

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TIMOTHY PRUIS,

Claimant,

VS.

MEDPLAST,

Employer,

and

CONTINENTAL INDEMNITY CO.,

Insurance Carrier,
Defendants.

File No. 5058256

ARBITRATION

DECISION

Head Notes: 1108.50, 1402.40, 1804
2204, 2501, 2907

STATEMENT OF THE CASE

Timothy Pruis, claimant, filed a petition in arbitration seeking workers' compensation benefits from Medplast, employer and Continental Indemnity Company, insurance carrier as defendants. Hearing was held on July 22, 2020. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via video means, using CourtCall. Accordingly, this case proceeded to a live video hearing via CourtCall with all participants, including the court reporter appearing remotely.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

Marlene Franden, Timothy Pruis, and Brian Pruis all testified live at trial. The evidentiary record also includes Joint Exhibits JE1-JE8 and Defendants' Exhibits A-J. Claimant offered Exhibits 1-13. Defendants filed written objections to Claimant's Exhibit 1, pages 50-60 and Claimant's Exhibit 3, pages 107-122. At hearing, the undersigned heard arguments from both parties regarding the objections and sustained the objection. Therefore, Claimant's Exhibits 1, pages 50-60 and Claimant's Exhibit 3, pages 107-122 were excluded. All other exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on September 14, 2020, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained injuries to his head, neck, vision, and mental health as a result of the stipulated August 11, 2016 work injury.
2. Whether claimant is entitled to any additional healing period benefits.
3. Whether claimant has reached maximum medical improvement (MMI).
4. Whether claimant sustained permanent disability as a result of the stipulated August 11, 2016 work injury. If so, the extent of permanent disability.
5. The proper commencement date for any permanent disability benefits.
6. Whether penalty benefits are appropriate.
7. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Timothy Prais, was 59 years old at the time of the hearing. He is alleging injury to his head, neck, vision, and mental health as the result of the August 11, 2016 work injury.

Mr. Prais graduated from high school. He has one semester of post-high school education in business management at St. Louis University. He does have certification in production supervision, leadership skills, and training. (Testimony; Def. Ex. H, p. 123)

Mr. Prais has worked in the plastics industry for most of his adult life. While in high school, Mr. Prais worked for his dad's company, T & P Tool Company, which produced injection molding tools. Through T & P Tool Company he learned all aspects of the business including working on parts orders, as a tool changer, machinist, and eventually working as a supervisor. After Mr. Prais graduated from high school, he worked full-time for fourteen years as a shift supervisor. He supervised approximately 24 employees on the second and third shifts. He left that job to pursue different plastic processing applications. (Testimony)

Throughout his career, he has worked in a number of different plastic manufacturing companies as a supervisor. He has supervised as many as 100 employees at a time. (Testimony)

For approximately four years, Mr. Prais owned his own company, Prais Consulting. His company helped other manufacturers set up new machinery and production lines. He also helped train employees in operating the machinery and provided safety training. (Testimony)

In March of 2006, Mr. Pruis began working at Medplast where he supervised 20 to 25 employees. Mr. Pruis was the third shift supervisor. The third shift worked from 11:00 p.m. until 7:00 a.m. He was responsible for keeping a fast-paced production line moving. If a machine went down, he would jump in to help fix the machine. The job was not physically demanding, but did require him to do some climbing and ladder work. The job also required good, close, visual acuity in order to review data and computer screens and to inspect small defects. Ms. Pruis was subject to sufficient noise to cause a worker to shout in order to be heard above ambient noise level. Prior to the injury, he had perfect attendance. (Testimony; Cl. Ex. 9)

At the time of the injury, August 11, 2016, Mr. Pruis was called over to one of the plastics molding machines because there was a problem with the machine. He went inside the machine to look at the injection mold. When he reached up to grab a tie bar to pull himself up into the machine, he hit the right side of his head on a solid steel bar. The impact jarred his teeth and he dropped back to the floor. He felt immediate pain in his neck and saw little yellow stars. He also felt pain at the base of his head and on top of his shoulders and on the right side of his head, which was bruised. Mr. Pruis was able to get up and go to the office. He sat in the office with his head back until the end of his shift. At the time of the injury, Mr. Pruis' boss was not at work yet. Once his boss arrived, Mr. Pruis informed his boss of his injury. Mr. Pruis does not remember much after that point in time. He does not remember how he got home; however, he has been told by his family that he drove himself home, but had to call his family for help with directions. (Testimony)

After Mr. Pruis arrived home, his daughter Tiffany took him to the emergency room at Genesis Medical Center. He has no recollection of the emergency room visit. According to the records, Mr. Pruis presented with confusion after striking his head at work. He vomited one time at work. He knew his first and last name, but not his middle name. Additionally, he did not know how many kids he had. A CT of his cervical spine was performed which demonstrated degenerative changes of the cervical spine without evidence of acute bony abnormality. A head CT showed no acute intracranial process. The assessment was very severe concussion, traumatic brain injury, and he needed a higher level of care than what that facility could provide to him. He was transferred via ambulance to Genesis West. Mr. Pruis has no recollection of the ambulance ride. Once he arrived at Genesis West he was placed on a neurological floor. After 24 hours his confusion resolved. Mr. Pruis was back to normal baseline level with no significant headaches and his neck pain had improved. He was kept overnight and discharged home to the care of his family. He had restrictions placed on his activities until follow-up evaluation or for at least one week. (Testimony; JE1, pp. 1-14)

Mr. Pruis was seen by Steven Fowler, M.D. at Medical Associates on August 24, 2016 for follow-up. He reported that he is unable to return to work. Any activity produces severe headache. He is experiencing some difficulty with sleeping and concentrating. He reported that the fluoxetine that he had been taking for depressive symptoms prior to his concussion was not effective and remained ineffective at the current dose. He also reported that his balance has been slightly off. The assessment was post-concussive syndrome. He was referred to the Concussion Clinic. Mr. Pruis

was to refrain from intense concentration activities as well as physical activity and driving. He was to remain off work for the time being. He was to taper off the antidepressant medication. (JE2, pp. 31-32)

On September 13, 2016, Mr. Pruis returned to Dr. Fowler with a headache, nausea, and motion sickness. With any activity or jarring motion such as riding in the car, Mr. Pruis experiences a headache and often a sense of vertigo. This also occurs with quick movements of his head which have been present since his head injury. He was having difficulty concentrating and focusing, and his short-term memory is very poor. He is experiencing daily headaches. He has not made significant progress at the concussion clinic. He continued to have pain radiating from his upper back into his arms similar to what he experienced after a motor vehicle accident several years ago; he said this had completely resolved until his concussion. Dr. Fowler assessed Mr. Pruis with post-concussive syndrome. Dr. Fowler decided to consult neurology due to the multiplicity of his symptoms. Mr. Pruis is to remain off work. (JE2, p. 33) Dr. Fowler referred Mr. Pruis to Irena M. Charysz Birski, M.D.

Mr. Pruis saw Dr. Birski at Neurology Consultants, P.C. on October 6, 2016. He was assessed with post-concussion syndrome. The doctor discussed the natural course of symptoms involved in post-concussive syndrome with Mr. Pruis, his girlfriend, and his daughter. The doctor noted that the August 11, 2016 MRI was unremarkable. The doctor recommended vestibular rehabilitation for post-concussive vertigo. He was also advised not to continue in concussion clinic. Dr. Birski noted that prior to the work injury, Mr. Pruis had a history of headaches, hearing loss on the right side, depression and anxiety, and history of MRI of the cervical spine in July of 2010. Dr. Birski prescribed Amitriptyline at bedtime for post-concussive headaches. He was also prescribed Phenergan for nausea. (JE3, pp. 34-37)

Mr. Pruis returned to Neurology Consultants on December 9, 2016. His headaches were much better while on amitriptyline which he cut back from 25 mg to 12.5 mg nightly. He was still experiencing dizziness in what he explained as in his right eye. He started physical therapy for the dizziness. (JE3, pp. 38-39)

Mr. Pruis testified that Dr. Birski referred him to DeAnn M. Fitzgerald, O.D., an optometrist. Dr. Fitzgerald has been an optometrist since 1986. In 2004, she opened a general practice, Dr. Fitzgerald and Associates. This is a general practice where for three days of the week she sees patients for glasses and contact lenses. During the remaining two days of the week Dr. Fitzgerald sees specialty patients for traumatic brain injury (TBI), strokes, and concussions. Approximately 30 to 40 percent of her patients are specialty patients. In 2007, she opened Vision In Motion, which is a rehabilitation clinic. She has also opened Active Evolution, which is a sports, concussion sports rehabilitation clinic. In 2010, she aligned herself with Pittsburgh impact testing and became Credentialed IMPACT Consultant (CIC) certified. She is vice president of neuro-optometric rehab which has approximately 900 members. She receives referrals from a nine-state area from neurologists, family practice, optometrists, and other doctors. (Cl. Ex. 4; Cl. Ex. 13)

Mr. Pruis saw Dr. Fitzgerald at her general practice, Dr. Fitzgerald and Associates on January 6, 2017. Dr. Fitzgerald prescribed glasses to correct Mr. Pruis' vision. She recommended tinted lenses for photophobia. She also recommended visual/vestibular rehabilitation and multisystem therapy at her rehabilitation clinic, Vision in Motion. (JE4, p. 49)

In mid-January 2017, Dr. Fitzgerald recommended additional treatment for Mr. Pruis. She suggested his therapy for his eye condition continue at Vision in Motion twice a week for 60 days. (JE4, p. 74)

On February 10, 2017, Mr. Pruis saw Dr. Fitzgerald. The assessment was concussion, now moving into post-concussion syndrome; light sensitive, needs tint; sounds sensitive; balance and gait, unable to ambulate well; he was so symptomatic that he was unable to complete testing. Dr. Fitzgerald recommended multisystem therapy to go after the vision vestibular problems, tinted lenses for the light sensitivity, cranio-sacral for the neck-cervical issues from the compression injury with referral to Vision in Motion for rehab. (JE4, p. 47)

On March 6, 2017, Mr. Pruis returned to Dr. Fitzgerald for treatment of his head injury. The notes indicate that they completed the intense multi-systems therapy which increased his balance and gait. His eyes were working better together. He also had decrease in the light and sound sensitivity, and overall doing better with multi-tasking. She recommended visits twice a week for four more weeks. (JE4, p. 51)

Dr. Birski saw Mr. Pruis again on March 16, 2017. His headaches were better, but his dizziness persisted seven months after the accident. He was with his son who drove him to the appointment. Mr. Pruis reported that there was not much that he could do because of his dizziness. He also reported that his balance is off and he bumps against the walls. His concentration and memory are not good. His mood is also not the best. Dr. Birski felt there was significant psychological overlay in this patient with a pre-existing history of depression. The assessment was post-concussion syndrome. She felt he would benefit from psychological counseling so she referred him to a psychology group. Dr. Birski referred him to Wayne Sliwa, PhD. (JE3, pp. 40-42)

On March 17, 2017, Vision in Motion issued a report on Mr. Pruis' treatment at their office since March 6, 2017. Mr. Pruis told the clinic about his work injury and the treatment he had to date. Mr. Pruis reported that some of the things he engaged with during physical, occupational, and speech therapy only made him feel worse, so he decided to exit all of those therapies. His goals here are to improve his nausea, balance, vision, and stability. He had hoped to return to work six months ago, but was not able to handle overstimulation from noise, distractions, nausea, and headaches. He reported that he experiences three types of dizzy: eye, head, and room dizzy. Mr. Pruis arrived at the first session wearing sunglasses due to light sensitivity. After the first session, Mr. Pruis reported that his eye watered the whole way home. The report set forth a summary of the sessions. At the end of the 12-day cycle, Mr. Pruis was given a light box to take home for the remainder of the program. Mr. Pruis continued to treat at Vision in Motion through at least October 8, 2019, as set forth in the over 60

pages of hand-written, sometimes illegible, notes submitted by the parties. (JE5, pp. 95-165)

On April 5, 2017, Dr. Fitzgerald noted that Mr. Pruis still had low performance and a large number of symptoms. He was making great improvement, but still needed rehab two to three times per week. (JE4, p. 52)

On May 2, 2017, Dr. Birski had a telephone conference with the defendants' attorney. Dr. Birski noted that the psychological evaluation with Dr. Sliwa that was recommended had not been approved by the insurance carrier yet. (JE3, p. 43)

Mr. Pruis returned to see Dr. Birski on May 19, 2017. His daughter accompanied him to the appointment. He benefited from physical therapy with Dr. Fitzgerald in Cedar Rapids and would like to continue with similar therapy in town, but needs work comp approval. He is better, but still dizzy. His headaches are better. The notes state that the evaluation by Dr. Sliwa was not approved by workers' compensation yet. (JE3, pp. 44-46)

On September 29, 2017, Dr. Fitzgerald recommended additional treatment for Mr. Pruis. Specifically, she suggested that the therapy for his eye condition continue at Vision in Motion, three times per week for 90 days. She also felt it was appropriate to have him evaluated by an orthopedic surgeon or neurosurgeon to address his ongoing neck issues. (JE4, p. 69)

On November 16, 2017, Mr. Pruis went to Iowa Ortho to see Todd J. Harbach, M.D. He reported that 80 percent of his pain was cervical and 20 percent with bilateral upper extremity pain. Mr. Pruis reported Dr. Harbach recommended diclofenac. He also recommended an MRI and EMG and nerve conduction testing. He was to return after the testing was complete. (JE6, pp. 166-173)

Dr. Fitzgerald issued another letter dated December 5, 2017. She was seeking approval for blood draw testing to show blood brain barrier markers and/or gastrointestinal markers that can be correlated with lasting TBI symptoms. The doctor felt the test results could provide further insight as to how to move forward with treatment. (JE4, p. 71)

On December 14, 2017, Mr. Pruis saw psychologist, J. Austin Williamson, at Psychology Health Group. He was referred to Dr. Williamson by workers' compensation. He presented with his wife and adult son. Mr. Pruis requested help in the areas of depression and irritability. He also has problems with his vision and one of his eyes wandering. Additionally, he experiences dizziness, balance issues, nausea, and headaches. Since his head injury, he has had problems finding words and remembering things. He feels that his somatic and neurocognitive problems have improved somewhat since his injury, but he is not back to his old self. Dr. Williamson's diagnoses included: Axis I, major depressive disorder, Axis V: problems related to the social environment, occupational problems. The treatment plan for his anger was to control and express his anger appropriately. For his depression, the goal was to renew

his interest in activities, social patterns, eating patterns and express joy for life. (JE7, pp. 180-190)

On January 10, 2018, Dr. Harbach wrote a missive to claimant's counsel. He noted that Mr. Pruis has chronic degenerative changes in his cervical spine at C4-C5 and C5-C6 with broad-based disc bulges that do result in stenosis of the cervical spine. Mr. Pruis reported to Dr. Harbach predominant cervical pain (70-80%) versus arm pain (20-30%). His EMG/nerve conduction velocity tests demonstrated that he does not have cervical radiculopathy, but does have bilateral carpal tunnel syndrome. Dr. Harbach noted that ever since the work injury Mr. Pruis has had neck and arm pains. Dr. Harbach opined with a reasonable degree of medical certainty that Mr. Pruis' injury to his head, which also involves his cervical spine, lit up his pre-existing degenerative conditions. (JE6, p. 177)

Mr. Pruis returned to see Dr. Harbach on January 22, 2018 to go over his test results. He reported 70 percent cervical pain and 30 percent right upper extremity pain. Dr. Harbach noted he had foraminal stenosis on the right at C4-C5 greater than C6-C7. He discussed treatment options with Mr. Pruis including physical therapy and anti-inflammatories versus pain clinic for injections versus surgery. Mr. Pruis was very adamant that he wants conservative treatment. Dr. Harbach gave him a consult with physical therapy to work on cervical stabilization exercises and cervical traction. He switched him from diclofenac to Relafen because Mr. Pruis felt the diclofenac was not really helping. He was also given a low-impact aerobics condition program. The EMG/nerve conduction test did not show any evidence of cervical radiculopathy, but did show bilateral carpal tunnel syndrome. He was to return in six weeks. (JE6, pp. 174-175)

On March 22, 2018, Dr. Fitzgerald recommended BrainTap head gear to help stimulate Mr. Pruis' brain. In May of 2018, Dr. Fitzgerald recommended continued treatment for the next 90 days. These recommendations were approved by the insurance carrier at the end of May. (JE4, pp. 78-80)

On July 10, 2018, Dr. Fitzgerald wrote to the insurance carrier seeking authorization for 24 chiropractic visits for brain injury-related symptoms; this was authorized by the carrier. (JE4, pp. 82-83)

Mr. Pruis was seen at Dr. Fitzgerald's and Associates again on August 30, 2018. Mr. Pruis continued to report headaches, light sensitivity, tired eyes, epiphora, eye pain or soreness, itching, blurred vision distance and near, double vision, spots, and loss of side vision. (JE4, pp. 84-87)

Mr. Pruis continued to see Dr. Williamson. The last treatment note we have is dated September 7, 2018. At that time, his clinical diagnosis was major depressive disorder, single episode, moderate. He reported that his vision and balance had not improved significantly. He reported clinical problems leading to strain in his relationship with his wife; Dr. Williamson offered to have her attend the next session. (JE7, pp. 193-201)

At the request of the defendants, Daniel T. Tranel, Ph.D., saw Mr. Pruis on three occasions and issued reports. Dr. Tranel's reports will be discussed in greater detail later in this decision. In October of 2018, Dr. Tranel opined that the August 2016 work accident might have temporarily aggravated his previous problems with depression. He placed Mr. Pruis at MMI for any such temporary aggravation by the time of his initial evaluation in August of 2017. According to Dr. Tranel, the August 2016 work accident did not cause any permanent neurological or mental injury to Mr. Pruis. Dr. Tranel felt that Mr. Pruis did not require any additional treatment or restrictions related to the work accident. (Def. Ex. C, pp. 45-61)

In October of 2018, defendants did not authorize any additional medical or mental health treatment. After the two reports from Dr. Tranel, the defendants stopped authorizing Dr. Fitzgerald's continued care of Mr. Pruis and the therapy at Vision in Motion. Pursuant to the recommendation of Dr. Fitzgerald, Mr. Pruis attended several chiropractic appointments after his injury. These sessions were initially paid for by workers' compensation, but that also ended around this same time. Mr. Pruis did not have health insurance at this time. Mr. Pruis' weekly workers' compensation benefits stopped in mid-November. After his care ended, Mr. Pruis' condition regressed significantly. (Testimony; Cl. Ex. 4, depo pp. 27-28, Def. Ex. F, p. 113, 136)

Defendants obtained surveillance footage of Mr. Pruis on October 28, 2019. In the footage, Mr. Pruis is seen moving pieces of furniture out of his home. In the video, Mr. Pruis is seen ambulating with what appears to be a normal gait. The undersigned does not find the video to be terribly helpful. Surveillance footage is often not helpful in determining claimant's ability to work eight hours a day, five days a week. (Def. Ex. J)

Throughout this workers' compensation claim, Mr. Pruis has been evaluated by several experts.

On March 19, 2019, at the request of his attorney, Mr. Pruis underwent an IME with Mark C. Taylor. As the result of the examination and review of records, Dr. Taylor issued a report on May 7, 2019. Dr. Taylor's diagnoses included: persistent cervicgia with right greater than left pain, paresthesias into the upper extremities and abnormal cervical spine MRI, traumatic brain injury with post-concussive syndrome and mild neurocognitive disorder, persistent headaches, and dizziness related to post-concussive syndrome. He also noted major depressive disorder, generalized anxiety disorder and persistent personality disturbance per Kunal Patra, M.D., and persistent visual complaints per Dr. Fitzgerald. Dr. Taylor agreed with Dr. Harbach that Mr. Pruis likely had pre-existing degenerative changes in the cervical spine, but he was asymptomatic. Mr. Pruis "lit-up" a previously asymptomatic condition and has been unable to return to his asymptomatic baseline. (Cl. Ex. 2, p. 76)

At the request of the defendants, R.L. Broghammer, M.D. conducted an IME on April 15, 2019. Mr. Pruis reported that he had numbness in his right second through fourth digits. He experiences pins and needles in his forearm with a burning pain that extends from this right shoulder to his shoulder blade as well as a stabbing pain. He also reported terrible headaches. Mr. Pruis was also experiencing pain at the base of

his skull and into his neck. Dr. Broghammer reviewed the records provided to him and also conducted an examination of Mr. Prais. Dr. Broghammer opined that Mr. Prais did not have any current head condition that was related to the work injury. He noted that Mr. Prais did have subjective headaches with a history dating back to March of 2011, with an unclear etiology. Dr. Broghammer did not believe that there was any current head condition referable to the work injury. He assessed Mr. Prais as having multilevel cervical spondylosis with multilevel central canal and neural foraminal stenosis due to degenerative changes of the cervical spine. He opined that this condition was preexisting and not related to the work injury. With regard to any eyesight or vision condition, Dr. Broghammer felt Mr. Prais has myopia due to hardening of the lens, which was due entirely to the aging process and not the work injury. With regard to Mr. Prais' mental health, Dr. Broghammer assessed him with subjective/proven history of major depressive disorder, functional overlay, and possible somatization disorder. He opined that none of these conditions were related to the work injury. With regard to Mr. Prais' right shoulder, Dr. Broghammer assessed him with idiopathic ongoing right shoulder pain with radiating pain that was not related to the work injury. Mr. Prais also has a bilateral hand condition. Dr. Broghammer stated that there was no way to logically connect the bilateral carpal tunnel syndrome to the work injury. Dr. Broghammer placed Mr. Prais at MMI as of August 30, 2017 for all claimed conditions. He felt that Mr. Prais did not require any additional care for any of his alleged conditions. He felt that treatment at Vision in Motion and the treatment recommendations of Dr. Fitzgerald are unnecessary and unwarranted. Dr. Broghammer opined that Mr. Prais did not sustain any permanent impairment or required any work restrictions as the result of the work injury. (Def. Ex. B, pp. 2-23)

On May 18, 2020, Dr. Broghammer completed an updated IME. He stood by his prior opinions. He noted that he did not agree with Dr. Taylor or Dr. Patra who opined that Mr. Prais sustained a traumatic brain injury. He also disagreed with Dr. Taylor regarding Mr. Prais' cervical spine. Additionally, he disagreed with Dr. Fitzgerald's opinion regarding visual impairment. (Def. Ex. B, pp. 24-38)

On August 30, 2017, at the request of the defendants, Mr. Prais underwent an Independent Neuropsychological Evaluation with Daniel Tranel, Ph.D. at the University of Iowa Hospitals and Clinics (UIHC). (Ex. C, pp. 39-40)

At the August 2017 appointment, Dr. Tranel conducted a neuropsychological evaluation. During the evaluation, Dr. Tranel had Mr. Prais take numerous tests. The testing results indicated that areas in attention and working memory were well below expectations. Test results in the category of speed of processing and mental control were in the 5th and 9th percentile. The test results for areas in language showed that Mr. Prais was functioning in the 1st percentile. However, Dr. Tranel stated that Mr. Prais showed some slowness of cognitive and motoric processing speed. He felt that Mr. Prais' profile was not suggestive of cognitive impairment, and his test performances were not reflective of neurological dysfunction. Dr. Tranel noted moderate symptoms of depression and general emotional dysfunction could be contributing to observed weaknesses in processing speed. Dr. Tranel stated that Mr. Prais did not have brain damage from the August 2016 work accident. Dr. Tranel felt that Mr. Prais would

benefit from weekly individual psychotherapy sessions, with focus on Cognitive Behavioral Therapy (CBT) to help him develop adaptive coping strategies for managing symptoms of emotional distress. He also felt that Mr. Pruis would benefit from moderate exercise to help improve and maintain his cognitive and physical health. Dr. Tranel did not place any work restrictions on Mr. Pruis. Dr. Tranel felt Mr. Pruis was capable of full-time, gainful employment at the same level he was prior to the August 2016 accident. (Def. Ex. C, pp. 39-44)

Dr. Tranel re-evaluated Mr. Pruis on October 3, 2018. It should be noted that Dr. Tranel issued a report on October 14, but then replaced it with a report dated October 24, 2018. In the October 14, report Dr. Tranel stated it appeared that treatment with Dr. Fitzgerald and Vision in Motion actually made Mr. Pruis worse. He recommended that Mr. Pruis discontinue the treatment to see if he would improve without it. In the October 24 report, Dr. Tranel removed his criticisms of the treatment with Dr. Fitzgerald and Vision in Motion. (Cl. Ex. 4, depo. pp. 25-27)

The October 2018 appointment revealed slightly lower intellectual functioning than in August of 2017. Mr. Pruis had lower functioning with regard to attention, concentration, working memory, learning, and executive functioning. In his report, Dr. Tranel opined that Mr. Pruis was normal and did not have any neurological or psychiatric condition attributable to the August 2016 accident. Mr. Pruis does not have any objective neurological abnormality per Dr. Tranel's comprehensive neuropsychological assessment completed on August 30, 2017 and again on October 3, 2018. Dr. Tranel stated that Mr. Pruis did not have any diagnosable mental health condition. He noted that the neuroimaging data (head CT, brain MRI) had all been negative. Dr. Tranel felt that Mr. Pruis' current subjective neurological complaints were not supported by the testing. He noted there was evidence of dissimulation; however, due to other factors, Dr. Tranel did not diagnose Mr. Pruis with malingering. Dr. Tranel stated that he did not agree with Dr. Fitzgerald's diagnostic or treatment approaches or recommendations. He felt Mr. Pruis did not have post-concussion syndrome. Dr. Tranel opined that the August 2016 work accident might have temporarily aggravated his previous problems with depression. He placed Mr. Pruis at MMI for any such temporary aggravation by the time of his initial evaluation in August of 2017. According to Dr. Tranel, the August 2016 work accident did not cause any permanent neurological or mental injury to Mr. Pruis. Dr. Tranel felt that Mr. Pruis did not require any additional treatment or restrictions related to the work accident. (Def. Ex. C, pp. 45-61)

On December 6, 2018, at the request of his attorney, Mr. Pruis underwent an Independent Psychiatric Evaluation with Kunal K. Patra, M.D. a board certified psychiatrist. Mr. Pruis was accompanied by his son and daughter. As the result of his evaluation and review of records provided to him, Dr. Patra issued a 49-page report. (Cl. Ex. 1, pp. 1-49)

Mr. Pruis reported that he was still experiencing difficulties with his thought processing, concentration, memory, depression, and anxiety. Additionally, he still had problems with his vision and right-side hearing impairment. He also reported some ongoing balance issues, headaches, and light sensitivity, but these issues had improved

some. Mr. Pruis' daughter reported that Mr. Pruis comes across as a changed person in terms of his anger outbursts, tendency to isolate, loss of patience, and a new-found passion for orderliness. (id.)

Dr. Patra concluded that Mr. Patra was experiencing major depressive disorder, single episode with moderate intensity which was brought on by the workplace injury of August 11, 2016. Dr. Patra felt that Mr. Pruis' prior depression was in remission prior to the work injury. He noted that the condition appeared to be stable at the time of the August 12, 2016 discharge summary from Genesis Health. He was taking Prozac at the time of the injury. He was functioning well in his job and in his family life prior to the work injury. Dr. Patra felt Mr. Pruis was also struggling with generalized anxiety disorder caused by the work injury. He also opined he was suffering from mild neurocognitive disorder due to his traumatic brain injury. He also stated that Mr. Pruis had sustained a personality change due to his traumatic brain injury. (id.)

Dr. Patra commented on the opinions of Dr. Tranel. Dr. Patra stated:

Review of the 10/14/18 report suggests that Dr. Tranel felt that Mr. Pruis' persistent presence of cognitive difficulties and progressive decline in other areas of cognitive functioning was unexpected and inconsistent with normal recovery trajectory. While normal trajectory is something we can expect in most individuals, we cannot say that is the case with all individuals with mild traumatic brain injury. Studies have highlighted poor neuropsychological outcomes even among individuals with mild to moderate traumatic brain injury as noted by Sherman KB, et al: Traumatic brain injury and pain; *Phys Med Rehab Clin N Amer* 2006; 17: 473-490. These impairments can hinder functional recovery including, cognitive readiness to work, to go to school, and in some cases independent living. About 10% of individuals with traumatic brain injury have persistent post concussive symptoms, including headache, fatigue, concentration difficulty, irritability, anxiety, depression, and sensitivity to light and noise. These symptoms may lead to vocational and [sic] or social difficulties out of proportion to the severity of the initial injury, a condition termed persistent post-concussive syndrome.

(Cl. Ex. 1, pp. 39, 40)

In his report Dr. Patra also stated:

Mr. Pruis meets the criteria under Table 14-2 of Selected Impairments and Common Limitations and Ability of the AMA Guides, 5th Edition for 1) Major Depressive Disorder, with limitations in the sphere of social, interpersonal, and vocational capabilities, 2) Generalized Anxiety Disorder, with limitations in the sphere of social capabilities; and 3) Personality Disorder due to Traumatic Brain Injury, with limitations in the sphere of social, interpersonal, and vocational capabilities.

Following clinical evaluation and review of Mr. Pruis' medical and psychiatric records, I based my opinion within a reasonable degree of medical and psychiatric certainty that, Mr. Pruis' workplace accident on 08/11/16 during the course of his employment with MedPlast Holdings, Inc. is the predominant contributing factor in Mr. Pruis' current psychiatric and neurologic diagnoses which include, 1) major depressive disorder, recurrent episode, moderate intensity; 2) mild neurocognitive disorder due to the traumatic brain injury; 3) personality disorder due to another medical condition (here from the traumatic brain injury); 4) generalized anxiety disorder; and 5) post-concussion syndrome.

(Cl. Ex. 1, p. 43)

Dr. Patra felt that Mr. Pruis' conditions were permanent mental health injuries or impairments. He opined that his conditions fell between the mild and moderate level of impairment when viewed in the context to his functioning in activities of daily living, social functioning, concentration, persistence/pace and adaption to workplace demands. He assigned 22 percent of the whole person permanent impairment based on mild neurocognitive disorder due to traumatic brain injury. (Cl. Ex. 1, pp. 44-46)

Dr. Tranel performed a second re-evaluation of Mr. Pruis on June 17, 2020 and issued a report dated June 21, 2020. Dr. Tranel stated that the re-evaluation was notable for three main findings. The first was failure on numerous direct and embedded performance validity tests. Second, failure on all administered symptom validity tests. Third, decline in neuropsychological test performances compared to previous evaluations in October 2018 and August 2017. Dr. Tranel concluded that Mr. Pruis had the following conditions: malingering, somatic symptom disorder, and major depressive disorder. Dr. Tranel opined that none of these conditions were caused by the work injury. Dr. Tranel stated that Mr. Pruis' current condition was related to a combination of dissimulation/malingering and inaccurate medical validation of his perception of his condition. He felt Mr. Pruis might benefit from comprehensive mental health treatment and vocational rehabilitation. It was not clear to Dr. Tranel if his current treatment was helping Mr. Pruis. Dr. Tranel felt he was actually getting worse over time. Dr. Tranel continued to believe that there was no further treatment needed due to the work injury and that Mr. Pruis had zero impairment as the result of the accident. (Def. Ex. C, pp. 62-69)

Dr. Fitzgerald testified in her deposition that Mr. Pruis has poor short-term, long-term memory. She also noted that he has poor focus and attention to where he would have difficulty staying on task. She does not believe that he would be able to complete an eight-hour day due to his high fatigability. (Cl. Ex. 4, depo. p. 35)

When Dr. Tranel re-evaluated Mr. Pruis on October 3, 2018, Mr. Pruis' intellectual function was slightly lower than it was at the August 2017 evaluation. The testing demonstrated lower function with regard to attention, concentration, working memory, learning, and executive functioning. According to Dr. Tranel, this reflected moderate interval decline in cognitive functioning. Dr. Tranel noted that this was not the

way most people responded over time after a traumatic brain injury. However, Dr. Patra noted that approximately 10 percent of individuals do have persistent post-concussive symptoms like Mr. Pruis. In the October report, Dr. Tranel felt that the decline was because Dr. Fitzgerald's treatments had actually made Mr. Pruis' condition worse. After Dr. Fitzgerald contacted Dr. Tranel, Dr. Tranel issued a supplemental report retracting his criticisms of her treatment. (Ex. C, p. 48, Cl. Ex. 1, pp. 40, 49-50)

At the arbitration hearing, Mr. Pruis provided testimony about his ongoing symptoms. The pain that Mr. Pruis had in his right shoulder has basically resolved. He still experiences a little bit of numbness down his arm, but he does not have pain. (Testimony)

Mr. Pruis still had pain on both sides of his neck, mostly on the right side of the back of the neck, at the base of his head. This was the first pain he felt at the time of the injury. His pain is constant and ranges from 2 to 5 out of 10. (Testimony)

Mr. Pruis continues to struggle with headaches. Treatment has helped improve his headaches some, but he has constant headache pain of at least a 2/10. His headaches intensify with bright lights, loud sudden noises, physical activity, and trying to concentrate. His headaches can reach 10/10. He takes ibuprofen and Aleve, but they do not provide much relief. (Testimony)

Mr. Pruis feels that his work injury has changed his life and that he basically has lost everything. He has difficulty finding words and remembering why he walked into a room. He cannot remember his children's birth dates or even where they were born. He has difficulty remembering who people are, even some of his own relatives. He frequently has to ask Marlene to identify people for him. Unfortunately, he does not remember information regarding the complex processes that he learned over the years he spent in the plastics manufacturing business. He does not believe he could ever handle a production supervision position anymore. He believes this work is too fast-paced for him. (Testimony)

Prior to the injury, Mr. Pruis was social and enjoyed the outdoors. He rode a motorcycle, had a fishing boat, snowmobile, and four-wheeler. Due to his work injury he no longer owns any of those recreational vehicles because he does not feel safe using them anymore. Mr. Pruis used to be very close with his and Marlene's extended families and enjoyed family gatherings. However, now gatherings are very difficult for him. The gatherings cause him severe headaches. He and Marlene recently had to leave a gathering early due to his headache; he was so wore out that he spent the entire next day in bed. (Testimony)

At the time of the work injury, Ryan was living with Mr. Pruis. He also lived with him for a bit after the injury. According to Ryan, prior to the injury, his dad was a very proud, self-reliant man who was a good dad. They would hunt, fish, golf and disk golf together. He was also a great cook. However, Ryan says since his head injury, his dad is nearly unrecognizable. His dad has balance problems and speech issues. He complains about headaches and often he goes into a state where his eyes become red

and glossed over and he zones out. Since the injury, there are times when Ryan would come home and find that his dad had left the oven or another appliance on for an extended time. Ryan said his dad can barely cook a frozen pizza now. His dad used to handle the family finances, but now Marlene has to do the finances. (Testimony)

Prior to the injury, Ryan worked at Berry Plastics at the same time as his dad. He said his dad was the go-to-guy who could fix any machine. A couple of years after the work injury, Ryan observed his dad at work at Harbor Freight. Ryan spoke with a couple of his dad's co-workers. It was clear that they liked Mr. Pruis, but they said they had to watch him very closely and follow him around. Ryan felt as though they were speaking about a "special needs" adult. (Testimony)

With regard to physical activities, Mr. Pruis has trouble with overhead lifting due to his neck. He also struggles with bending, stooping, kneeling, or crawling because those activities increase his headaches and dizziness. When he first gets up he has to hold onto the wall, but once he gets moving, he is able to walk a quarter to a half mile. (Testimony)

We now turn to the issue of causation between the work accident and the alleged injuries.

Mr. Pruis has alleged injury to his neck. Claimant relies on the opinions of Dr. Taylor and Dr. Harbach. As noted above, Dr. Taylor opined that the work injury did cause permanent injury to Mr. Pruis' cervical spine. Additionally, Dr. Harbach opined that Mr. Pruis likely had pre-existing degenerative changes in his cervical spine, but those were asymptomatic until the work injury "lit up" the previously asymptomatic condition. Defendants rely on the opinions of Dr. Broghammer. With regard to Mr. Pruis' neck, Dr. Broghammer felt that Mr. Pruis had multilevel cervical spondylosis with multilevel central canal and neural foraminal stenosis due to preexisting changes of the cervical spine. He stated that this was preexisting and not related to the work injury. Dr. Broghammer did not provide any convincing rationale to support this opinion. With regard to Mr. Pruis' neck, I find the opinions of Dr. Taylor and Dr. Harbach to be more persuasive than those of Dr. Broghammer. Thus, I find Mr. Pruis sustained an injury to his cervical spine as the result of the August 11, 2016 injury.

Claimant alleges that he sustained head, vision, and mental injuries as the result of the August 11, 2016 work injury. Several experts have issued their opinions with regard to these matters.

Mr. Pruis alleges that the August 11, 2016 work injury affected his vision. Dr. Birski of Neurology Consultants, P.C. noted that since his injury, Mr. Pruis experienced "daily headaches, nausea, dizziness, particularly with eye movements and body movements, unable to drive due to nausea and vomiting, unable to work, has intermittent right facial numbness, blurry vision, states he was diagnosed with double vision by most recent eye evaluation, he has had problems with concentration and memory." (JE3, pp. 34-35) Dr. Birski referred Mr. Pruis to Dr. Fitzgerald and her clinic that specializes in the treatment of head injury patients. Following the injury, Mr. Pruis

had difficulty with light sensitivity. With regard to visual acuity, Dr. Fitzgerald determined that Mr. Pruis had no ratable permanent impairment because his vision is correctable to 20/20 with glasses. However, Dr. Fitzgerald opined that he sustained a permanent injury due to loss of a portion of his field of vision. She found a 20% deficit in his right eye and a 10% deficit in his left eye. (Cl. Ex. 4, pp. 31-33)

Dr. Fitzgerald believes that Mr. Pruis could benefit from further therapy at Vision in Motion clinic to improve his balance and cognition. She anticipates he would need this therapy for the rest of his life. She feels that without ongoing therapy and treatment, Mr. Pruis' ability to focus and to concentrate and his memory function will likely diminish over time. (Cl. Ex. 4, pp. 33-34, 46-47)

Since the time of the work accident, Dr. Fitzgerald has seen Mr. Pruis approximately 23 times. Additionally, he was seen at Vision in Motion clinic over 70 times. Mr. Pruis testified that this helped improve his balance, eye movement, and dizziness. Dr. Fitzgerald testified that Mr. Pruis' original impact test showed that he was well below comprehension for vision and verbal reaction time. In a CNS test that was conducted later, Mr. Pruis also performed poorly in numerous categories. Based on her work with Mr. Pruis, Dr. Fitzgerald believes that he does not have the capacity for any type of long-term focus and attention. (JE 4 and 5; Testimony; Cl. Ex. 4)

At the time of the hearing, Mr. Pruis still experienced right eye pain. He feels a constant pressure behind his right eye, a pain that he rates as a 2/10. After five to ten minutes of looking at his smart phone, watching television or looking at a computer screen, his pain levels increase, often up to a 10/10. He described it as a sharp stabbing pain. The pain is also brought on by physical activity or sometimes the pain increases on its own. (Testimony)

He also continued to experience blurriness in his right eye that gets worse as the day goes on. Any action on TV or fast-paced movement makes it worse and can even cause nausea or double vision. He also has difficulty controlling his right eye; sometimes it wanders. Oftentimes Mr. Pruis will use a blank sheet of paper to cover up portions of a page he is trying to read; this allows him to focus on just one line at a time. Additionally, he has noticed some loss of peripheral vision in his right eye. He still has significant light sensitivity and often wears sunglasses. He has difficulty driving at night due to headlights and other bright lights. If he tries to read or concentrate too much his eyes often get watery and blurry. (Testimony)

Mr. Pruis still struggled with dizziness at least two or three times per day. His dizziness seems to occur when his right eye wanders or with quick movement of his head. Looking up also seems to aggravate his dizziness. Getting down and looking underneath something can also trigger severe dizziness. When his dizziness is severe he can barely walk and has to lay down. (Testimony)

Mr. Pruis treated with psychologist, Dr. Williamson. In his treatment notes, Dr. Williamson noted occupational problems. Dr. Williamson did not issue a formal opinion regarding causation in this matter. (JE7)

As noted above, defendants sent Mr. Pruis to see Dr. Tranel on several occasions. Dr. Tranel ultimately opined that Mr. Pruis did not have any diagnosable mental health condition. He felt that Mr. Pruis did not have post-concussion syndrome. He did feel that the work accident might have temporarily aggravated his prior problems with depression. For any such aggravation, he placed him at MMI as of his August 2017 evaluation. He felt that the August 2016 work injury did not cause any permanent neurological or mental injury and he did not require any restrictions. Dr. Tranel stated that Mr. Pruis had zero impairment as the result of the accident. (Def. Ex. C)

Dr. Patra, a board certified psychiatrist, saw Mr. Pruis in December of 2018. He concluded that Mr. Pruis was experiencing major depressive disorder brought on by the workplace injury. He felt that Mr. Pruis' prior depression was in remission prior to the work injury. Dr. Patra also believed that Mr. Pruis was struggling with generalized anxiety disorder caused by the work injury. Additionally, he noted that Mr. Pruis was suffering from mild neurocognitive disorder due to a traumatic brain injury. He also sustained a personality change due to the traumatic brain injury. He causally related these conditions to the workplace injury. Dr. Patra opined that the conditions were permanent mental health injuries or impairments. He felt that his impairment level was mild to moderate. Dr. Patra assigned 22 percent of the whole person impairment based on mild neurocognitive disorder due to traumatic brain injury. (Cl. Ex. 1)

Dr. Taylor's diagnoses included traumatic brain injury with post-concussive syndrome and mild neurocognitive disorder, persistent headaches, dizziness related to post-concussive syndrome. He also noted major depressive disorder, generalized anxiety disorder, persistent personality disturbance and persistent visual complaints. (Cl. Ex. 2)

Dr. Broghammer opined that Mr. Pruis did not have any current head condition that was related to the work injury. With regard to Mr. Pruis' vision, Dr. Broghammer opined that he had myopia due to hardening of the lens, which was due entirely to the ageing process and not the work injury. Regarding his mental health, Dr. Broghammer assessed him with subjective/proven history of major depressive disorder, functional overlay, and possible somatization disorder, none of which were work-related. (Def. Ex. B)

With regard to claimant's mental health, defendants primarily rely on the opinions of Dr. Tranel, while claimant primarily relies on the opinions of Dr. Patra. Both sides argue that the other side's expert should not be believed. Claimant argues that Dr. Tranel is a frequent evaluator in Iowa worker's compensation cases. Claimant argues that Dr. Tranel's name appears in dozens of cases before this agency and defendants could only find one instance where he was retained by the injured worker. Defendants argue that Dr. Patra was involved in seven cases before this agency; he was retained by the claimant in six cases and by defendants in one case. In this case, I do not find either of these arguments to be persuasive.

It is not known what records were provided to Dr. Tranel, but in his initial report, he incorrectly stated that Mr. Pruis went to the emergency room the day of the work

accident, but then did not seek any medical care for several months when he saw Dr. Birski. (Ex. C, pp. 39-40) However, the records demonstrate that after Mr. Pruis was seen at the emergency room on the date of the injury he saw Dr. Fowler and underwent numerous physical and occupational therapy sessions prior to seeing Dr. Birski. Additionally, it is not clear from Dr. Tranel's report if he was aware of Mr. Pruis' pre-injury level of functioning. Mr. Pruis' job required that he was capable of supervising a workforce of up to 25 production workers and overseeing high-speed production of plastic injection molding products. Dr. Tranel does not explain how some of the low test results fit with Mr. Pruis' ability to perform his job prior to the injury. Additionally, Dr. Tranel initially stated (although later recanted) that Dr. Fitzgerald's treatment actually made Mr. Pruis' conditions worse. This opinion is not consistent with what Mr. Pruis' own son, Ryan witnessed regarding that treatment. Ryan credibly testified at the hearing. On several occasions Ryan drove his dad to treatments with Dr. Fitzgerald and to therapy at Vision in Motion. Ryan saw that the treatment helped to reduce the frequency of the glazing over and foggy state that Mr. Pruis would otherwise experience on a frequent basis. Based on his observations of his father, Ryan felt the treatment there was the most helpful of any treatment. (Testimony)

By all accounts, prior to the work injury Mr. Pruis was able to perform his job without any difficulties and he did not have absences from work. Since the injury, Mr. Pruis has not been the same. Marlene Franden is Mr. Pruis' significant other and has lived with him since approximately 2006. She testified about the differences in Mr. Pruis' abilities and personality since his work injury. She gave examples of the memory problems that he experiences and examples of tasks he can no longer perform. She testified that he was a great cook prior to the injury, but not after the injury. He was capable of handling their finances prior to the injury, but now she has to manage the finances. Ryan Pruis testified about the personality change he has seen in his father. He also testified about his observations about the decline in his father's abilities after the work injury.

When the evidentiary record is viewed in its entirety, I find the opinions of Dr. Patra and Dr. Taylor are more persuasive than those of Dr. Tranel and Dr. Broghammer. Dr. Patra is a board certified psychiatrist and a diplomat of the American Board of Psychology and Neurology, I find that Dr. Patra is well-qualified. I find that as the result of the August 11, 2016 injury Mr. Pruis sustained a physical-mental injury as set forth by Dr. Patra.

Mr. Pruis contends that he has not yet reached MMI for his injury. Although additional treatment has been recommended, it appears the treatment is for maintenance or to prevent further decline. I find that the evidence does not demonstrate that substantial improvement is expected. With regard to MMI, I find the opinion of Dr. Taylor to be persuasive. (Cl. Ex. 2, p. 77) I find that Mr. Pruis has in fact reached maximum medical improvement as of the time of his evaluation with Dr. Patra.

The next issue that must be determined is extent of permanent impairment.

Dr. Patra rated Mr. Pruis' mental impairment as 22% of the whole person, based upon his diagnosis of mild neurocognitive disorder due to his traumatic brain injury. (Cl. Ex. 1, p. 46) Dr. Taylor assigned 7% whole person impairment based upon DRE cervical category II. (Cl. Ex. 2, p. 77) Dr. Fitzgerald assessed a 10% loss of peripheral vision for the left eye and 20% for the right eye for loss of peripheral vision. (Cl. Ex. 4, pp. 31-33) In the present case, I find the preponderance of the evidence demonstrates that Mr. Pruis sustained permanent functional impairment to his body as a whole due to the work injury.

At the time of the hearing, Mr. Pruis was not employed. After the work injury, he was not returned to work at Medplast and they eventually closed their plant entirely in late 2018. Even if the plant had not closed, Mr. Pruis believes that he is no longer capable of performing that job. He had difficulty even remembering or trying to describe most of what he had learned in his experience in the plastics business. He does not believe he could return to his prior job because it is too fast paced and complex for him since his injury. (Testimony)

Following the August 11, 2016 injury, Mr. Pruis was unemployed for approximately 2 ½ years. His desire to return to the workforce is obvious. He obtained his first job after his injury at Home Depot where he worked part-time doing merchandising work. He attached UPC labels and pricing information on merchandise. He worked eight-shifts there and was mentally and physically exhausted by the end of his day. That employment was from December 5, 2018 through January 30, 2019. He quit that job because he knew he was going to be terminated due to poor attendance. (Testimony)

Mr. Pruis was unable to find employment again until April 15, 2019 when he began working a similar job for Harbor Freight Tool. He was paid \$15.00 per hour. He worked in logistics about 30 to 36 hours per week. His duties included stocking shelves and changing prices. At times, he would also help set displays and work on inventory. Sometimes he also had to work as a cashier, but oftentimes his drawer was short of money at the end of the shift. He had difficulty handling the money. For example, one time when a customer was trying to buy an item, Mr. Pruis gave the customer money back, as if it was a return. He was written up for problems with the cash register. This employment lasted until May 24, 2020, when he again quit to avoid being terminated for poor performance. (Testimony)

As noted by Dr. Patra, Mr. Pruis is significantly impaired and restricted by his poor mental functioning. He cannot concentrate or read like he did prior to the injury. He also has issues with his memory. Mr. Pruis also has physical difficulties due to the work injury. He has difficulty with overhead lifting due to his continued neck symptoms. Mr. Pruis is limited to lifting no more than 20 to 25 pounds on an occasional basis, preferably between knee and chest level. It is recommended that he rarely lift overhead. Additionally, he must have the ability to change his head position on an as-needed basis. He is not to be working at heights due to his dizziness; he is to avoid ladders. He experiences headaches and dizziness with bending, stooping, kneeling or crawling. When he first gets up, he needs to hold onto the wall in his bedroom. Mr.

Pruis will require regular breaks built into his schedule to allow for flexibility for neurocognitive impairment.

Mr. Pruis has tried to find employment. Additionally, each side has hired vocational counselors.

On January 31, 2019, at the request of his attorney, Mr. Pruis met with Barbara Laughlin, a vocational rehabilitation consultant. In addition to meeting with Mr. Pruis, Ms. Laughlin also reviewed records provided to her by claimant's counsel. Ms. Laughlin issued an employment assessment report. She conducted a transferable skills analysis and searched for potential employment options for Mr. Pruis. Based on the restrictions set forth by Dr. Taylor and Dr. Patra, Ms. Laughlin concluded that Mr. Pruis had sustained 100 percent occupational loss of all semi-skilled and skilled occupations in the closest match occupations. He had 98.4 percent loss in the good match occupations and 79.4 percent loss of unskilled occupations. However, Ms. Laughlin noted that there were restrictions that could not be input into a transferable skills analysis. For example, he cannot be depended on to be at work as scheduled, as demonstrated in his Home Depot job. She set forth numerous other restrictions on page 14 of her report that she says cannot be input into a transferable skills analysis. Ms. Laughlin reviewed the report of Rene Haigh, a Disability/Vocational Case Manager, and the jobs she recommended for Mr. Pruis. Some of the jobs Mr. Pruis had applied for and been rejected. She set forth reasons why she did not feel the jobs were appropriate for Mr. Pruis. Ms. Laughlin ultimately opined that Mr. Pruis is unable to perform the jobs found by Ms. Haigh, and he was also unable to perform any jobs in the labor market. (Cl. Ex. 3)

At the request of the defendants, Paradigm conducted vocational rehabilitation evaluations of Mr. Pruis. It should be noted that no one from Paradigm ever contacted Mr. Pruis, spoke to him, or offered him any assistance in updating his resume or obtaining employment. Given Mr. Pruis' difficulty with work finding and poor performances in interviews, I find Paradigm's failure to even speak with Mr. Pruis disturbing. I do not find the opinions of Paradigm to be very persuasive in this matter. The first report is authored by Rene Haigh. The report is dated May 1, 2019, nearly three years after the injury. The purpose of the report was to "provide a professional opinion regarding Mr. Pruis' vocational outlook given that Mr. Pruis was provided recommendations regarding permanent restrictions." (Def. Ex. D, p. 70) The May 1, 2019 report lists 10 jobs that were a sampling of jobs currently available to Mr. Pruis. Mr. Pruis contacted all of those employers and did not receive a single job offer. The report further stated that based on the opinions of Dr. Tranel and Dr. Broghammer, Mr. Pruis sustained zero percent loss of access to his pre-injury employment opportunities. (Def. Ex. D, pp. 70-93)

Paradigm issued a second report on June 22, 2020; this one was issued by Lana Sellner, a Disability/Vocational Case Manager. This report was a supplement to the May 2019 report. Ms. Sellner performed Labor Market Research. Based on the restrictions set forth by Dr. Broghammer, Mr. Pruis did not sustain a loss of access to pre-injury employment opportunities and he has no vocational impact. Based on the

recommendations from Dr. Taylor, Ms. Sellner set forth a sampling of jobs currently available to Mr. Pruis in the labor market. Ms. Pruis contacted all of the listed employers and was told that either they were not hiring or that he was under or over qualified. (Def. Ed. D, pp. 94-102; Testimony)

Mr. Pruis credibly testified that he would prefer to be working, especially as a production supervisor. Prior to his injury, he enjoyed his work. Mr. Pruis has testified that he does not believe he is capable of performing his prior job at Medplast. His testimony is supported by the fact that from the time of the 2016 injury until the plant closed in late 2018 the employer did not return him to work. Additionally, he could not go back to the jobs he held prior to Medplast. (Testimony)

I find that Mr. Pruis has demonstrated that he is motivated to return to the workforce. He has applied for and even interviewed for numerous jobs. He was able to secure employment with two employers since the accident. Unfortunately, those periods of employment were unsuccessful. Even during the time when he was able to remain employed, Mr. Pruis struggled to perform his job duties and would come home at the end of his shift mentally and physically exhausted.

I find that Mr. Pruis has made a reasonable, but unsuccessful effort to find steady employment. Considering Mr. Salazar's age, educational background, employment history, inability to retrain, motivation to return to the workforce, permanent impairment, and permanent restrictions, and the other industrial disability factors set forth by the Iowa Supreme Court, I find that he has proven he is permanently and totally disabled as a result of the August 11, 2016 work injury.

Claimant is seeking additional treatment. Claimant is seeking treatment with Dr. Fitzgerald and therapy at Vision in Motion. Dr. Fitzgerald has indicated that without further treatment Mr. Pruis' condition will likely worsen. (Cl. Ex. 4, p. 46-47)

Claimant argues that he has also benefited from chiropractic care that was cut short. Additionally, he contends that he benefited from physical therapy and has regressed and become deconditioned since that was stopped by the defendants. Claimant is requesting that defendants be ordered to provide further chiropractic treatment and therapy that Dr. Fitzgerald may recommend.

I find that the treatment claimant is seeking is related to the work injury. Claimant was referred to Dr. Fitzgerald and to Eden Chiropractic by authorized providers. Defendants are responsible to provide all reasonable and necessary treatment related to the August 11, 2016 work injury.

Claimant is also seeking payment of past medical expenses as set forth on Claimant's Exhibit 6. Specifically, claimant is seeking payment for medication charges at Scott Drug for medications prescribed by authorized treating providers. He is also seeking payment for testing ordered by Dr. Harbach. Dr. Fitzgerald, an authorized provider, recommended chiropractic treatment for Mr. Pruis. A total of 24 chiropractic sessions were authorized by the workers' compensation carrier. However, eight of

these were not paid. Defendants do not present any argument as to why they should not be responsible for these past medical expenses. Based on a review of the bills and record as a whole, I find that these past expenses were reasonable and necessary and causally connected to the work injury. Thus, I find that defendants are responsible for these expenses pursuant to Iowa Code section 85.27. (Cl. Ex. 6, pp. 135-38)

Claimant is also seeking medical mileage as set forth in Claimant's Exhibit 7. Claimant is seeking the outstanding amount of \$2,063.93, after credit for defendants' mileage payments to date. Defendants do not present any argument as to why they should not be responsible for the medical mileage as presented by the claimant. Based on a review of the claimant's mileage log and record as a whole, I find that claimant incurred these mileage expenses as the result of the work injury. Thus, I find that defendants are responsible for these expenses pursuant to Iowa Code section 85.27.

Claimant is seeking penalty benefits on the basis that defendants' denial of any permanency benefits and the early suspension of healing period benefits in this case was not reasonable. However, I find that defendants' actions were reasonable. Defendants paid weekly benefits from August 12, 2016 through October 18, 2018. They terminated benefits based upon Dr. Tranel's medical report which stated claimant had reached MMI as of August 30, 2017. While ultimately I did not find the opinions of Dr. Tranel or Dr. Broghammer to carry the day, I do find that defendants' reliance on their reports was reasonable. Defendants also reasonably relied on the opinions of Dr. Tranel and Dr. Broghammer with regard to permanency benefits.

Finally, claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the deputy hearing the case or by the Commissioner. I find that claimant was generally successful in his claim. I exercise my discretion and find that an assessment of costs against the defendants is appropriate.

Specifically, claimant is seeking two filings fees, each in the amount of one hundred and no/100 (\$100.00). 4.33(7). Claimant is seeking two filing fees because he filed, dismissed, and then re-filed his petition. It appears that claimant voluntarily dismissed his claim because the case was not ready for hearing. I exercise my discretion and find that only one filing fee in the amount of one hundred and no/100 dollars (\$100.00) is appropriate under 876 IAC 4.33(7).

Claimant is also seeking the deposition costs of claimant's deposition in the amount of \$90.00 and the deposition costs of Dr. Fitzgerald in the amount of \$240.00. (Def. Ex. A; Cl. Ex. 4) I find that these costs are appropriate under 876 IAC 4.33(1). Defendants are assessed transcription costs in the amount of three hundred thirty and no/100 dollars (\$330.00).

Additionally, claimant is seeking reimbursement for the vocational report from Laughlin Enterprises in the amount of \$1,396.00. It has been determined that reports from vocational counselors and physical therapists are considered practitioner reports as defined in our rule 876 IAC 4.17. A review of the invoice reveals that 5.4 hours were

spent on the report. At the rate of \$110.00 per hour, the cost of her report is \$594.00. I find that \$540.00 is an appropriate cost under 876 IAC 4.33(6).

Finally, claimant is seeking the cost of Dr. Harbach's report in the amount of three hundred seventy-five and no/100 dollars (\$375.00). (JE 6, p. 177) I find that this is an appropriate cost under 876 IAC 4.33(6).

It should be noted that claimant was also seeking the costs of rebuttal reports from Ms. Laughlin and Dr. Patra. However, those reports were excluded from evidence. Thus, I conclude any assessment of those expenses as costs would be inappropriate.

CONCLUSIONS OF LAW

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).

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).

Based on the above findings of fact, I conclude that claimant sustained permanent injury to his head, vision, and neck. Additionally, I conclude that he sustained a physical-mental injury as the result of the work injury. Further, I conclude that claimant has sustained permanent impairment to the body.

Because 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).

Based on the above findings of fact, I conclude Mr. Pruis is entitled to permanent total disability benefits. Assessments of industrial disability involve a viewing of loss of earning capacity in terms of the injured workers' present ability to earn in the competitive labor market without regard to any accommodation furnished by one's present employer. Quaker Oats Co. v. Ciha 552 N.W.2d 143, 158 (Iowa 1996); Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 617 (Iowa 1995).

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).

In the present case, I considered all of the relevant industrial disability factors and found that Mr. Pruis is wholly disabled. He is physically and mentally unable to perform work that his experience, training, education, and intelligence would otherwise have allowed him to perform. The only work that Mr. Pruis has been able to obtain since his injury was less complex than his prior job and he was not successful in maintaining that employment. Having found Ms. Laughlin's opinion that Mr. Pruis is not capable of any full-time, regular employment is credible. I further find there are no realistic jobs available to Mr. Pruis. Under the traditional analysis, I conclude that claimant has proven he is permanently and totally disabled. Defendants shall pay claimant permanent total disability benefits from August 11, 2016, through the date of the arbitration hearing and into the future during the period of claimant's continued disability. Benefits are not owed during claimant's periods of employment with the subsequent employers.

Because Mr. Pruis is permanently and totally disabled, any issues surrounding healing period are rendered moot.

We now turn to the issues surrounding medical benefits. 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).

Claimant is seeking additional treatment for his work injuries. Based on the above findings of fact, I conclude that defendants are responsible for claimant's reasonable treatment that is causally connected to the work injury. Claimant is seeking treatment with Dr. Fitzgerald and Eden Chiropractic. Claimant was referred to both of these providers by authorized providers. Defendants should provide causally connected treatment to the claimant.

Claimant is also seeking payment of past medical expenses. Based on the above findings of fact, I conclude defendants are responsible for the past medical expenses contained in Claimant's Exhibit 6. Additionally, I conclude that defendants are responsible for the outstanding medical mileage contained in Claimant's Exhibit 7.

We now turn to the issue of penalty. If weekly compensation benefits are not fully paid when due, section 86.13 requires that additional benefits be awarded unless the employer shows reasonable cause or excuse for the delay or denial. Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996).

Delay attributable to the time required to perform a reasonable investigation is not unreasonable. Kiesecker v. Webster City Meats, Inc., 528 N.W.2d 109 (Iowa 1995).

It also is not unreasonable to deny a claim when a good faith issue of law or fact makes the employer's liability fairly debatable. An issue of law is fairly debatable if viable arguments exist in favor of each party. Covia v. Robinson, 507 N.W.2d 411 (Iowa 1993). An issue of fact is fairly debatable if substantial evidence exists which would support a finding favorable to the employer. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

An employer's bare assertion that a claim is fairly debatable is insufficient to avoid imposition of a penalty. The employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

Based on the above findings of fact, I conclude that defendants' denial of additional benefits was not unreasonable. While ultimately I did not find the opinions of Dr. Tranel and Dr. Broghammer to carry the day, I do find that they provided a

reasonable basis for defendants' actions. I conclude that penalty benefits are not appropriate in this case.

Claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the hearing deputy or the Commissioner. I concluded that claimant was generally successful in his claim and therefore an assessment of costs against the defendants was appropriate. Costs are assessed as set forth above. 876 IAC 4.33.

It should be noted that claimant is also seeking reimbursement for the IMEs of Dr. Taylor and Dr. Patra. Defendants deny claimant is entitled to full reimbursement for both IMEs. However, these are not disputed issues in this case because the agency previously issued orders that granted the IME petitions.

On May 9, 2019 claimant filed a Petition for IME under section 85.39, Code of Iowa. Claimant sought an IME because claimant felt the rating from defendants' doctor, Dr. Broghammer, was too low. Defendants did not file an answer to the Petition. On June 6, 2019, another deputy from this agency issued an order granting the application for IME. Defendants were ordered to immediately reimburse claimant the reasonable expenses of the requested examination, including travel expenses.

On March 15, 2019, claimant filed a petition for IME under section 85.39 seeking an IME from a psychiatrist, Dr. Patra. Claimant sought the IME in response to the reports of Dr. Tranel who was selected by defendants. Again, defendants did not file an answer. On April 12, 2019, another deputy from this agency issued an order granting the application for IME. Defendants were ordered to immediately reimburse claimant the reasonable expenses of the requested examination, including travel expenses.

A petition for an IME under Iowa Code section 85.39 is a separate contested case proceeding before this agency. 876 IAC 4.1(12). Defendants did not appeal either order granting the IMEs. Therefore, even if the orders granting the IMEs may be legally incorrect, defendants are bound by the orders that they did not appeal. Claimant already has a right to seek judgment on those prior orders. Defendants are bound by the prior agency orders to pay for both of the IMEs.

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of seven hundred forty-six and 62/100 dollars (\$746.62).

Defendants shall pay claimant permanent total disability benefits from August 11, 2016, through the date of the arbitration hearing and into the future during the period of claimant's continued disability. Benefits are not owed during claimant's periods of employment with the subsequent employers.

Defendants shall be entitled to credit for all weekly benefits paid to date.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).


Defendants shall pay for past medical expenses and outstanding medical mileage as set forth above.

Defendants are responsible to furnish ongoing treatment pursuant to 85.27, Code of Iowa.

Defendants shall reimburse claimant costs as set forth above.

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

Signed and filed this 23rd day of November, 2020.


ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Valerie Foote (via WCES)
Mark Sullivan (via WCES)
Lindsey Mills (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.