

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DOUGLAS VANHOOSER,

Claimant,

vs.

DOHRN TRANSFER COMPANY,

Employer,

and

PROTECTIVE INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5057912.01

REVIEW-REOPENING

DECISION

Head Note No.: 2905, 2502, 1803

STATEMENT OF THE CASE

Claimant, Douglas Vanhooser, has filed a review-reopening petition seeking workers' compensation benefits from Dohrn Transfer Company, LLC, employer, and Protective Insurance Company, insurer.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of Coronavirus/COVID-19 Impact on Hearings, the hearing was held on August 17, 2021 via CourtCall. The case was considered fully submitted on October 13, 2021, upon the simultaneous filing of briefs.

The evidence consisted of Joint Exhibits 1-9, Claimant's Exhibits 1-10 and Defendants' Exhibits A-C along with the testimony of the claimant.

ISSUES

1. Whether there has been a change in condition to warrant an increase in award of industrial disability;
2. The extent of claimant's industrial disability, if any;
3. The appropriate commencement date for an award of permanent disability benefits;
4. Whether claimant is entitled to reimbursement of an IME under 85.39;

5. Assessment of costs.

STIPULATIONS

The parties filed a hearing report at the commencement of the review-reopening hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this review-reopening 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.

The parties stipulate the claimant sustained an injury arising out of and in the course of his employment on June 9, 2016. They further agree that the injury was a cause of some permanent disability, and that the disability is industrial in nature.

At the time of the injury, the parties agreed that the claimant's average weekly wage was \$1122.00 per week, that he was married and entitled to four exemptions. Based on the foregoing, the weekly benefit rate is \$720.98.

Prior to the hearing, claimant was paid 92.64577 weeks of permanent partial disability benefits at the rate of \$720.98 per week. Defendants are entitled to a credit of that amount against any award of permanent benefits.

The defendants waive all affirmative defenses.

FINDINGS OF FACT

This is a review-reopening petition. In the underlying suit, the parties entered into a settlement on February 6, 2018, for 18.529 percent industrial disability arising from a back injury sustained on June 9, 2016. (CE 7)

At the time of the review-reopening hearing, claimant was a 47-year-old person. His educational history includes graduation from high school in 1991, a few automotive classes at North Iowa Area Community College, and a certificate for diesel truck driving. Since 1997, claimant has worked as a truck driver.

He began working for Taylor Truck Lines in 1997 and then moved to Family Affair Trucking which he eventually purchased. Following a divorce in 2013, claimant sold this business and went to work for Graham Tire as a diesel mechanic.

Claimant started working for Dohrn Transport doing pickup and delivery and injured himself moving pallets with a hand jack on June 9, 2016. (JE 1:4) His work duties required the ability to lift up to 100 pounds, sit up to 10 hours a day with frequent standing and walking. (CE 3:22) His initial x-rays were unremarkable. (JE 1:6) He was referred for physical therapy and advised to restrict his lift, carry, push and pull efforts to 10 pounds occasionally. (JE 2:18)

He underwent an MRI on July 11, 2016. (JE 4:61) The radiographer found signs of right L3-L4 foraminal annular tear and disc bulge causing tethering of the exiting right L3 nerve. (JE 4:61) There were also noncompressive degenerative disc signal changes at L5-S1. (JE 4:61)

On July 25, 2016, claimant presented to Dr. Ronald Kloc at Mason City Clinic Interventional Pain Clinic reporting low back pain that was 4/10. (JE 4:62) Dr. Kloc reviewed the MRI and right L3-L4 intraforaminal disc bulge. (JE 4:64) He assessed claimant with lumbar spondylosis, facet joint arthritis, and facet-mediated pain. (Id.) Dr. Kloc recommended claimant finish physical therapy and if it was unhelpful, then he could undergo medial branch blocks. (Id.) Claimant contacted Dr. Kloc on August 15, 2016 stating that he received a letter from the insurance company denying the procedure. (JE 4:66)

On August 16, 2016, claimant was seen by Mark Mahoney, M.D., for the back pain. (JE 5:67) His pain was 6 to 7 on a 10 scale. (JE 5:67) Flexeril was of no benefit while ibuprofen and naproxen irritated claimant's stomach. (JE 5:67) Dr. Mahoney prescribed a trial of Celebrex and refilled claimant's Norco prescription. (JE 5:68)

On September 12, 2016, claimant presented to Dr. Trevor Schmitz at Iowa Ortho reporting low back pain of 6 on a 10 scale that was worsening. (JE 6:93) The pain increased getting in and out of the car and going up and down stairs which Dr. Schmitz felt was more consistent with hip or SI joint etiology than low back pain. (JE 6:95) On examination, claimant had normal alignment and functional range of motion in the back with no palpable spasm or subluxation. (JE 6:94) Dr. Schmitz diagnosed claimant with sacroiliac pain and acute right-sided low back pain without sciatica and recommended a right sacroiliac joint injection. (JE 6:95)

On September 22, 2016, claimant presented to Dr. Sandeep Bhangoo at Neurosurgery of North Iowa requesting a second opinion. (JE 7:132) Dr. Bhangoo reviewed the MRI and noted minor degenerative changes, but nothing that could be treated surgically. (Id.) Dr. Bhangoo told claimant that a large amount of his pain was myofascial and from his degenerative disc changes. (Id.) He recommended ongoing conservative treatment and that while injections would be okay, they are not known to provide complete pain relief and that there were risks. (JE 7:133)

Claimant returned to Dr. Mahoney on October 12, 2016, with reports of pain at a level of 6 to 7 on a 10 scale. (JE 5:69) He had trouble sleeping with the pain and could not sit more than 10-15 minutes due to pain. (Id.) His pain was localized in the low back across the lumbar region bilaterally. (JE 5:69) His deep tendon reflexes were normal with slightly decreased right knee jerk compared to the left which claimant described as a chronic condition. (JE 5:70) His gait was normal. (Id.) Dr. Mahoney started claimant on cyclobenzaprine, continued the Norco prescription, and advised claimant to return in one month. (JE 5:70)

Claimant underwent a right sacroiliac joint injection with Dr. John Rayburn on October 27, 2016. (JE 6:102) On December 5, 2016, claimant returned to Dr. Schmitz reporting no relief from the injection. (JE 6:104) The pain was a 5 on a 10 scale, occurring persistently in the low back. (JE 6:104) He had a non-ataxic, non-antalgic gait with normal alignment, functional range of motion in the back, but pain with right lumbar trunk rotation. (JE 6:105) Dr. Schmitz recommended a right L3-4 transforaminal epidural steroid injection but claimant refused since the injection would cause an increase in his blood sugars. (JE 6:106) Dr. Schmitz explained that the increase would be temporary,

but claimant did not want to undergo the injection. (Id.) Dr. Schmitz prescribed gabapentin and recommended work hardening. (Id.) He believed claimant's spine was stable and he had a quality-of-life issue. (Id.)

Claimant returned to Dr. Schmitz on December 19, 2016 reporting that his pain was unbearable and he rated his pain as 7/10. (JE 6:108) Dr. Schmitz discussed with claimant that he had midline low back pain and his symptoms were not consistent with a right-sided L3-4 disc herniation. (JE 6:109) The two discussed various treatment options including injections or nerve blocks, narcotic medications and claimant's current medication. Claimant was not interested in any form of injection. (Id.) Dr. Schmitz stated he would not prescribe long-term narcotic medications. (Id.) Claimant stated he was unable to tolerate gabapentin. (Id.) Dr. Schmitz had nothing further to offer claimant and recommended 4 weeks of work hardening for which claimant had not yet been approved. (JE 6:110)

He was seen at Dr. Mahoney's office on December 20, 2016. (JE 5:72) He admitted to not taking any Celebrex, cyclobenzaprine or narcotics but instead gabapentin 300 mg at bedtime. (Id.) He reported significant difficulty with sitting after ten minutes and numbness in the right leg greater than the left. (Id.) Dr. Mahoney recommended claimant continue with the gabapentin. (JE 5:73)

When claimant followed up with Dr. Schmitz on January 18, 2017, he reported his back pain as at a 5 or 6 on a 10 scale and that the work hardening increased claimant's back pain. (JE 6:114) Claimant noted tingling in his feet that he thought was due to his diabetes. (Id.) Dr. Schmitz recommended claimant continue with work hardening as therapy noted that he was progressing well. (JE 6:115) Dr. Schmitz once again brought up injections, but claimant was not interested in injections given his elevated diabetes nor was claimant interested in medication management. (Id.)

On January 30, 2017, claimant returned to Dr. Schmitz reporting increased right-sided low back pain that began on January 26 while lifting a heavy box. He felt a pop in his right-sided low back and fell to the ground, crying in pain. The pain had started to subside. (JE 6:120) Dr. Schmitz recommended a right intra-articular anesthetic-only injection at the SI joint for diagnostic purposes. (JE 6:121) He also recommended progressive work hardening. (Id.) Dr. Schmitz discussed with claimant that he did not want him to "fall into the cycle of pain running his life." (Id.) Claimant underwent the SI joint injection with Dr. Rayburn on February 21, 2017. (JE 6:123)

When claimant returned to Dr. Schmitz on March 1, 2017, he stated the injection did not provide any relief at all and he now had right foot numbness. (JE 6:125) Claimant stated he would be very dissatisfied if he had to live the rest of his life with his back and leg like this. (Id.) Claimant had no relief from the injection of February 21,

2017 and he had been discharged from work hardening due to an inability to progress¹. (JE 6:126) Dr. Schmitz did not believe claimant's back pain was coming from the disc bulge and he did not think claimant was a surgical candidate. (Id.) Dr. Schmitz did not "have a clear-cut anatomic explanation for his pain" and referred claimant for a functional capacity evaluation. (Id.)

During the March FCE, claimant struggled with the following:

- Unable to perform a 2-hand occasional lift from 12" to waist level greater than 75 pounds, from waist to shoulder level greater than 50 pounds, and from shoulder to overhead greater than 30 pounds.
- Unable to perform a 2-hand frequent lift from 12" to waist level greater than 40 pounds, from waist to shoulder level greater than 28 pounds, and from shoulder to overhead greater than 15 pounds.
- Unable to perform a 2-hand occasional push greater than 66 pounds of force and 2-hand occasional pull greater than 70 pounds of force x 50ft distance.
- Unable to perform sustained kneeling and crawling greater than occasional category of work.
- Unable to perform walking, stair climbing, bending and squatting greater than the frequent category of work.

(CE 4:24) He had minimal tenderness with central palpation of the lumbar spine with no tenderness or increased tone of the lumbar paraspinals. (CE 4:28) He reported numbness on the top and bottom of the right foot from the ball to the toes. (CE 4:28)

The evaluator placed claimant in the heavy physical demand category.

On April 17, 2017, claimant followed up with Dr. Schmitz after undergoing the FCE. (JE 6:127) Claimant stated that overall his pain was better; he did not have significant pain during the FCE. (Id.) Dr. Schmitz recommended permanent work restrictions within the FCE findings which placed claimant in the heavy physical demand level, performing a 2-handed 75-pound occasional lift from waist and 2-handed 40-pound frequent lift from 12 inches to the waist. (JE 6:128) Dr. Schmitz had no other treatment to offer, placed claimant at MMI, and in correspondence dated May 10, 2017, Dr. Schmitz opined claimant had sustained 5 percent whole body impairment. (JE 6:128, 131) Dr. Schmitz wrote that claimant had non-verifiable radicular complaints and

¹ In a work conditioning functional status report dated February 28, 2017, it was noted that claimant was able to meet 36.36 percent of his job demand. (JE 3:56) Claimant was not able to meet the physical demands of his current job in the heavy work category that required two-handed lifting up to 50 pounds. (Id.) Claimant was able to perform a two-handed lift from floor to waist of 35 pounds and a unilateral carry on the right and left of 30 pounds. (Id.) It was noted that claimant had been seen for 2 months of work hardening and overall progress was poor. (JE 3:58). It was noted that every time weights were increased, claimant reported pain. (Id.) Claimant was discharged due to lack of progress. (Id.)

no alteration of the structural integrity of the spine nor any significant radiculopathy. (JE 6:131)

On December 8, 2017, claimant began treatment with Anna Clausen, D.C., at Mason City Chiropractic for neck pain and headaches. (JE 8:134) He reported that his lower back and mid back had been bothering him and that the medical doctor had discussed surgery but claimant did not want to pursue that option. (JE 8:134) Claimant rated his low back pain as 6/10. (Id.) On examination, there was tenderness to digital palpation and muscle tension on both sides of the lumbar spine with subluxations noted at the L2 and L4 levels. (JE 8:136) Claimant was assessed with segmental and somatic dysfunction of the cervical, thoracic, and lumbar regions and he underwent spine adjustments. (JE 8:137)

Claimant was seen at Dr. Mahoney's office by Luke Hachfeld, ARNP, on March 26, 2018. (JE 5:74) He continued to have moderate to severe back pain with a pain rating of 6 on a 10 scale in the low back, worse on the right than the left. (Id.) The chronic numbness in the right foot worsened over the last month. (JE 5:74) Mr. Hachfeld referred claimant back to Dr. Kloc for treatment.

During 2018, he began semi regular treatment at Mason City Chiropractic. On April 3, 2018, claimant returned to Dr. Clausen due to pain in the mid to lower back and in the neck due to shoveling snow and heavy lifting. (JE 8:139) He mentioned that he was due to get an injection for a "disc bulge." (Id.) On June 6, 2018, claimant reported pain in his back after riding his bike for 300 miles. (JE 8:141) He was tight and sore. (Id.)

On August 1, 2018, claimant received chiropractic treatment after driving 1180 miles in about 17 hours. (JE 8:143) He did not use ice or medication for the pain which was primarily between his shoulder blades toward the middle of his back. (JE 8:143) Two weeks later he returned to the chiropractor due to a flare up after trimming trees at his daughter's new residence. (JE 8:144) The pain was in the neck radiating into the upper mid back and shoulder blades. (Id.) At the end of September, on the 26th, he returned for an adjustment reporting all over soreness with pain in the low back and hips. (JE 8:147) On October 16, 2018, he felt pain in his shoulder to his neck and low back after raking over the weekend. (JE 8:149) He returned on November 1, 2018, with reports of improvement but some increased tightness in the mid back and neck. (JE 8:151) On December 5, 2108, he returned for treatment due to increased pain all over after shoveling snow. (JE 8:153) He felt that his lower back and hips were "all jammed up." (Id.) The last chiropractic note in the record is dated March 29, 2019. (JE 8:155) In the record claimant is noted to have said, "I have been out cleaning up the garage and I lifted a heavy box to put it up on a high shelf and felt a pop in the lower back and I am now getting tight in the mid back too. I have a really stiff neck as well." (JE 8:155)

Claimant had no treatment again until August 14, 2019, when he was sent to Dr. Charles Mooney for an evaluation. (JE 9:157) Claimant reported ongoing low back pain on both sides with no radicular symptoms. (Id.) He was taking Tylenol for relief of pain, not performing home exercises, nor utilizing a TENS unit. (Id.) His pain was a 6 on a 10 scale. (Id.) He was able to forward flex to get his fingertips 10 cm to the floor and 20

degrees of extension. (JE 9:158) He demonstrated no tenderness over the sacroiliac joints, sacroiliac notches, spinous processes, or specifically over the lumbar facets. (Id.) He did have slight sensory deficits in the bilateral feet but all other tests were normal. (Id.) Dr. Mooney recommended that Mr. VanHooser continue the use of Tylenol, along with intermittent heat and stretching exercises. (Id. at 158) Claimant refused the use of a TENS unit. (JE 9:158)

Claimant was to return in three months but was a no show. (JE 9:167)

On February 17, 2020, Dr. Mooney again evaluated Mr. VanHooser. (Id. at 164) Claimant reported increased symptoms of low back pain due to more activity and that pain was 50 percent worse than the last visit. (Id.; JE 9:167) The pain was “predominantly axial back pain noted to be worsened by prolonged standing and walking.” (Id.) On examination, he was able to get to 60 degrees of forward flexion, 15 degrees of extension, and 20 degrees of lateral side bending. (Id.) New x-rays were taken which showed moderate degenerative changes to the lower back. (Id. at 165) Dr. Mooney recommended he continue home exercise, limit use of Tylenol to a maximum of three per day and continue use of a Lidoderm patch if helpful. (JE 9:165)

During an October 19, 2020, wellness examination with Luke Hachfeld, ARNP, claimant was seen for smoking, diabetes, and GERD. (JE 5:86) There was no mention of his low back pain. He was seen by Kaci Younger, ARNP, on January 21, 2021, for depression and anxiety related to a personal domestic issue. (JE 5:89)

On December 6, 2017, Sunil Bansal, M.D., issued an opinion that claimant had sustained 5 percent whole person impairment due to radicular complaints, guarding, and loss of range of motion. (CE 1:18) Dr. Bansal recommended work restrictions of no lifting over 60 pounds occasionally and no lifting over 30 pounds frequently with no frequent bending or twisting and no use of vibratory equipment. (CE 1:18) During the 2017 examination, Dr. Bansal found tenderness to palpation over the left lumbar paraspinals into the right sacroiliac joint with guarding. (CE 1:15) His left and right straight leg raise tests were negative. He had a negative Fabre’s test on the left with a positive test on the right. (CE 1:15) He exhibited a loss of two point sensory discrimination over the right lateral thigh. His range of motion was measured as follows:

RANGE OF MOTION

Flexion:	77 degrees
Extension:	21 degrees
Left Lateral Flexion:	30 degrees
Right Lateral Flexion:	26 degrees

(CE 1:15)

On July 2, 2021, Sunil Bansal, M.D. issued an opinion that claimant had sustained a 8 percent whole person impairment due to increased pain and decreased range of motion. (CE 1:5) Dr. Bansal recommended restrictions of no lifting over 30 pounds occasionally and no lifting over 20 pounds frequently along with no frequent bending, twisting, use of vibratory equipment, and no standing greater than 30 minutes

at a time. (CE 1:5) During this 2021 examination, Dr. Bansal recorded the following range of motion deficits:

RANGE OF MOTION

Flexion:	72 degrees
Extension:	19 degrees
Left Lateral Flexion:	25 degrees
Right Lateral Flexion:	22 degrees

(CE 1:4) Claimant was tender to palpation over the lower lumbar facets with exquisite tenderness over the right sacroiliac joint with guarding. (CE 1:3) He had a negative Fabre's test on the left but positive on the right. (CE 1:4) His straight leg raise tests were negative. (CE 1:4) Dr. Bansal found a loss of two-point sensory discrimination over the right lateral leg and midfoot. (CE 1:4) All other tests were within normal range.

On July 16, 2021, Dr. Mooney provided an independent medical record review to the defendants. (Defendants' Exhibit B) Dr. Mooney noted that Mr. VanHooser was not experiencing radicular symptoms at the time of his initial evaluation of him on August 14, 2019, and that he could continue working within the 2017 permanent restrictions. (Id. at 8-9) When Mr. VanHooser returned to Dr. Mooney on February 17, 2020, Mr. VanHooser had increased low back pain but no radicular symptoms. (Id. at 9) Ultimately, after reviewing Mr. VanHooser's records and last evaluating him in February of 2020, Dr. Mooney determined that "there is no evidence of objective advancement of his underlying condition." (Id. at 9) Dr. Mooney further stated that he found Dr. Schmitz's impairment rating and restrictions from 2017 to still be appropriate for Mr. VanHooser. (Id. at 10)

Mr. VanHooser was next seen by Dr. Joseph Chen on July 29, 2021, for the purposes of an independent medical examination at the request of the defendants.

Dr. Chen reviewed Mr. VanHooser's medical records and briefly met with Mr. VanHooser. (DE C:14; Tr. pp. 27-28) Mr. VanHooser reported his pain mainly in his low back and tailbone area, with increases due to prolonged sitting or standing. (DE C:18.) When asked whether the current condition was materially different from when the injury occurred on June 9, 2016, Dr. Chen opined that the records indicate his symptoms remain similar. (Id. at 21) However, Dr. Chen did find that Mr. VanHooser had "a slight worsening of [his] back pain symptomatology" compared to Dr. Mooney's note from February 2020 because of "radicular symptoms in his right leg." (Id.) Dr. Chen's examination indicated "some nerve tension signs with sitting knee extension and ankle dorsiflexion" that led to Dr. Chen assigning a 6 percent whole person impairment compared to the previous 5 percent ratings from 2017. (Id.)

However, Dr. Chen would assign no different work restrictions than those adopted in 2017. He further noted that a lumbar disc herniation or annular tear could have occurred from any number of idiopathic or unknown causes including his history of smoking, need for high levels of physical fitness to unload freight or need to sit for prolonged periods of time and that the work incident did not accelerate a pre-existing

degenerative condition such that it is materially worse today than it would have been in the absence of such injury. (DE C:23)

His wages were reflected as follows:

2014: \$32,110²

2015: \$62,567

2016: \$30,589

2017: \$31,936

2018: \$41,348

(Ex 8)

Following the FCE, claimant worked as a night line hauler through April 2018. (CE 4:23; testimony) He quit this job due to childcare responsibilities. From April 2018 through February 2019, he worked for LB Transport as a short haul truck driver. He then ran his own business as an owner/operator from February 2019 to April 2021. Prior to COVID, he would drive around 2,000 miles or less a week, but after COVID he drove up to 3,000 miles per week at the rate of \$1.10 per mile.

He sold his truck stating that he was unable to continue to do maintenance on the vehicle due to his increasing back pain. He also wanted to be home at night for his family.

He began a no-touch trucking job in August 1, 2021, driving 2,000 miles per week and earning \$0.47 per mile or \$700 gross per week. (CE 9:78) His employer, First Fleet, was aware that he had permanent work restrictions of no lifting more than 75 pounds occasionally and no more than 40-50 pounds frequently. (DE A:19-20) Claimant testified that he drives a new truck with air ride and other features that allow him to alleviate pain and pressure. (Tr. pp. 40-41) He intends to continue driving in the foreseeable future.

Claimant testified that the intensity of his back pain has increased. It is more frequent and painful. He believes that these increased symptoms further limit the types of jobs he can do due to the inability to service his truck. He experiences radiculopathy into the right leg. Symptoms can increase with physical activity.

CONCLUSIONS OF LAW

Iowa Code § 86.14(2) states: "In a proceeding to reopen an award for payments or agreement for settlement as provided by section 86.13, inquiry shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon." IOWA CODE § 86.14(2) (2020). To justify an increase in benefits, "the claimant carries the burden of establishing by a preponderance of the evidence that, subsequent to the date of the award under review,

² His 2014 tax returns include \$41,975 of business income from owning his own trucking company and \$37,000 of other gains. (CE 8:60)

he or she has suffered an impairment or lessening of earning capacity proximately caused by the original injury.” E.N.T. Assocs. v. Collentine, 525 N.W.2d 827, 829 (Iowa 1994).

At the time of the Agreement for Settlement on February 2, 2018, claimant was diagnosed with a low back injury that had been treated conservatively. Following an FCE, Dr. Schmitz adopted work restrictions of no lifting greater than 75-pounds. Claimant’s restrictions were accommodated and claimant was moved into a position that did not require loading or unloading. Both Dr. Schmitz and Dr. Bansal opined that Mr. VanHooser had a 5 percent whole person impairment at the time of the Agreement for Settlement. The parties agreed that claimant sustained an 18.529 percent industrial loss.

Since the settlement, claimant has left defendant employer and obtained work with another trucking company and then eventually started his own business as a truck driver. However, claimant eventually shut down his personal company and took work as a company driver due to his inability to service his own truck.

Dr. Bansal recommends additional significant restrictions, whereas Dr. Chen does not. The only restrictions Dr. Chen would impose were those from the 2017 FCE as there are no structural changes to claimant’s spine. Claimant testified that he attempts to observe Dr. Bansal’s restrictions. However, claimant also acknowledged that he has a full commercial driver’s license which was renewed in 2021 without restrictions. (Tr. pp. 47-48)

Claimant’s earnings in 2017 were \$31,936 and in 2018 were \$41,348. (See CE 8:73 and 8:74) There were no records for his 2019 or 2020 income. Thus his economic condition improved from pre-settlement to post-settlement.

In the period following the settlement, claimant has had spotty medical care. During much of 2018, he sought out care with Mason City Chiropractic where he would report worsening of his low back, upper back, and neck after various physical activities whether it was shoveling snow, trimming trees, or riding his motorcycle. He then did not have treatment for much of 2019 until he was sent to Dr. Mooney. Dr. Mooney recommended home exercise, Tylenol and lidocaine patches which claimant testified is his primary home care.

There has been no change in claimant’s treatment regimen from the 2018 settlement to the present. There is no new FCE which suggests claimant has had a diminished ability to function. The only difference is an increase in pain complaints and an addition of radiculopathy that did not exist prior to the settlement.

The medical history is more aligned with the opinions of Dr. Chen than those of Dr. Bansal and therefore, the opinions of Dr. Chen are adopted. Dr. Chen noted that claimant does have an increase in impairment from 5 percent to 6 percent which is a significant enough change to warrant a review-reopening and an additional award of industrial disability.

Dr. Chen would impose no new restrictions, however. Some of claimant's work decisions are based on his personal desire to be home with his children. He testified that new technology in his truck allowed for increased ability to manage his discomfort. He plans to continue driving truck as he did previous to the settlement. Based on the increased rate of impairment, it is found that claimant has sustained a 20.589 percent industrial disability or an increase of 2 percent disability.

Claimant seeks reimbursement for an IME of Dr. Bansal which was obtained on July 2, 2021. The defendants did not obtain an IME from Dr. Mooney or Dr. Chen until July 16, and July 29, 2021, respectively. Thus, the triggering conditions of Iowa Code section 85.39 were not met.

The parties seek a finding of the appropriate commencement date of benefits. For a review-reopening, the proper date of commencement of benefits is the date of the filing of the review-reopening petition. Searle Petroleum, Inc. v. Mlady, 842 N.W.2d 679 (Iowa App. 2013) (Table). See also Verizon Bus. Network Servs., Inc. v. McKenzie, 791 N.W.2d 712 (Iowa App. 2012) (Table).

Claimant also seeks an assessment of costs. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. Claimant has prevailed and received an additional award of permanent disability. Therefore, exercising the agency's discretion, the costs itemized in claimant's exhibit 10 shall be awarded as well as the cost of the hearing transcript. However, the IME report fee of \$1584.00 is excluded as it was not properly obtained pursuant to Iowa Code 85.39.

ORDER

THEREFORE, IT IS ORDERED:

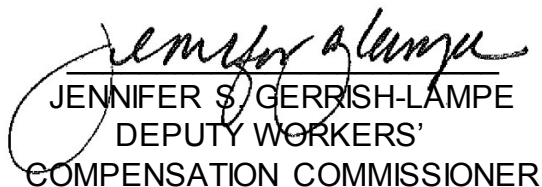
Defendant shall pay claimant an additional ten (10) weeks of permanent partial disability benefits at the rate of seven hundred twenty and 98/100 dollars (\$720.98) per week commencing on the date of filing of the petition for review-reopening, or May 12, 2020.

That defendants shall pay accrued weekly benefits in a lump sum.

That defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

That defendant shall pay the costs of this matter pursuant to rule 876 IAC 4.33 except for the charge of \$1584.00 for the IME.

Signed and filed this 3rd day of February, 2022.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Emily Anderson (via WCES)

Dillon Besser (via WCES)

Kent Smith (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.