defendants are liable for all causally connected medical expenses. Claimant did not detail what medical bills were disputed by defendants. The undersigned is assuming defendants are paying all medical bills for authorized treating physicians and medical providers.

The final issue centers on claimant's costs, especially for the vocational expert, Kent Jayne, at Worklife Resources, Inc. Mr. Jayne charged $2,769.00 for his vocational assessment, and $1,620.70 for his rebuttal vocational assessment. The total charges equaled $4,389.70. Then claimant's counsel asked for costs as the standard $100.00 filing fee; $107.50 for the deposition transcription of claimant, and the cost of same day

transcriptions of the vocational assessment for $92.25. Claimant is requesting total costs in the amount of $4,589.45.

It is the determination of the undersigned; defendants shall pay unto claimant the following costs:

Filing fee	$100.00
Vocational Assessment of Kent Jayne	$2,769.00
Deposition transcript of claimant	$107.50
Total	$2,976.50

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant three hundred twenty-five (325) weeks of permanent partial disability benefits commencing from September 25, 2012 and payable at the stipulated weekly benefit rate of three hundred twenty-two and no/100 dollars ($322.00) per week.

Accrued benefits shall be paid in a lump sum with interest as provided by law.

Defendants shall take credit for all benefits paid prior to the filing of this decision.

Costs in the amount of two thousand nine hundred seventy-six and 50/100 dollars ($2,976.50) are assessed to defendants.

Defendants shall file all reports as required by this division.

Signed and filed this 8th day of April, 2015.

Michelle A. McGovern

MICHELLE A. MCGOVERN
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.