BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JERRY LOCKE,	:	
Claimant,	:	File No. 19700544.01
vs.	:	
CITY OF WATERLOO, IOWA,	:	ARBITRATION DECISION
Employer,	:	
Self-Insured,	:	Head Note Nos.: 1803, 1108, 2500
Defendant.	:	

STATEMENT OF THE CASE

The claimant, Jerry Locke, filed a petition for arbitration and seeks workers' compensation benefits from the City of Waterloo, a self-insured employer. The claimant was represented by Gary Nelson. The defendants were represented by Bruce Gettman.

The matter came on for hearing on August 25, 2021, before Deputy Workers' Compensation Commissioner Joe Walsh in Des Moines, Iowa via Court Call videoconferencing system. The voluminous record in the case consists of Joint Exhibits 1 through 15 (350 pages); Claimant's Exhibits 1 through 7 (177 pages); and Defense Exhibits A through L (64 pages). In addition, administrative notice was taken of File No. 19700544.03, an alternate medical care claim between the same parties. The claimant testified at hearing, in addition to defense witnesses Cheryl Huddleston and Matt Boquist. Stephanie Cousins served as the court reporter. The matter was fully submitted on October 8, 2021 after helpful briefing by the parties.

ISSUES

The parties submitted the following issues for determination:

1. The nature and extent of claimant's permanent disability, including medical causation issues regarding some of the claimant's alleged conditions.

2. Whether the claimant is entitled to medical expenses set forth in Claimant's Exhibit 6, under Iowa Code section 85.27. Defendant contends that such expenses were not authorized, were not reasonable and necessary and were not causally connected to his stipulated work injury.

3. Whether claimant is entitled to an independent medical examination (IME) under Section 85.39.

4. Whether claimant is entitled to alternate medical care.

5. Costs.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship.

2. Claimant sustained an injury which arose out of and in the course of employment on October 31, 2018. Specifically, defendant stipulates that on this date, claimant sustained an injury to his low back and has suffered the condition of tinnitus.

3. This injury is a cause of both temporary and permanent disability.

4. Temporary disability/healing period and medical benefits are no longer in dispute.

5. The commencement date for any permanent disability benefits is May 17, 2021.

6. The elements comprising the rate of compensation are all stipulated and the parties contend the weekly rate of compensation is $669.06.

7. Defendant City paid and is entitled to a credit of 34 weeks of compensation (permanent partial disability). In addition defendant has paid medical expenses in the amount of $2,527.13 and is entitled to a credit under Section 85.38(2).

8. Affirmative defenses have been waived.

FINDINGS OF FACT

Claimant Jerry Locke was a 52-year-old married man as of the date of hearing. He and his wife live in Evansdale, Iowa. He obtained his GED in June 1991 and later a welding certificate. He has worked in manual labor positions for his adult life. Mr. Locke testified live and under oath at hearing. I find his testimony to be credible. He was a reasonably good historian although it is noted he is not a particularly sophisticated witness. His answers were simple. His testimony is consistent with other portions of the record. There was nothing about his demeanor which caused any concern about his truthfulness.

Since 2013, Mr. Locke worked as an equipment operator for the City of Waterloo. On October 31, 2018, Mr. Locke was involved in a rather serious workplace accident. The injury itself is stipulated. The real fighting issue in this case is what conditions were caused by this injury. Mr. Locke was performing normal surveying work when the injury occurred. He testified about the injury at hearing. “I got hit by a track hoe bucket.” (Tr., p. 16) He testified that the bucket hit him on the right side of his body and estimated

that it knocked him about 10 to 15 feet. (Tr., p. 17) When asked whether he lost consciousness, he testified the following:

> A. I'm sure I did, 'cause I - - I was out. I mean, I couldn't hear nothing. I couldn't see nothing. I couldn't breathe. I was regaining my breath when I was coming - - starting to come back or whatever, however it works. And then as I - - I just - - I had a hard time. I couldn't breathe. And then I ended up - - the ringing in my ears, I couldn't hear. It was all like muzzled.

(Tr., p. 17)

It is noted that Mr. Locke has experienced pain and various symptoms in parts of his body prior to this work injury. He has experienced neck pain, right shoulder pain and low back pain. He also experienced symptoms related to a hernia injury. He also experienced ringing in his ears following an automobile accident in the 1990's. His prior medical problems are partially outlined in Joint Exhibits 1 through 3, pages 1 through 57.

The City directed Mr. Locke's medical care the day after the accident. On November 1, 2018, he was sent to Occupational Health in Waterloo, Iowa. At that time, Mr. Locke complained of pain in his neck, right shoulder, chest, right arm, bilateral wrists and his right knee. (Joint Exhibit 4, page 144) The nurse took an accurate history of the injury. (Jt. Ex. 4, p. 143) He was placed on significant medical restrictions. (Jt. Ex. 4, p. 146) X-rays were taken of his cervical spine, right shoulder, ribs and hip. (Jt. Ex. 5) The treatment notes from Occupational Health are a little unusual in that they are all hand-written form notes rather than ordinary typed clinical notes. (Jt. Ex. 4, pp. 142-158)

He visited Occupational Health a few times between November 1, 2018, and November 15, 2018. The November 15, 2018, note indicates he saw Kenneth McMains, M.D. (Jt. Ex. 4, p. 158) Mr. Locke testified that Dr. McMains told him that he [Mr. Locke] had arthritis and workers' compensation does not cover arthritis. (Tr., pp. 20-22) I find this testimony believable. Mr. Locke understood this to mean the City would not cover his future medical care. In any event, after two weeks of treatment, Mr. Locke testified that his symptoms improved significantly. In fact, some of his medical notes from Occupational Health seem to indicate a complete recovery. (Jt. Ex. 4, p. 156) He was released to return to work without any restrictions at all on November 15, 2018. (Jt. Ex. 4, p. 158)

Mr. Locke testified credibly, however, that he was, in fact, not completely recovered. He testified that after he returned to work, his symptoms returned, particularly as he began performing heavier aspects of his job in the winter months, such as sandbagging and plowing snow. (Tr., pp. 19-20) There is a letter in evidence from Cheryl Huddleston, the Waterloo manager of human resources, which indicates that later in 2019, Mr. Locke chose to seek out medical treatment on his own with his family physician. Specifically, he testified that because of his conversations with Dr. McMains, he did not believe the City would authorize any additional treatment, so he went to his own doctor. (Tr., p. 20) Mr. Locke provided an affidavit that he went to his family physician, Brian Sankey, D.O., in March 2019. (Cl. Ex. 6, p. 175) I cannot find

any corresponding clinical note in the record, however, there is an x-ray report of Mr. Locke's thoracic spine. (Jt. Ex. 3, p. 122) The first note from Dr. Sankey I can find related to his work injury is dated June 28, 2019. The following is documented:

> Subjective patient with chronic history of diagnosed hypothyroidism which resulted in his chronic symptoms being treated with levothyroxine also hyperlipidemia heartburn chronic back pain works in construction he had an accident about 8 months ago that was a Workmen's Comp. injury that is still open but is having worsening pain now he has pain in his upper arms bilaterally he also has weakness he has numbness and tingling in his hands and arms bilaterally the morning and this did not happen prior to his accident at work he also has been having problems with leg pain where he will have a sensation of having intense leg cramps in his legs bilaterally but when they feels [sic] like there is no mass or muscle spasm.

(Jt. Ex. 3, p. 63) Dr. Sankey diagnosed spinal stenosis of cervical and possibly lumbar spine. He recommended diagnostic testing (MRI, EMG), conservative management and a referral to a specialist. (Jt. Ex. 3, p. 63)

This examination by Dr. Sankey occurred shortly after Mr. Locke had emailed Cheryl Huddleston. On June 17, 2019, he wrote the following:

> Last fall I was injured on the job when a trackhoe bucket hit me and I was seen by the Workman comp doctor and they checked me over and sent me home with medication. Since then I have been experiencing pain in same areas and I went to our family doctor and they prescribed me the same medications but they work temporarily and now the issues are worse and the pills do not seem to be helping. I have been experiencing issues that I have never had before and want to get this checked and fixed. I told the foreman and he said to talk to Tony and today I told Tony and he said I had to go to you.

(Cl. Ex. 4, p. 162) Ms. Huddleston responded that she had reviewed the request and it appeared that he had fully healed back in November 2018. She asked if something happened in the interval. She concluded, "We don't normally open up a closed claim after that length of time since many things both on and off the job could have occurred in a 7-month time frame." (Cl. Ex. 4, p. 162) This email undoubtedly constitutes a denial of Mr. Locke's claim under Iowa law.

Mr. Locke then went to his appointment with Dr. Sankey on June 28, 2019, which resulted in additional treatment through his family clinic which continued through October 2019. (Jt. Ex. 3, pp. 64-85) He underwent diagnostic testing and a pain injection among other conservative treatments. Most of the treatment focused on his low back, but also his neck and extremities. He was evaluated by Marietta Walsh, D.O., on October 29, 2019, specifically for his low back complaints. She took history (noting the October 2018 work injury), performed an examination, and reviewed all of the radiographic films. She ultimately diagnosed spondylolisthesis. She recommended injections and physical therapy. (Jt. Ex. 3, p. 91) Dr. Walsh continued to treat Mr. Locke with conservative treatment for the next several months. (Jt. Ex. 3, pp. 91-100)

By December 2019, Mr. Locke had retained legal counsel and filed a claim. His attorney wrote to the City requesting treatment. (Cl. Ex. 3, p. 133) In response, the City arranged an appointment with Sarvenaz Jabbari, M.D., on January 8, 2020. Cheryl Huddleston sent Dr. Jabbari a letter asking questions related to medical causation. (Jt. Ex. 4, p. 163) It is unclear what medical records Dr. Jabbari was able to review, however, it appears that she at least reviewed the records of Dr. Walsh. Dr. Jabbari did perform a physical examination and took a history from Mr. Locke at the appointment. Dr. Jabbari opined that Mr. Locke was not having any residual symptoms from his work injury. She recommended no further workup and no restrictions. (Jt. Ex. 4, p. 164) She provided a diagnosis of arthritis in his shoulder and neck area. She noted Dr. Walsh's diagnosis of bilateral L5 spondylolisthesis and Grad 2 L5-S1 anterolisthesis. (Jt. Ex. 4, p. 165) She opined that this condition preexisted the work injury. After this evaluation, the City did not authorize any additional medical treatment for Mr. Locke and he continued to seek out treatment on his own initially with Dr. Walsh. He was, of course, legally entitled to do this since the claim was denied.

Dr. Walsh continued to treat Mr. Locke conservatively. In January 2020, she noted that he had completed physical therapy, continued to use a TENS unit and has undergone two pain injections with limited lasting benefit. (Jt. Ex. 3, p. 101) His symptoms at that time, continued to be substantially limiting. Dr. Walsh continued to recommend conservative treatment, however, he again brought up the possibility of surgery. (Jt. Ex. 3, p. 106) Thereafter, Mr. Locke sought pain management treatment in February 2020. (Jt. Ex. 10, pp. 190-191; Jt. Ex. 8, p. 181)

Mr. Locke finally sought out medical treatment at the Mayo Clinic on September 1, 2020. Keith Bengston, M.D., took a full history and documented his symptoms thoroughly.

> Currently he describes pain in his neck, right shoulder, low back, right buttock and right greater than left posterior thigh and calf with nighttime cramping in his right calf and foot. Symptoms are worse with bending, lifting, and twisting. He also has trouble with prolonged standing is limited to 10 minutes at a time. He gets pain with driving greater than 45 minutes. He also has intermittent numbness and paresthesias involving both hands and this occurs at night, driving and with gripping activities.

(Jt. Ex. 11, p. 194) Dr. Bengston diagnosed the following:

1. Grade 2 L5 on S1 spondylolytic spondylolisthesis with right greater than left L5 foraminal stenosis and pseudoclaudication
2. Mechanical neck pain
3. Bilateral carpal tunnel syndrome
4. Right shoulder pain of uncertain etiology
5. Head injury with subsequent tinnitus

(Jt. Ex. 11, p. 195) The plan was to focus on the low back condition first and then revisit the other conditions if necessary. (Jt. Ex. 11, p. 195) A week later, on September 8, 2020, Mr. Locke saw Arjun Sebastian, M.D., also at Mayo. Dr. Sebastian recommended fusion surgery to deal with the low back issues. (Jt. Ex. 11, p. 196)

Surgery was scheduled for October 12, 2020.

Ms. Huddleston testified that the City did not learn Mr. Locke was seeking surgery until shortly before the surgery was scheduled. (Tr., p. 89) Once the City learned that Mr. Locke was seeking surgery, it reopened the investigation of his claim. On September 9, 2020, the day after surgery was recommended, counsel for the City wrote to Chad Abernathey, M.D., a well-known back surgeon in Cedar Rapids. (Jt. Ex. 12, p. 299) He set forth the facts of the case from the City's point of view, enclosed numerous appropriate records and asked various medical causation questions. (Jt. Ex. 12, p. 300) Dr. Abernathey apparently examined Mr. Locke at some point and provided the following responses:

1. A component of Mr. Locke's current low back symptoms could be related to his October 31, 2018 work injury depending upon the veracity of his oral history. If the patient was symptom free prior to his injury and he subsequently developed persistent back pain following the injury, then the two events would be related. I believe that Mr. Locke was destined to undergo a lumbar fusion at L5-S1 based upon the presence of long-standing L5-S1 spondylolisthesis and prior symptomatology, in spite of any intervening trauma.
2. I believe Mr. Locke does require surgery to correct the L5-S1 spondylolisthesis. The fusion proposed by Dr. Sebastian is appropriate.

(Jt. Ex. 12, p. 302) On October 2, 2020, defense counsel wrote to claimant's counsel stating that Mr. Locke's request for surgery was denied based upon Dr. Abernathey's report. (Def. Ex. F, p. 41)

The agency record in File No. 19700544.03 reflects that Mr. Locke filed an alternate medical care claim on October 2, 2020 and the hearing was scheduled for October 14, 2020. It appears claimant filed immediately once he received the report from Dr. Abernathey in an effort to preserve his surgery scheduled for October 14, 2020. On October 3, 2020, Dr. Abernathey prepared a "check box" report for claimant's counsel (on firm letterhead). Claimant's counsel clearly sought to clarify Dr. Abernathey's opinions. Dr. Abernathey agreed with the following statements:

1. Prior to the October 31, 2018 work injury Jerry had some preexisting conditions in his lumbar spine.
2. Even if Jerry did not have the October 31, 2018 work injury, he was destined to undergo a lumbar fusion at L5-S1.
3. Even if the October 31, 2018 work injury did not occur and assuming Jerry was destined to undergo a lumbar fusion at L5-S1 in the future, that future date was unknown and speculative as of October 31, 2018.
4. As far as you know, Jerry was performing his assigned work duties prior to and on October 31, 2018 without restrictions or limitations.
5. Even with Jerry's long-standing preexisting condition at L5-S1, if Jerry's oral history about how the October 31, 2018 work injury occurred is accepted as accurate and true, the October 31, 2018 work injury was a material contributing factor in:

a. Accelerating the need for the proposed fusion at L5-S1; and
b. Was a material contributing factor in leading to the proposed L5-S1 fusion.

(Jt. Ex. 12, pp. 304-305)

Around the same time that the City sought to involve the medical expert Dr. Abernathey, Mr. Locke sought the involvement of his own expert Farid Manshadi, M.D. On September 2, 2020, claimant's counsel wrote a lengthy letter to Dr. Manshadi outlining the underlying facts and attaching numerous appropriate medical records. (Cl. Ex. 1, pp. 1-7) Supplemental information was sent to Dr. Manshadi over the next few days. (Jt. Ex. 1, pp. 8-12) Dr. Manshadi evaluated Mr. Locke on September 8, 2020. (Jt. Ex. 1, p. 13) He prepared an expert report on October 5, 2020. Dr. Manshadi opined that Mr. Locke's work injury "caused significant aggravation of his pre-existing low back pathology." (Cl. Ex. 1, p. 17) He opined on Mr. Locke's other alleged conditions as well. (Jt. Ex. 1, p. 18) Specifically, he opined the shoulder condition (impingement), neck pain and depression were all connected to the work injury. (Jt. Ex. 1, p. 18)

On October 12, 2020, Mr. Locke underwent the fusion surgery at the Mayo Clinic. (Jt. Ex. 11, pp. 201-202) On October 12, 2020, the same day, Dr. Abernathey then clarified in a similar "check box" report for defense counsel. He opined the surgery was not urgent and he could wait until Mr. Locke was evaluated at the University of Iowa Hospitals and Clinics. (Jt. Ex. 12, p. 306)

On October 13, 2020, the City filed a formal answer which, for the first time, formally admitted liability on the claim. It is important to note that this was the first time in this claim that the City had ever formally admitted liability for any ongoing low back condition. The City had previously denied liability on the claim on at least two prior occasions. The answer stated that the City admits liability for the low back claim but denies "responsibility for the surgery" at Mayo Clinic because the City had never authorized such treatment. (Def. Answer) On October 8, 2020, claimant's counsel again wrote to defense counsel requesting treatment, not just for the low back but for the neck, right shoulder and tinnitus. (Cl. Ex. 3, p. 134) On October 9, 2020, the City responded to claimant's counsel indicating the intent to admit liability for his low back and asking Mr. Locke to cancel his surgery.

The alternate medical care hearing was held on October 14, 2020. Claimant did not participate in the hearing as he was still recovering from his surgery. He was not discharged from Mayo until October 15, 2020. Counsel presented exhibits and made arguments in this recorded hearing. On October 15, 2020, I awarded alternate medical care to the claimant, finding the following:

> I find the employer's attempt to change the care on the eve of surgery would unreasonably delay claimant's treatment. I find the employer's attempt to change the care on the eve of surgery would cause substantial inconvenience to claimant's treatment. I find that the employer's attempt to change the care on the eve of surgery would unreasonably interfere

> with claimant's efforts to receive quality care which is reasonably suited to treat his injury.

(Alternate Care Decision, p. 6)[1]

Following the alternate care proceedings, Mr. Locke continued to treat with Mayo Clinic. The follow up treatment since then has been substantial. (Jt. Ex. 11, pp. 228-298) Mr. Locke was off work from the surgery until he was released to modified duty on March 1, 2021. (Jt. Ex. 11, pp. 288-289) The City paid healing period benefits during this timeframe. On May 26, 2021, Dr. Sebastian released Mr. Locke to return to activities as tolerated with no restrictions. (Jt. Ex. 11, p. 295) The City accommodated Mr. Locke. Mr. Locke's supervisor, Matt Boquist, testified live and under oath at hearing. His testimony is highly credible. He testified that Mr. Locke has been able to perform the tasks of an equipment operator, however, he is assigned lighter tasks and not asked to perform tasks outside of his abilities. (Tr., p. 102) Mr. Locke has continued to work for the City with the same or better earnings up through the date of hearing, although his position appears to be highly accommodated.

Mr. Locke testified that, while the surgery improved his symptoms, he is not completely better. He still has significant symptoms from the back injury which he described in some detail. He testified that he has difficulty bending and twisting. He only feels comfortable lifting about 30 pounds. He has challenges walking on stairs or uneven surfaces. He has difficulty sitting and standing. His sleep is not good. (Tr., pp. 35-39) He was observed standing for a portion of the hearing.

Aside from his low back condition, claimant contends that he has suffered permanent conditions in various other parts of his body, specifically neck pain, right shoulder pain, depression and tinnitus. He also complains of carpal tunnel symptoms and post-surgical erectile dysfunction. The medical workup for these conditions is not nearly as complete as it is with his low back condition, however, there are numerous expert medical opinions in the record.

As set forth above, Dr. Jabbari provided medical causation opinions on January 8, 2020, which served as a basis for the continued denial of Mr. Locke's claim. (Jt. Ex. 4, p. 164) In that report she opined that when Mr. Locke was released on November 15, 2018, all of his work-connected conditions were resolved. She went on to opine that all of her complaints thereafter were merely related to his various underlying degenerative conditions. (Jt. Ex. 4, pp. 164-165) She relied quite heavily on Mr. Locke's November 15, 2019, examination, showing his pain had resolved. Dr. Jabbari updated her opinions in an October 9, 2020, "check box" opinion reports on defense counsel letterhead. She checked "No" to the following questions:

1. Is Mr. Locke's neck condition related to the 10/31/18 work injury or Mr. Locke's employment with the City of Waterloo?

[1] It is noted that the City timely sought judicial review of this decision and the matter appears to be pending in Black Hawk County District Court.

2. Does Mr. Locke require any present treatment for any present treatment for a neck condition that is related to his 10/31/18 work injury or Mr. Locke's employment with the City of Waterloo?
3. Is Mr. Locke's right shoulder condition related to the 10/31/18 work injury or Mr. Locke's employment with the City of Waterloo?
4. Does Mr. Locke require any present treatment for a right shoulder condition that is related to his 10/31/18 work injury or Mr. Locke's employment with the City of Waterloo?
5. Is Mr. Locke's tinnitus condition related to the 10/31/18 work injury or Mr. Locke's employment with the City of Waterloo?
6. Does Mr. Locke require any present treatment for the tinnitus condition that is related to his 10/31/18 work injury or Mr. Locke's employment with the City of Waterloo?

(Def. Ex. A, pp. 1-2) The City repeatedly asked whether any of these conditions were "related to" his work injury without ever defining the phrase. Since it was a "check box" report there is really no analysis or explanation for her opinions.

Dr. Jabbari checked boxes on a subsequent report dated April 29, 2021, where she opined that claimant's carpal tunnel syndrome, mental health conditions and erectile dysfunction, were not "causally connected" to Mr. Locke's work injury. (Def. Ex. A, pp. 3-4) To summarize, Dr. Jabbari opined that on November 15, 2018, Mr. Locke was completely healed from the effects of his October 31, 2018, work injury, and none of his ongoing health complaints are related to or causally connected to that injury including the conditions that the City now admits are causally related to the injury. Dr. Jabbari is Board Certified in Occupational and Environmental Medicine. (Def. Ex. A, p. 6) The opinions of Dr. Jabbari are rejected. I find that Dr. Jabbari did not have a complete history of the underlying factual circumstances of Mr. Locke's conditions. I find that Dr. Jabbari used vague, undefined terms and never specifically answered the question whether Mr. Locke's conditions were materially aggravated or lit up by the work injury. A number of her causation opinions have actually been rejected by the defendant and their own more qualified experts. I find that Dr. Jabbari does not have equivalent expertise as the other experts in this case.

Dr. Manshadi provided his initial report on September 2, 2020, just prior to Mr. Locke's low back surgery. (Cl. Ex. 1) He examined Mr. Locke again following the recuperation from his low back surgery on May 11, 2021. He prepared an expert report dated May 17, 2021, wherein he reviewed records and examined Mr. Locke. (Cl. Ex. 1, pp. 28-30) He opined that all of Mr. Locke's treatment at Mayo Clinic was reasonable and necessary. (Cl. Ex. 1, p. 31) He opined that the back surgery caused Mr. Locke's erectile dysfunction. (Cl. Ex. 1, p. 31) He reaffirmed his earlier opinion that Mr. Locke had sustained permanent damage to his right shoulder as a result of his work injury. He assigned a 10 percent right upper extremity rating pursuant to the AMA Guidelines to the Evaluation of Permanent Impairment, Fifth Edition, Chapter 16, pages 475-479.[2] (Cl. Ex. 1, p. 31) He also recommended permanent restrictions for this condition. (Cl. Ex. 1, p. 32) He reaffirmed his earlier opinion that Mr. Locke had sustained permanent

[2] Ten percent of the upper extremity converts to 6 percent of the body as a whole. AMA Guides, Fifth Ed. Table 16-3, page 439.

damage to his neck as a result of his work injury. He assigned a 5 percent impairment rating pursuant to the AMA Guides, Chapter 15, Table 15-5. (Cl. Ex. 1, p. 32) He also recommended that Mr. Locke avoid any activity which requires to use his neck in extreme range of motion. He also assigned a 2 percent rating for depression, which he stated was based upon the AMA Guides, although he provided no citation or reference. (Cl. Ex. 1, p. 32) I reject Dr. Manshadi's assignment of a 2 percent whole body rating for the mental health condition. Dr. Manshadi does not explain this rating at all, and it seems to be counter to the AMA Guides position on numeric impairment ratings for mental health conditions. Dr. Manshadi's expertise is in Physical Medicine and Rehabilitation. (Cl. Ex. 1, pp. 34-44)

Dr. Abernathey also provided follow-up expert opinion reports. As set forth above, he prepared a number of reports around the time of Mr. Locke's low back fusion surgery in October 2020. (Jt. Ex. 12, pp. 302-306) Dr. Abernathey evaluated Mr. Locke on June 23, 2021 and prepared an additional report for the City opining on his impairment and restrictions. (Def. Ex. C, p. 21a) He assigned a 25 percent whole body rating and assigned no restrictions. He recommended further treatment and work-up for his groin complications related to the surgery. Dr. Abernathey provided an additional "check box" report to claimant's counsel on June 24, 2021. Dr. Abernathey agreed that all of Mr. Locke's groin and erectile dysfunction symptoms were caused by his October 12, 2012 surgery, including his need for urological treatment. (Jt. Ex. 12, pp. 307-308) Dr. Abernathey is a Board Certified Neurosurgeon. (Def. Ex. C, p. 12)

Finally, with regard to Mr. Locke's tinnitus claim, both parties retained hearing loss experts prior to hearing. In the hearing report, the City has admitted that claimant's tinnitus is causally related to his October 31, 2018, work injury. (Hearing Report, paragraphs 2-3) The City retained Timothy Simplot, M.D., who prepared a report containing expert opinions on March 21, 2021. (Def. Ex. D) He reviewed a number of medical records but never evaluated Mr. Locke. (Def. Ex. D, pp. 24-25) He undertook a substantial and serious review of Mr. Locke's tinnitus condition which dated back to at least 2010 and ultimately reached the following conclusion. "Based on his correlation of an increase in ringing and the mechanism of injury with a reasonable degree of medical certainty the increased sensation of tinnitus he is experiencing could have at least in part been related to this alleged incident." (Def. Ex. D, p. 26) Dr. Simplot assigned an impairment rating of 2 percent using the AMA Guides. (Def. Ex. D, p. 27)

Claimant retained Richard Tyler, Ph.D., a well-known hearing expert in Iowa City. Dr. Tyler prepared an expert report dated April 11, 2021. (Cl. Ex. B) He reviewed records and interviewed Mr. Locke by telephone. He also had him fill out numerous forms documenting his subjective difficulties with tinnitus. Dr. Tyler opined that the work injury caused Mr. Locke's tinnitus. (Cl. Ex. 2, p. 67) I find Dr. Tyler's report to be somewhat confusing and disjointed. He assigned an extremely high whole body impairment rating for this (75%), although he seemed to concede that the AMA Guides, only allow for a maximum of a 5 percent impairment rating. (Cl. Ex. 2, p. 71) In any event, claimant only appears to be requesting an assignment of a 5 percent rating pursuant to the Hearing Report. (*See* Hearing Report, paragraph 5; Cl. Brief, p. 14)

On May 26, 2021, claimant obtained a "check box" expert medical report from Patrick O'Connor, Ph.D., providing medical opinions in relation to Mr. Locke's alleged mental health conditions. (Cl. Ex. 7) He opined Mr. Locke has the diagnosis of moderate episode of major depressive disorder. He opined Mr. Locke's work injury was a substantial contributing or aggravating factor to this condition and he would benefit from further mental health treatment. (Cl. Ex. 7, p. 177)

Mr. Locke submitted an affidavit of medical expenses which outlined substantial medical expenses from a number of medical providers. (Cl. Ex. 6) These expenses are not broken out in detail. The claimant did provide detailed travel expense documentation, including mileage, and other travel expenses such as meals and lodging. (Cl. Ex. 6, pp. 171-175)

The City presented evidence that Mr. Locke has continued to maintain hunting and fishing licenses after his work accident. (Def. Ex. L)

Having reviewed all of the evidence in the record, including the competing expert reports, I find the following:

1. Mr. Locke's injury is a substantial causal or material aggravating factor of claimant's low back, neck, right shoulder, groin, mental health and tinnitus conditions.
2. The treatment obtained by Mr. Locke for these conditions prior to hearing has been reasonable and necessary.
3. Mr. Locke's low back, neck, right shoulder and tinnitus conditions have resulted in permanent impairment.
4. The best impairment ratings in the record for each of Mr. Locke's permanent conditions are as follows:
    a. Low back: Dr. Abernathey 25 percent whole body.
    b. Neck: Dr. Manshadi 5 percent whole body.
    c. Right shoulder: Dr. Manshadi 6 percent whole body.
    d. Tinnitus: Dr. Simplot 2 percent whole body.
5. These ratings combine under the AMA Guides, Fifth Edition, Combined Values Chart, page 604, combine to 35 percent whole body functional impairment.

CONCLUSIONS OF LAW

The parties have stipulated that Mr. Locke sustained an injury which arose out of and in the course of his employment on October 31, 2018. The first question submitted is what medical conditions are causally connected to this stipulated work injury. The City has stipulated that claimant suffered injury to his low back and aggravated the condition of tinnitus. The City has denied that any of Mr. Locke's other alleged conditions are, in any way, causally connected to the work injury.

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).

It has long been the law of Iowa that Iowa employers take an employee subject to any active or dormant health problems and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). A material aggravation, worsening, lighting up or acceleration of any prior condition has been a viewed as a compensable event ever since initial enactment of our workers' compensation statutes. Ziegler v. United States Gypsum Co., 252 Iowa 613; 106 N.W.2d 591 (1960). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established in Iowa that a cause is "proximate" when it is a substantial factor in bringing about that condition. It need not be the only causative factor, or even the primary or the most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

An employer may be liable for a sequela of an original work injury if the employee sustained a compensable injury and later sustained further disability that is a proximate result of the original injury. Mallory v. Mercy Medical Center, File No. 5029834 (Appeal February 15, 2012).

The Iowa Supreme Court held long ago that "where an accident occurs to an employee in the usual course of his employment, the employer is liable for all consequences that naturally and proximately flow from the accident." Oldham v. Scofield & Welch, 222 Iowa 764, 266 N.W. 480, 482 (1936).

A sequela can be an after effect or secondary effect of an injury. Lewis v. Dee Zee Manufacturing, File No. 797154, (Arb. September 11, 1989). One form of sequela of a work injury is an adverse effect from medical treatment for the original injury. Where treatment rendered with respect to a compensable injury itself causes further injury, the subsequent injury is also compensable. Young v. United Fire & Casualty Co., 256 Iowa 813, 129 N.W.2d 75 (1964). For example, the death of a claimant who died on the

operating table during surgery for a work injury may be compensable, since the injury caused the need for surgery. Breeden v. Firestone Tire, File No. 966020, (Arb. February 27, 1992). As another example, a claimant who fell as a result of dizziness from medication he was taking to treat a work injury is to be compensated for both the original injury and the resulting fall as a sequela of the first injury. Hamilton v. Combined Ins. of America, File Nos. 854465, 877068, (Arb. February 21, 1991).

A sequela can also take the form of a secondary effect on the claimant's body stemming from the original injury. For example, where a leg injury causing shortening of the leg in turn alters the claimant's gait, causing mechanical back pain, the back condition can be found to be a sequela of the leg injury. Fridlington v. 3M, File No. 788758, (Arb. November 15, 1991).

A sequela can also take the form of a later injury that is caused by the original injury. For example, where a leg injury leads to the claimant's knee giving out in a grocery store, the resulting fall is compensable as a sequela of the leg injury. Taylor v. Oscar Mayer & Co., III Iowa Ind. Comm. Rep. 257, 258 (1982).

This is a complicated case with prolific medical exhibits because Mr. Locke is claiming the work injury resulted in a number of different conditions. In addition, Mr. Locke had numerous preexisting conditions in those same body parts. For the reasons set forth in the findings of fact, I found that Mr. Locke proved, by a preponderance of evidence that the following conditions were either substantially caused by, and/or materially aggravated by his October 31, 2018, work injury:

1. Low back
2. Tinnitus
3. Right shoulder
4. Neck
5. Mental health (depression)
6. Groin

The City relied upon the expert opinions of their chosen occupational medicine physician to deny that the right shoulder, neck, depression, and groin conditions were in any way connected to the work injury. The problem for the City is that when they engaged in further investigation and sought expert medical evidence from more qualified specialists, many of Dr. Jabbari's opinions had to be rejected by the City itself. Dr. Jabbari relied too heavily in her opinions upon the November 15, 2018, report of Dr. McMains, which documented that Mr. Locke was basically as good as new. The facts at hearing are convincing that he was, in fact, not completely healed. Given that the City stipulated at hearing that at least two of Dr. Jabbari's causation opinions were wrong, I find it difficult to rely on any of Dr. Jabbari's medical causation opinions. Her opinions regarding Mr. Locke's right shoulder and neck conditions are essentially the same as her opinion regarding the low back. She blamed his condition on underlying preexisting conditions. Because the City was facing a potentially significant medical bill regarding the low back condition, it chose to reopen that portion of the claim and question Dr. Jabbari's medical causation opinion by seeking the opinion of a respected neurosurgeon, Dr. Abernathey. The City, however, did not engage in the same further investigation for any of Mr. Locke's other conditions (other than the tinnitus).

Because I have rejected the opinions of Dr. Jabbari, the only remaining opinions, at least with respect to claimant's neck and right shoulder are the opinions of Dr. Manshadi. I find no good reason in the record to reject Dr. Manshadi's opinions. Dr. Abernathey has provided a highly-convincing opinion regarding Mr. Locke's groin condition as being a sequela of the work injury caused by his fusion surgery. (Def. Ex. C, p. 12)

Mr. Locke also contends that he has the condition of carpal tunnel in both wrists. There has been very little workup of this condition and he has not been examined for this condition in some time. There is no evidence in the record that this condition is disabling in any way at this time or requires further treatment. While it is clear how the nature of the accident caused aggravation to his neck and shoulder, it is less clear to me in this record how the injury aggravated his carpal tunnel. He may be entitled to further treatment for this condition upon further evaluation and expert medical opinion on causation.

I also find Mr. Locke has proven by a preponderance of the evidence that his depression is a sequela of his work injury. His pre-surgery medical records showed no signs of depression. Following surgery, Mr. Locke developed depression and Dr. O'Connor provided unrebutted medical evidence that the work injury is a causal factor.

The next issue is whether Mr. Locke is entitled to permanent partial disability benefits, and if so, to what extent?

The claimant's disability is a scheduled disability under Iowa Code section 85.34(2)(v) (2019). While the claimant's injury has affected his whole body, the parties agree that he has not lost any income as a result of his injury and his damages are limited to the extent of the functional impairment rating at this time. Therefore, the only function of the agency in assessing the degree of disability to the claimant's body as a whole, is to choose one of the impairment ratings in the record.

> x. In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity.

Iowa Code section 85.34(2)(x) (2019). Thus, the law, as written, is not concerned with an injured worker's actual functional loss or disability as determined by the evidence, but rather the impairment rating as assigned by the adopted version of the AMA Guides. The only function of the agency is to determine which impairment rating should be utilized. The statute itself provides no guidance for assigning an impairment rating,

however, it is assumed that the rating which most closely reflects the injured worker's actual functional loss should be adopted.

As set forth in the findings of fact, I have found the following impairment ratings are most appropriate given the evidence in this case:

1. Low back: Dr. Abernathey 25 percent whole body.
2. Neck: Dr. Manshadi 5 percent whole body.
3. Right shoulder: Dr. Manshadi 6 percent whole body.
4. Tinnitus: Dr. Simplot 2 percent whole body.

Using the AMA Guides, Fifth Edition, Combined Values Chart, page 604, these ratings combine to 35 percent whole body functional impairment.

I conclude that this finding entitles Mr. Locke to 175 weeks of compensation commencing on May 17, 2021, as stipulated by the parties.

The next issue is past medical expenses. Claimant seeks over $200,000.00 in medical expenses, mostly from the Mayo Clinic. (Cl. Ex. 6) The City contends that these expenses are (1) not reasonable and necessary, (2) not causally connected to the work injury and (3) not authorized.

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

Evidence in administrative proceedings is governed by section 17A.14. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence. The rules of evidence followed in the courts are not controlling. Findings are to be based upon the kind of evidence on which reasonably prudent persons customarily rely in the conduct of serious affairs. Health care is a serious affair.

Prudent persons customarily rely upon their physician's recommendation for medical care without expressly asking the physician if that care is reasonable. Proof of reasonableness and necessity of the treatment can be based on the injured person's testimony. Sister M. Benedict v. St. Mary's Corp., 255 Iowa 847, 124 N.W.2d 548 (1963).

It is said that "actions speak louder than words." When a licensed physician prescribes and actually provides a course of treatment, doing so manifests the physician's opinion that the treatment being provided is reasonable. A physician practices medicine under standards of professional competence and ethics. Knowingly providing unreasonable care would likely violate those standards. Actually providing care is a nonverbal manifestation that the physician considers the care actually provided to be reasonable. A verbal expression of that professional opinion is not legally mandated in a workers' compensation proceeding to support a finding that the care provided was reasonable. The success, or lack thereof, of the care provided is evidence that can be considered when deciding the issue of reasonableness of the care. A treating physician's conduct in actually providing care is a manifestation of the physician's opinion that the care provided is reasonable and creates an inference that can support a finding of reasonableness. Jones v. United Gypsum, File 1254118 (App. May 2002); Kleinman v. BMS Contract Services, Ltd., File No. 1019099 (App. September 1995); McClellon v. Iowa Southern Utilities, File No. 894090 (App. January 1992). This inference also applies to the reasonableness of the fees actually charged for that treatment.

An employer ordinarily has the right to control the care provided to the employee. Iowa Code section 85.27(4). In Trade Professionals, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003), the Supreme Court allowed that the employer can lose this right in two circumstances:

> The commissioner has interpreted this section to mean that,
>
> > In Iowa, an employer and its insurer have the right to control the medical care claimant receives, with two exceptions. The first is where the employer has denied liability for the injury. The second is where claimant has sought and received authorization from this agency for alternative medical care.

Trade Professionals, Inc. v. Shriver, 661 N.W.2d at 124 (quoting Freels v. Archer Daniels Midland Co., #1151214 (July 30, 2000)). Once an abandonment of care has occurred, the claimant is free to seek care on his own at defendant's cost. See West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999) (the court upheld the holding that the defendant employer had "lost the right to choose the care" and that "allow and order other care" language is broad enough to include treatment by a doctor of the employee's choosing).

As an initial matter, I reject the authorization defense asserted by the City. The City did initially accept this claim and direct treatment through their chosen clinic. Thereafter, however, the City repeatedly denied care, denied causal connection and/or otherwise abandoned the medical care. When Mr. Locke first asked for additional medical care in June 2019, the City refused to authorize any treatment at all. While the City did not formally deny the claim at this time, the City's Human Resources manager responded with the following: "We don't normally open up a closed claim after that length of time since many things both on and off the job could have occurred in a 7-month time frame." (Cl. Ex. 4, p. 162) No appointment was arranged and there was no further inquiry by the City. After Mr. Locke retained counsel and filed this claim, his

attorney requested further care in December 2019. (Cl. Ex. 3, p. 133) In response, the City arranged an appointment with Dr. Jabbari, on January 8, 2020. After receiving Dr. Jabbari's report, the City again refused to provide any further treatment. While there is no evidence that the City formally denied the claim by filing a Subsequent Report of Injury (SROI) as required under Rule 3.1(2), this was, in fact, undoubtedly a denial of liability based upon medical causation.

Mr. Locke had firmly established medical care at this point in time with his family medical clinic and Dr. Marietta Walsh. He was legally entitled to establish medical care with any provider of his choice at this time. By the Fall of 2020, he had finally secured a surgical evaluation as recommended by Dr. Walsh at the Mayo Clinic in Rochester, Minnesota. In September 2020, again through his attorney, claimant requested further medical care. This time, knowing claimant's medical bills could be quite substantial at Mayo Clinic, the City reopened investigation into the compensability of this claim. The City chose to secure evaluation and expert opinion from a respected neurosurgeon, Dr. Abernathey. Initially, the City continued to deny the claim until claimant's counsel obtained a clarification opinion utilizing the correct legal standard for medical causation. The City, however, did not formally accept the claim and attempt to reestablish direction of medical care, until after the claimant had undergone surgery. All of this was resolved in the alternate care proceedings before the agency in File No. 19700544.03.[3]

The alternate medical care proceedings were summary proceedings with limited evidence. Having reviewed the entire body of evidence now following arbitration proceedings, I find no reason to alter my findings of fact or conclusions of law. The defendants are barred from asserting any authorization defense following their initial denial of treatment in June 2019.

It is important to note that the City could have performed further investigation of this claim at any time after Mr. Locke requested additional care in June 2019. Had the City done so, this claim may have had quite different results. Instead, the City responded with a simple statement that it does not "normally open up a closed claim". When the City did perform further investigation in September/October 2020, it ultimately concluded that it was wrong. Mr. Locke should have been getting further evaluation and treatment as far back as June 2019. To allow the City to assert an authorization defense or otherwise reestablish direction of medical care in these circumstances would be to reward a party for failing to properly investigate a claim. This would be contrary to the substantial legal precedent set forth above, as well as fundamental purpose of the Workers' Compensation Act to expeditiously provide treatment for injured workers.

Claimant's Exhibit 6 provides a general overview of the expenses he claims are related to his work injury. It is not broken down by date or treatment type in such a manner as to allow me to award specific dollar amounts for the treatment. I find that the treatment Mr. Locke received for the conditions which have been found to be connected to his work injury (low back, neck, shoulder, tinnitus, groin, mental health) were reasonable and necessary.

[3] Again, it is noted that this matter is on judicial review.

Therefore, I conclude that the claimant is entitled to reimbursement of all past medical expenses related to the causally connected conditions set forth in this decision from June 8, 2019, up through the date of hearing. The City is responsible to reimburse the claimant for any expenses paid out of pocket. Otherwise, the City is responsible to pay outstanding balances directly to the medical providers or otherwise reimburse any other party who has paid for such costs. The City is responsible for the claimant's transportation expenses (including mileage, meals and lodging where applicable) as set forth in Claimant's Exhibit 6 pages 171 to 175, commencing on June 8, 2019, forward. The City is entitled to a credit for the medical expenses paid under their group plan as stipulated by the parties.

While I have found that the City is barred from asserting an authorization defense, it is noted that I would alternatively find that the treatment set forth in Claimant's Exhibit 6 should be awarded under the beneficial care rule. Bell Brothers Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010). In other words, even if his claim had not been denied, or even if I had found that the employer was entitled to reestablish care in October 2020, I now find that the claimant received beneficial care at the Mayo Clinic and he is entitled to reimbursement of Section 85.27 medical expenses in any event.

The next issue is future medical care. Claimant seeks alternate medical care.

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

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

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

The claimant seeks future treatment for all of his conditions which have been found to be work-related, including his groin condition, mental health, neck and right shoulder. I find that Mr. Locke is entitled to future treatment for these conditions. Mr. Locke has been evaluated for these conditions through various physicians he has chosen. Since the City denied and has continued to deny these claims, Mr. Locke is entitled to direct his own medical treatment. Specifically, Mr. Locke has sought treatment from Gayathry Inamdar, M.D., for his groin condition. The City shall authorize treatment for the groin condition with Dr. Inamdar. Mr. Locke has sought evaluation of his mental health condition with Dr. O'Connor, although it is unclear if he has established any treatment relationship prior to hearing. In any event, the City is ordered to authorize treatment with Dr. O'Connor.

The final issue is IME expenses and case costs.

The next issue is claimant's entitlement to an independent medical examination under Iowa Code Section 85.39.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991).

Iowa Code section 86.40 states:

> **Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> **Costs.** Costs 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. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining

> doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

I find claimant is entitled to IME expenses in the amount of $2,000.00 as set forth in Claimant's Exhibit 5, pages 168-169.

I find the claimant is entitled to the following costs in the amount of $3,930.60:

Filing Fee/Service	$106.80
Deposition	$248.80
Dr. Manshadi Report (5/11/21)	$1,600.00
Dr. Tyler Report (excluding examination)	$1,975.00

The City shall pay its own costs.

ORDER

THEREFORE IT IS ORDERED:

All benefits shall be paid at the stipulated rate of six hundred and sixty-nine and 06/100 ($669.06).

Defendant shall pay the claimant one hundred seventy-five (175) weeks of permanent partial disability benefits per week commencing May 17, 2021.

Defendant shall pay accrued weekly benefits in a lump sum.

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

Defendant shall be given credit for the weeks previously paid.

Defendant shall pay past medical expenses incurred after June 8, 2019, as set forth in Claimant's Exhibit 6, including transportation expenses for all conditions which have been found to be causally connected to the work injury in a manner consistent with this decision.

Defendant shall authorize treatment for claimant's groin condition with Dr. Inamdar.

Defendant shall authorize treatment for claimant's mental health condition with Dr. O'Connor.

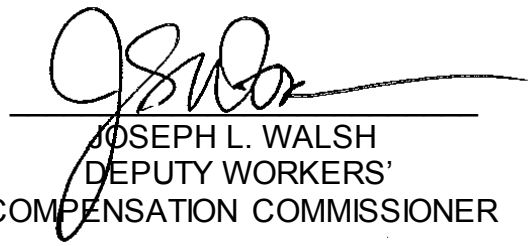
Claimant shall be allowed to direct his own medical treatment with regard to his other conditions which have been found to be causally connected to his work injury, including his neck and his right shoulder.

Defendant shall reimburse claimant for his independent medical examination costs as set forth in Claimant's Exhibit 6, pages 168-169, in the amount of two thousand and 00/100 dollars ($2,000.00).

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

Costs are taxed to defendant as set forth in Claimant's Exhibit 5, in the amount of three thousand nine hundred thirty and 60/100 dollars ($3,930.60).

Signed and filed this 28th day of March, 2022.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Gary Nelson (via WCES)

Bruce Gettman (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.