

3. The alleged injury is a cause of temporary disability during a period of recovery.
4. The alleged injury is a cause of permanent disability.
5. Entitlement to temporary benefits is no longer in dispute.
6. The disability is an industrial disability.
7. The commencement date for permanent partial disability benefits is October 20, 2014.
8. At the time of the alleged injury Rock's gross earnings were \$821.00 per week, he was married and entitled to four exemptions, and the parties believe the weekly rate is \$560.20.
9. Medical benefits are no longer in dispute.
10. Prior to the hearing Rock was paid 100 weeks of compensation at the rate of \$560.20 per week.
11. The costs listed in JE 6 have been paid.

ISSUES

1. What is the extent of Rock's disability?
2. Is Rock entitled to mileage?
3. Should costs be assessed against either party?

FINDINGS OF FACT

Rock lives in Atalissa with his wife Trina and their daughter. (Transcript, pages 11, 22, 29) Rock graduated from high school where he was an average student. (Tr., p. 22; JE 4, p. 3; JE 17, p. 2) After high school Rock completed a commercial driver's license ("CDL") course at Kirkwood Community College. (JE 4, p. 3; JE 17, p. 2) Rock does not use computers or the internet well. (Tr., p. 14) At the time of the hearing he was fifty-two. (Tr., p. 22)

At the age of twelve, Rock started working with his father and brothers performing farm labor during evenings and weekends in exchange for meat from farmers. (Tr., p. 43) From 1990 through 2000, Rock worked as a truck driver for two employers. (JE 4, p. 4) Rock worked for a grain processing company as a laborer from 2000 through 2011, until a contract dispute, and he returned to truck driving in 2011. (JE 4, p. 4)

In August 2011, River Valley hired Rock as a full-time feed delivery truck driver. (Tr., pp. 24-25; JE 4, p. 4; JE 17, p. 3) Rock delivers feed and uses an auger to fill the bulk feed bins for each delivery. (Tr., p. 25) At the time of the hearing Rock was working full time for River Valley, performing the same hours and duties he performed before his work injury. (Tr., pp. 14, 34) Since his work injury Rock's hourly wage has increased. (Tr., pp. 34-35)

In August 2011, Ken Morrison Construction also hired Rock to work part-time hauling equipment, including forklifts, a bulldozer, and Bobcats to different job sites when he is not working for River Valley. (Tr., pp. 19-20, 35-36; JE 4, p. 4) Rock works for Ken Morrison Construction a maximum of ten hours per week. (JE 4, p. 4) When Rock arrives the equipment is loaded onto a trailer and he takes the equipment to the next job site. (Tr., pp. 20, 36) Rock also hauls dirt for Morrison using a dump truck Morrison owns. (Tr., p. 36) At the time of the hearing Rock continued to work part-time for Ken Morrison Construction. Rock has not looked for any employment since his work injury. (Tr., p. 37)

On November 8, 2012, Rock was working for River Valley driving a truck in Illinois when his tire dropped off the road into a sandy shoulder. (Tr., p. 24) Rock hit a culvert and the truck flipped onto its side. (Tr., p. 24) Rock was transported to the emergency room and admitted overnight. (Tr., p. 24; JE 17, p. 6)

After he was released from the hospital, Rock received follow-up care from Tariq Niazi, M.D., in Muscatine. (JE 17, p. 6) Rock treated with Dr. Niazi for three months and he received physical therapy. (JE 17, p. 6) Rock was initially off work for a period of time. (JE 17, p. 7)

On July 10, 2013, Rock received lumbar spine magnetic resonance imaging. (JE 15, p. 1) The reviewing radiologist listed an impression of bilateral spondylolysis of L5 with grade 1 spondylolisthesis of L5 on S1, noted there was "severe bilateral foraminal narrowing," and mild degenerative changes to the discs and facets within the lumbar spine. (JE 15, p. 1)

Dr. Niazi referred Rock to Sergio Mendoza, M.D., an orthopedic surgeon at the University of Iowa Hospitals and Clinics ("UIHC"). On September 25, 2013, Rock attended an appointment with Dr. Mendoza, complaining of back and hip pain, and problems sleeping, walking, and mowing the lawn. (JE 14, p. 1) Dr. Mendoza diagnosed Rock with back pain from a work-related injury and recommended a LSO brace and foraminal injections. (JE 14, p. 4)

Rock underwent injections on October 2, 2013. (JE 14, pp. 8-9) During a follow-up appointment on October 23, 2013, Rock reported he received no relief from the injections, and noted the brace was uncomfortable when sitting, but helped with standing and that when he did not wear the brace he experienced shooting pain down his legs. (JE 14, p. 10) Dr. Mendoza assessed Rock with isthmic spondylolisthesis,

which was aggravated by his work injury, and recommended a trial of foraminal injections. (JE 14, p. 11)

On October 28, 2013, Rock underwent the injections, and during a follow-up appointment on November 6, 2013, Rock reported he received relief immediately upon receiving the injection and his symptoms had resolved. (JE 14, pp. 17-19)

On November 20, 2013, Rock returned to Dr. Mendoza, for a functional evaluation for official return to work duties. (JE 14, p. 21) Dr. Mendoza released Rock to return to work without restrictions, noted he may need three to four foraminal injections per year depending on his symptoms, and noted surgical intervention was not indicated. (JE 14, pp. 21-22)

On December 10, 2013, Dr. Mendoza issued a letter opining Rock had reached maximum medical improvement on November 6, 2013, and using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Mendoza assigned Rock a zero percent permanent impairment rating. (JE 14, p. 25) Dr. Mendoza released Rock to return to work without any permanent restrictions. (JE 14, p. 25)

On June 9, 2014, Dr. Mendoza issued a second opinion letter, opining Rock's current complaints are caused by his underlying congenital isthmic spondylolisthesis, and not from the work-related accident of November 8, 2012. (JE 14, p. 27)

Rock underwent a L5 to S1 anterior lumbar interbody fusion with posterior stabilization on August 7, 2014, which was authorized by River Valley and Union. (JE 14, p. 28) Dr. Mendoza listed a postoperative diagnosis of spondylolisthesis, L5-S1. (JE 14, p. 34)

Rock testified after his surgery he could not take codeine and drive, so for one or two weeks he was not performing his normal duties and he performed alternative work cleaning the mill. (Tr., p. 31) Rock worked four hours per day at that time. (Tr., p. 31) After he started taking tramadol, Rock was able to work full time. (Tr., p. 31)

Following surgery Rock received physical therapy in a work hardening program and Dr. Mendoza imposed a thirty-five pound weight restriction. (JE 14, p. 37) Rock reported his lower extremity symptoms had resolved, but he continued to have pain in his lower back. (JE 14, p. 37) Dr. Mendoza opined Rock reached maximum medial improvement on November 19, 2014, and he released him to return work without restrictions. (JE 14, pp. 36-37)

Rock testified Dr. Mendoza told him he should not drive a four-wheeler, ride a horse, or do anything that would impact his lower back. (Tr., p. 39) Dr. Mendoza's records do not document any permanent restrictions. (JE 14)

Dr. Mendoza sent a follow-up letter to the case manager for River Valley and Union, reporting Rock had reached maximum medical improvement and noting he will continue to need tramadol for his intermittent back pain. (JE 14, p. 42) Because the UIHC does not prescribe long-term or chronic medications, Dr. Mendoza recommended a primary care physician, occupational medicine physician, or pain physician provide ongoing care. (JE 14, p. 42)

On April 22, 2015, Dr. Mendoza issued an impairment rating for the November 2012 work injury, as follows:

[t]o the nearest degree of medical certainty, he has a DRE Lumbar Category IV permanent partial impairment rating of 20% of the whole person according to the Guides to the Evaluation of Permanent Partial Impairment of the AMA, 5th Edition. This rating is the result of loss of motion segment integrity as a result of successful attempt at surgical arthrodesis per table 15-3 on page 384 of the Guides.

(JE 14, p. 43) Dr. Mendoza imposed no restrictions and noted future treatment for the injury could include non-steroidal anti-inflammatory medications, physical therapy, and possibly revision surgery, including, but not limited to surgical intervention for adjacent segment disease. (JE 14, p. 43)

On January 22, 2015, Rock attended an appointment with Patrick Hartley, M.D., an occupational medicine physician with University of Iowa Health Works, LLC, on referral after Dr. Mendoza left the UIHC. (JE 12, pp. 1-2) Dr. Hartley examined Rock, assumed his care, and assessed Rock with chronic lumbar pain status post L5-S1 ALIF and posterior lumbar fusion. (JE 12, p. 2) Dr. Hartley opined the tramadol and amitriptyline do not appear to impair Rock's ability to perform his regular duties as a commercial motor vehicle operator, and he agreed his medications should be continued. (JE 12, p. 2)

Rock attended a follow-up appointment with Dr. Hartley on July 23, 2015, complaining of pain in his lumbar area in the midline and bilaterally without radiation. (JE 12, p. 5) Dr. Hartley assessed Rock with chronic low back pain, and recommended Rock resume home exercises. (JE 12, p. 6)

On November 5, 2015, Rock returned to Dr. Hartley, reporting in addition to his lumbar pain which was largely unchanged, he was experiencing a burning discomfort and tingling over the plantar aspect of his forefoot, bilaterally, and to a lesser extent over the dorsum of the foot, involving the balls of his feet and all toes. (JE 12, p. 8) Dr. Hartley assessed Rock with chronic lumbar pain status post L5-S1 fusion, and noted the burning discomfort and tingling/paresthesias in the forefoot bilaterally were of unclear origin and more consistent with peripheral neuropathy than a radiculopathy and recommended electromyography of the bilateral lower extremities to assist in the diagnosis. (JE 12, p. 8)

Rock underwent the electromyography and returned to Dr. Hartley on November 20, 2015. (JE 12, p. 11) Dr. Hartley documented he explained to Rock the results were suggestive of a more generalized polyneuropathy than a radiculopathy and not attributable to his back injury or L5-S1 surgical fusion, and he recommended Rock follow up with his primary care provider for further workup of his polyneuropathy condition. (JE 12, pp. 11-12)

Rock returned to Dr. Hartley on January 7, 2016, regarding his chronic low back pain. (JE 12, p. 14) Dr. Hartley refilled Rock's tramadol, completed the attestation form for his DOT physical to maintain his CDL, and opined Rock could continue his regular duties without restriction. (JE 12, p. 14) Rock continued to treat with Dr. Hartley. (JE 12, p. 16)

On October 5, 2016, Cassim Igram, M.D., an orthopedic surgeon with the UIHC, provided a second opinion for Rock. (JE 14, p. 44) Rock reported Dr. Hartley had prescribed tramadol and he experienced increased low back symptoms requiring him to increase his dose of tramadol to three times per day. (JE 14, p. 44) Dr. Igram examined Rock, opined his history and physical exam were consistent with low back pain that is likely chronic, found Rock had not sustained an acute injury and he did not see any significant degenerative changes on imaging, and ordered Rock to continue his current exercise and medication regimen. (JE 14, pp. 44-47)

Rock attended follow-up appointments with Dr. Hartley on December 15, 2017 and December 28, 2018. (JE 12, pp. 18-27) During an appointment on June 28, 2019, with Dr. Hartley, Rock reported no change in his chronic lumbar pain, which had persisted. (JE 12, p. 30) Dr. Hartley recommended a consultation with a qualified pain management specialist to evaluate Rock's current therapy and to explore additional treatment options. (JE 12, pp. 32-36)

On August 2, 2019, Rock attended an appointment with Tork Harman, M.D., with St. Luke's Outpatient Interventional Pain Clinic. (JE 11, p. 1) Dr. Harman assessed Rock with lumbosacral spondylosis without myelopathy, listed an impression of chronic low back pain status post a 2012 work injury and subsequent fusion, and performed a diagnostic medial branch block trial. (JE 11, pp. 1-5) Dr. Harman followed up with Rock on August 5, 2019, and Rock reported he received no relief from the trial. (JE 11, p. 6)

On December 27, 2019, Rock attended a follow-up appointment with Dr. Hartley. (JE 18, p. 1) Dr. Hartley noted Dr. Harman recommended and performed a diagnostic medial branch block trial, but Rock did not receive any relief, and Dr. Harman recommended he continue with his current medication regimen. (JE 18, p. 1) Dr. Hartley diagnosed Rock with low back pain, noting his condition is stable, continued his medication, and completed a form to ensure Rock could continue to hold a CDL. (JE 18, pp. 3-4)

Rock does not have any permanent work restrictions. (Tr., pp. 26, 38) Rock testified he does not have restrictions because he wanted to go back to work and he “didn’t want to be thought of as a less worker and have to take special things.” (Tr., p. 26) Rock takes tramadol during the day and amitriptyline at night. (Tr., p. 26) Rock reported if he does not take tramadol he could not do his job because of the pain. (Tr., pp. 28, 41) Rock’s wife testified when Rock stopped taking tramadol a month or two before the hearing he did not do well without it and he was in extreme pain. (Tr., p. 13) Rock continues to hold a Class A CDL without restrictions. (Tr., p. 33; JE 9, p. 2)

Rock reported after he arrives home from work in the evening he is tired. (Tr., p. 39) Rock performs chores, including cleaning the dishes, attending to the cats, and preparing his food for the next day. (Tr., p. 39) After his chores are done, Rock will go to the basement to relax for an hour or two before going to bed. (Tr., p. 39)

Rock’s wife reported on a bad day Rock goes downstairs and keeps to himself when his back is bothering him. (Tr., p. 15) Rock’s wife reported Rock struggles with mowing the grass and shoveling snow since his work injury. (Tr., p. 15) Before his work injury Rock could mow the grass with a push mower in thirty minutes, now it takes him an hour with breaks. (Tr., pp. 16-17) Rock’s wife tries to mow the grass before he gets a chance to because she knows it bothers him. (Tr., p. 15)

Rock reported since his work injury he walks slower. (Tr., p. 40) When his wife and children go to the mall to shop he sits down to rest while they shop. (Tr., p. 40)

CONCLUSIONS OF LAW

I. Applicable Law

This case involves several issues, including extent of disability, recovery of medical mileage, recovery of costs, and interest under Iowa Code sections 85.27, 85.34, 86.40, and 535.3. In 2017, the Iowa Legislature enacted changes to Iowa Code chapters 85, 86, and 535 effecting workers’ compensation cases. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code sections 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.71, 86.26, 86.39, and 86.42 apply to injuries occurring on or after the effective date of the Act. Rock’s injury occurred before July 1, 2017, therefore, the new provisions of the statute under Iowa Code section 85.34 do not apply to this case.

The calculation of interest is governed by Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant’s Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is 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.

II. Extent of Disability

The parties stipulated Rock has sustained an industrial disability, but disagree on extent of disability. Rock contends he has sustained at least a thirty percent industrial disability. River Valley and Union aver Rock has not sustained an industrial disability greater than twenty percent.

“Industrial disability is determined by an evaluation of the employee’s earning capacity.” Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 852 (Iowa 2011). In considering the employee’s earning capacity, the deputy commissioner evaluates several factors, including “consideration of not only the claimant’s functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment.” Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee’s “ability to be gainfully employed.” Id. at 138.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(u).

Dr. Mendoza assigned Rock at twenty percent industrial disability. Rock receives ongoing medical care from Dr. Hartley as a result of his work injury. Rock underwent surgery, he experiences ongoing pain, and he takes tramadol on a daily basis as a result of his work injury. Rock has not been assigned any permanent restrictions. He is performing the same duties he performed before the work injury. Rock is a hard worker who works through the ongoing pain he experiences which is documented in his medical records from Dr. Hartley. Rock works full-time for River Valley and he works part-time for Ken Morrison Construction.

At the time of the hearing Rock was fifty-two. Rock graduated from high school and he completed a course to obtain a CDL, which he still maintains. Each year Dr. Hartley must certify the medication Rock takes to treat the pain caused by his work injury does not adversely impact his ability to hold a CDL. Rock has worked as a truck driver or laborer for his entire adult career. Considering all of the factors of industrial disability, I find Rock has sustained a thirty percent industrial disability.

III. Medical Mileage

Rock has not received paid mileage since January 2015. (Tr., pp. 12, 28) Rock seeks to recover payment for 1,503.54 miles for treatment he received related to his

work injury with Dr. Hartley on January 22, 2015, July 23, 2015, November 5, 2015, November 20, 2015, January 7, 2016, June 10, 2016, October 14, 2016, March 31, 2017, September 21, 2017, December 15, 2017, July 6, 2018, July 12, 2018, October 26, 2018, June 28, 2019, at the UIHC on November 16, 2015, and with Dr. Harman on August 2, 2019. (JE 6)

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability"). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

Under the statute, an employer is required to pay for transportation expenses for all conditions compensable under the workers' compensation law. The mileage Rock incurred was for treatment he received from Dr. Hartley due to his work injury, at the UIHC, and from Dr. Harman. River Valley and Union are responsible for the 1,503.54 miles Rock drove for his medical appointments.

IV. Costs

Rock seeks to recover the \$100.00 filing fee, and the \$96.25 cost of his deposition transcript. (JE 5, pp. 1-2) Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides

[c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed

the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

The rule expressly allows for the recovery of the costs Rock seeks. Using my discretion, I find the costs should be taxed to River Valley and Union

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendants shall pay the claimant one hundred fifty (150) weeks of permanent partial disability benefits at the stipulated weekly rate of five hundred sixty and 20/100 dollars (\$560.20), commencing on the stipulated commencement date of October 20, 2014.

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. Sanchez v. Tyson, File No. 5052008 (Apr. 23, 2018 Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue).

Defendants shall receive a credit for all benefits paid to date.

Defendants shall reimburse Rock for the one thousand five hundred three point five four (1,503.54) miles he drove for medical appointments related to his work injury.

Defendants shall reimburse the claimant one hundred and 00/100 dollars (\$100.00) for the filing fee and ninety-six and 25/100 dollars (\$96.25) for the deposition transcript.

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

Signed and filed this 10th day of March, 2020.


HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Andrew William Bribriesco (via WCES)

Thomas Shires (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.