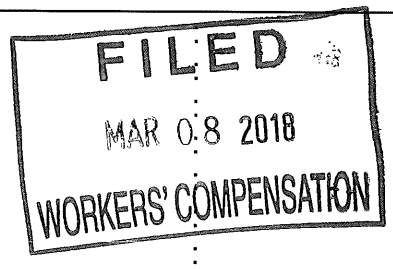
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



DENNIS MILLER, JR.,	
Claimant,	
vs.	File No. 5057520
CRST INTERNATIONAL, INC.,	ARBITRATION
Employer,	DECISION
and	
AIG INSURANCE COMPANY,	
Insurance Carrier, Defendants.	Headnotes: 1108.50, 1402.20, 1402.40, 1803, 2501, 2907, 3001

STATEMENT OF THE CASE

Dennis Miller, Jr., claimant, filed a petition in arbitration seeking workers' compensation benefits from CRST International, Inc., employer and AIG Insurance Company, insurance carrier, as defendants. Hearing was held on November 7, 2017 in Des Moines, Iowa.

Claimant, Dennis Miller, Jr. was the only witness to testify live at trial. The evidentiary record also includes Joint Exhibits JE1-JE13, Claimant's Exhibits 1-6, and Defendants' Exhibits A-J.

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

The parties submitted post-hearing briefs on December 8, 2017.

ISSUES

The parties submitted the following issues for resolution:

1. Whether the stipulated injury is the cause of permanent disability? If so, the extent of industrial disability claimant sustained as a result of the March 29, 2014 work injury.

2. The appropriate commencement date for the permanent partial disability benefits.

3. Claimant's weekly workers' compensation rate.

4. Whether claimant is entitled to reimbursement for an IME?

5. Whether claimant is entitled to alternate medical care?

6. Assessment of costs.

FINDINGS OF FACT

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

Mr. Miller began working as an over-the-road truck driver for CRST International, Inc. (hereinafter "CRST") in October of 2013. He testified that at the time of the March 29, 2014 injury he was in the parked truck with his co-driver. Mr. Miller was climbing out of the top bunk of the sleeper cab when he lost his footing, slipped, and fell two to three feet, landing on the gear stick and then falling another two feet to the floor. He testified that he basically did the splits when he landed. The gear shift struck his right side between his leg and testicle. He felt immediate pain in his right, lower abdominal area, between his right leg and testicle. His co-driver offered to call an ambulance but Mr. Miller just wanted to lay there. (Testimony)

At the time of the injury, he was in Indiana. Mr. Miller called CRST and reported the injury, but declined treatment. Mr. Miller testified that he needed to work for CRST for six months in order to pay CRST for the schooling they had sent him to. At the time of the injury, he had worked for approximately four months. Mr. Miller really wanted to reach the six-month mark, thus he did not want to seek medical treatment immediately. (Testimony)

Mr. Miller first sought treatment six weeks after the injury. During the weeks immediately following the injury, Mr. Miller and his co-driver continued driving multiple loads from California to Colorado to Washington. He drove the truck regularly. (Testimony)

Mr. Miller requested treatment in May of 2014, while he and his co-driver were taking a load to California. CRST informed Mr. Miller that treatment would be provided once he reached California. Mr. Miller testified that by the time he requested treatment, he was in so much pain he was unable to drive. Rather than drive he asked his co-

driver to take over driving the rest of the trip to California. By the time they reached California, the defendants had arranged an appointment for the claimant. (Testimony)

On May 15, 2015, Mr. Miller saw Michael Chiang, M.D. at Concentra in California. The notes indicate that the patient complained about his groin which was injured on March 29, 2014. The pain was noted to be in the abdominal wall, right testicle, and right groin. The diagnoses included abdominal wall strain, right groin strain, and rule out right-sided abdominal hernia. The doctor noted that his findings and diagnosis were consistent with the account of the injury. The doctor restricted Mr. Miller from driving company vehicles, lifting, pushing, or pulling over five pounds. He recommended office work only. He also recommended a surgical consult as soon as possible. At hearing, Mr. Miller testified that Dr. Chiang told him that he had entirely too much blood in his urine, and that the fall onto the gearstick may have caused one of his kidney cysts to rupture and bleed. However, because this is not reflected anywhere in the medical notes, the undersigned does not find this testimony to be persuasive. (JE2, pp. 1-3)

Mr. Miller was seen two more times at Concentra on May 16 and May 19, 2014. On May 16, Mr. Miller felt his symptoms were worsening. He had increased pain in his right groin. Mr. Miller also felt like he had a blood clot. He had a history of a blood clot in his right leg 28 years ago. He was referred to San Antonio Hospital where a blood clot was ruled out. At the May 16, 2014 hospital visit, Mr. Miller reported a gradual onset of pain which began three months ago. Numerous tests were performed. Dwight Guan, M.D. found cysts in the patient's liver and kidney. The doctor explained the importance and risks of the cysts. He also informed Mr. Miller that this was genetic. (JE3) Mr. Miller returned to Concentra on May 19. Dr. Chiang's note states that the patient was headed to his home town in South Carolina for further treatment. (JE2, pp. 4-7)

On June 4, 2014, Mr. Miller saw Bruce Marshall, M.D. in South Carolina. He noted that a prior CT scan of the pelvis did not indicate the presence of a hernia. Mr. Miller reported painful urination. The doctor diagnosed urinary tract infection and prostatitis. Dr. Marshall's impression was no inguinal/femoral/ventral hernias found. He felt the etiology of the pain was likely musculoskeletal in nature. He recommended a physiatry consultation regarding physical therapy. He also recommended a urology consultation to rule out urinary retention secondary to radicular injury. (JE4)

On July 14, 2014, Mr. Miller was seen by Lee Arnett, M.D. at the Urology Center of Spartanburg. Dr. Arnett diagnosed Mr. Miller with abdominal pain, hematuria, and dysuria. He ordered a CT of the abdomen and pelvis, a cytology test, and a metabolic panel. (JE5, p. 3)

Mr. Miller followed up with Dr. Arnett on July 29, 2014. The CT confirmed some bilateral small renal cysts, with a fairly large cyst on the left side. The cytology test was negative. Dr. Arnett noted that the abdominal pain did not appear to be urologic in

nature. He ordered a cystoscopy to be performed in approximately one month. (JE 5, pp. 5-7

On August 20, 2014, Urologist, Karyn Eilber, M.D. issued a report based on a records review; this was done at the request of the defendants. The doctor's report states that a peer to peer telephone conference was held with Dr. Arnett and the case was discussed in detail. The report stated, "Dr. Arnett and I agreed that the patient does need a cystoscopy, but we also agreed that the cysts, dysuria and hematuria are not industrially related." (JE7, p. 1) The report goes on to state that the described mechanism of injury would not result in bilateral cysts in the liver and kidneys. Rather, given the bilateral presentation, those types of cysts are genetic. The doctor noted that this pre-existing condition can pre-dispose a patient to abdominal hernias; however, the records for this patient did not establish the presence of a hernia. The doctor opined that the patient's abdominal wall strain was the result of the March 29, 2014 injury and had reportedly resolved. He no longer complained of abdominal pain; his current pain was in the testicle and radiated into the right upper medial thigh. (JE7)

On September 12, 2014, MRIs of Mr. Miller's right hip and pelvis were performed. (JE8, p. 1) In the fall of 2014, Mr. Miller saw Matthew Close, D.O. for an evaluation. The doctor reviewed the recent imaging and noted it was grossly unremarkable and there was no mention of hernia. However, he was concerned that Mr. Miller might have a sports hernia. He referred him to Alfredo M. Carbonell II, D.O. for a surgical opinion. (JE9)

Dr. Carbonell saw Mr. Miller on November 19, 2014 for right groin pain. He ordered CT imaging, which showed an enlarged prostate and a small protrusion of the small bowel directed toward the right inguinal canal. Dr. Carbonell reviewed the results and assessed Mr. Miller with an inguinal unilateral hernia. He recommended surgical repair. (JE9) Dr. Carbonell performed a laparoscopic repair of right inguinal hernia, non-incarcerated on January 5, 2015. (JE9)

Mr. Miller saw Dr. Carbonell five weeks post-op on March 4, 2015. He reported that two weeks after surgery his pain was fine, but now he was in a lot of discomfort. He fell off of a porch because he had a sudden pain in his right groin. His pain was the same as it was prior to the surgery. Mr. Miller saw Dr. Carbonell on April 22, 2015. Mr. Miller rated his pain as five out of ten. He was also dealing with some bowel irregularity, which made his testicular pain worse. He told the doctor that he had resumed all activities, including some weight lifting. He was ready to return to work as a truck driver. Dr. Carbonell released Mr. Miller to full duty. Dr. Carbonell placed Mr. Miller at MMI as of April 22, 2015. He felt that Mr. Miller did not sustain any permanent partial disability. The doctor recommended he see Dr. Lawrence Hill for an assessment of enlarged prostate and need for prostate cancer screening. Mr. Miller was diagnosed with an enlarged prostate in 2005, but never went back for follow-up and never had a colonoscopy. (JE9)

In January of 2016, Mr. Miller returned to Dr. Carbonell for his one-year post-operative appointment. He reported some residual right groin pain after his fall. Mr. Miller reported that the seatbelt hurt him too much to wear. Overall, he was doing well and was able to perform activities without limitation. He noted that his bladder function was adversely affected by his enlarged prostate but he had never been seen by a urologist for his prostate. (JE9)

On April 19, 2016, Mr. Miller underwent a cytology test. The results were negative for malignant cells. (JE5, p. 8)

On May 9, 2016 he underwent a CT of his abdomen and pelvis. The results showed simple-appearing cysts within the liver and kidneys, probable hemangioma again noted in the right lobe of the liver. The results also showed enlarged prostate with a TURP defect. There was also evidence of shotgun pellets in the anterior abdominal cavity of the right lower quadrant. In 2011, Mr. Miller confirmed that he had bullets, BBs, or pellets in his body. (JE5, p. 9; JE1, p. 1)

On May 11, 2016, Cliff Williams, M.D. saw Mr. Miller for symptoms of enlarged prostate. He reported blood in his urine. The doctor recommended a bladder biopsy. He provided Mr. Miller with a note to be off of work. (JE5)

Mr. Miller returned to Dr. Carbonell in May with testicular discomfort, groin discomfort, and ejaculatory pain. A cystoscopy was ordered. (JE9)

On July 7, 2016, Dr. Williams performed a cystoscopy. (JE6) Dr. Williams noted that the etiology of the hematuria was prostatic and not related to the work injury.

On July 20, 2016, defendants sent a letter to claimant advising that defendants would no longer authorize future medical care. This was based on the records from Dr. Williams and Dr. Henderson, which indicate the source of the ongoing complaints was secondary to prostate problems, not the work injury. (Cl. Ex. 4, p. 1)

On November 7, 2016, Mr. Miller was seen by Michael Henderson, M.D. at Orthopaedic Associates for right hip pain. The doctor ordered an MRI. Mr. Miller returned to Dr. Henderson after the MRI. The doctor told Mr. Miller that the MRI showed absolutely no pathology to explain his current symptoms. The doctor released him to full duty. (JE10)

In July of 2017, Mr. Miller had an independent medical examination (IME) with Dwight Jacobus, D.O.; this was performed at the request of his attorney. The doctor's impression included: hernia boarders of the abdomen, testicular pain, back pain, and lumbosacral myositis. The doctor opined that the ongoing pain and discomfort was secondary to the work injury. The doctor then addressed the issue of permanent impairment:

> I utilized *The Guides and Evaluation of Permanent Impairment, Fifth Edition*, in regard to his post-traumatic, post-protrusion, visible and

> palpatory pain of his abdomen, this would give him a 20% disability utilizing Table 6-9, page 136. The patient also has penile dysfunction and pain and probable periprostatic hematoma, penile pain, and poor urinary flow. This would lead to a 15% impairment utilizing Table 17-5, page 456. He shows objective L5 radiculopathy with some sensory loss and muscle stress. This would lead to a 13% disability level. I then utilized Combined Values Chart, page 604 of *The Guides and Evaluation of Permanent Impairment, Fifth Edition*, this would then transform to a 44% whole person impairment in regard to all of these functional abnormalities that he has. I utilized the fact that he had a 5% depression rating.

(JE12, p. 12)

With regard to the doctor's assignment of impairment for Mr. Miller's penile conditions, the undersigned notes there appears to be several typographical errors in the doctor's report. The doctor states that he utilized Table 17-5 on page 456. However, Table 17-5 is entitled "Lower Limb Impairment Due To Gait Derangement" and is on page 529 of The Guides. Page 456 of The Guides addresses impairment of the thumb. It appears that perhaps the doctor assigned impairment based on Table 7-5 which is on page 156 of The Guides. Table 7-5 is entitled, "Criteria for Rating Permanent Impairment Due to Penile Disease". In addition to the typographical errors, the IME report failed to provide sufficient rationale for the doctor's opinions. Also, the topic of restrictions is noticeably absent from the report of Dr. Jacobus. I find that the IME report carries little to no weight.

At the request of the defendants, Mr. Miller underwent an IME on September 21, 2017 with Daniel C. Miller, D.O. According to Dr. Miller, the diagnoses for injuries sustained by Mr. Miller as a result of the March 29, 2014 work injury were right inguinal hernia and abdominal muscle wall strain. He placed Mr. Miller at MMI for those diagnoses as of April 22, 2015. This is the date Dr. Carbonell placed him at MMI and released him to full duty. Pursuant to Table 6-9 of The Guides, the doctor assigned 6 percent whole person impairment due to residual pain from the hernia. He opined that the work injury did not cause the need for any permanent work restrictions nor any future treatment. Dr. Miller opined that the diagnoses of hematuria and dysuria are not causally related to the work injury. He also stated that urological workup would show that he has benign prostatic hypertrophy and renal cysts, which are known to cause microscopic hematuria. He did not believe that Mr. Miller's subjective hip pain and questionable right lower extremity weakness or back pain were related to the work injury. Additionally, he also disagreed with the diagnosis of depression. Dr. Miller provided his rationale for his opinions in his report. (JE13)

At hearing, Mr. Miller testified that he continues to have substantial pain in his waist and abdomen. The pain comes down from the right side of his belly button and into his groin area and right testicle, and shoots into his waist and down into his right knee. His pain is worse with climbing, extended sitting, and any pressure around his waist. Mr. Miller said that his daily pain is at a level 7 or 8 and can go as high as 10.

Because of his pain, Mr. Miller does not think he could work full-time as an over-the-road truck driver. He estimated that as a full-time over-the-road truck driver he could earn between $70,000.00 to 100,000.00 annually. (Testimony)

From May 16, 2014 through April 22, 2015, Mr. Miller was receiving treatment and was off work. Approximately six months after Mr. Miller was released from treatment he returned to full-duty work at CRST. Mr. Miller was terminated from CRST in September 2015 when he tested positive for cocaine on a drug screen. According to CRST, prior to the urinalysis, Mr. Miller displayed erratic behavior and abandoned his co-driver and truck in Colorado. Mr. Miller testified that his co-driver drank a lot. Mr. Miller called 9-1-1 and his co-driver took off with the truck and left Mr. Miller on the side of the road in Colorado. Once Mr. Miller returned to Iowa he took a urinalysis, which was negative. After he returned to South Carolina he was at home on personal time when he received a call from the employer advising him he needed to take a drug test or be terminated. It was this urinalysis that came back positive for cocaine. Mr. Miller denies using cocaine. (Testimony)

Mr. Miller has alleged injury to numerous body parts as a result of the March 29, 2014 work injury. I find that claimant has demonstrated by a preponderance of the evidence that he sustained an abdominal muscle strain and right inguinal hernia as a result of the March 29, 2014 work injury. This finding is supported by the detailed and well-reasoned report issued by Dr. Miller. I find that claimant has failed to carry his burden of proof to show that any of the other alleged conditions are related to the work injury. There is simply a lack of persuasive medical expert opinions to support claimant's contentions.

With regard to the issue of permanent disability, Dr. Carbonell opined that Mr. Miller did not sustain any permanent disability as a result of the work injury. He attributes Mr. Millers' residual symptoms to the non-industrial prostate condition. (JE9, pp. 18-19) Dr. Miller was hired by the defendants to evaluate Mr. Miller's impairment. Dr. Miller provided a well-reasoned, detailed report and assigned 6 percent functional impairment to the body as a whole. I find Dr. Miller's opinion to be the most persuasive in this case. Thus, I conclude that Mr. Miller sustained 6 percent functional impairment to his body as a whole due to the work injury. I also find Dr. Miller's opinions with regard to restrictions to carry the greatest weight. Thus, I conclude that Mr. Miller does not have any permanent restrictions as a result of the work injury. I find that Mr. Miller sustained permanent partial disability to his body as a whole due to the work injury.

We now turn to the issue of industrial disability. Two days after Mr. Miller's employment with CRST ended, he applied for a driving job with Barr-Nunn trucking company; he was hired. He underwent a pre-hiring drug screen and no drugs were present in his system at that time. Mr. Miller was employed with Barr-Nunn for approximately seven months. He testified that he left his job due to the physical demands. According to the employment records from Barr-Nunn, Mr. Miller had two accidents at work and was terminated. (Ex. D, p. 5) I find the employment records generated by Barr-Nunn to be more persuasive than claimant's testimony.

Within a month of the end of his employment with Barr-Nunn, Mr. Miller was hired by AMW Trucking Company. He worked there from approximately May through September of 2017. Mr. Miller testified that he quit this job because he was promised local driving routes, but over time was being sent farther and farther out. At the time of the November 7, 2017 arbitration hearing Mr. Miller was unemployed. He was continuing to apply for truck driving positions. (Testimony)

Mr. Miller has demonstrated that he is capable of driving a truck. After he was released from treatment by Dr. Carbonell, Mr. Miller worked for CRST for approximately six months. Next, he worked for Barr-Nunn trucking for approximately seven months before he was terminated due to accidents. He then obtained another job as a truck driver with AMW trucking. I found that claimant does not have any restrictions placed on his activities as a result of the work injury. However, he does continue to have some residual pain from the hernia. (JE 13, p. 16)

At the time of hearing Mr. Miller was 55 years of age. He attended high school through the eleventh grade and then obtained his GED. Subsequently, he attended college in pursuit of a degree in psychology. However, once Mr. Miller had children he left college for financial reasons. His work history includes working in communications in the Army where he installed, trouble shot, and worked on radio equipment. Mr. Miller testified that this training is obsolete due to technological advancements. He has also worked building fiberglass tanks, worked for South Carolina's state highway department, performed carpentry work, was a lead foreman for a bridge contractor, was a lumper for a tire manufacturer, and he has had several truck driving jobs.

Considering Mr. Miller's age, educational background, employment history, ability to retrain, lack of motivation to obtain a job, length of healing period, permanent impairment, and permanent restrictions, and the other industrial disability factors set forth by the Iowa Supreme Court, I find that he has sustained a 10 percent loss of future earning capacity as a result of his work injury with CRST.

Claimant contends that any permanency benefits should commence on July 20, 2016. This is the date that defendants denied further medical treatment. I do not find claimant's argument to be persuasive because it is not supported by the Iowa Code. Defendants contend permanency benefits should commence on April 23, 2015. Defendants' date is based on Dr. Carbonell placing Mr. Miller at MMI on April 22, 2015. At that time, he also returned claimant to full-duty work activities without restrictions. (JE9) Mr. Miller did return to work for CRST at that time and continued to work full duty for about six months. (Testimony) I find that Mr. Miller's healing period ended on July 20, 2016 when Mr. Miller was placed at MMI. Therefore, I find that claimant's permanent partial disability benefits shall commence on April 23, 2015.

We now turn to the issue of claimant's weekly workers' compensation rate. Claimant contends the proper weekly rate is $300.09. (Ex. 5, pp. 1-3) Defendants contend the proper rate is $258.01. (Ex. F, p. 1) Both parties agree that the rate should

be calculated pursuant to Iowa Code section 85.36(6). The disagreement centers on which weeks should or should not be included in the calculation of the rate.

Claimant bases his calculation on a Sunday through Saturday pay period. Defendants base its calculation on a Saturday through Sunday period. Claimant argues that the only weeks that should be included in the calculation are those in which claimant earned a minimum of $200.00. Claimant feels this is reasonable because this amount is generally representative of his customary earnings. The undersigned does not find this argument to be persuasive. Claimant seems to want to have it both ways in the sense that he wants to exclude any week wherein he made less than $200.00, but include weeks where he makes greater than $200.00. For example, week one included in claimant's calculation shows he earned $654.77 that week. I find that claimant's payroll records and his testimony demonstrate that his earnings vary due to the nature of his job. His earnings were dependent on the number of loads and miles available each week. A claimant's wages can be both varied and representative. Furthermore, claimant's rate calculation admittedly contains errors. I find that the defendants' rate calculation fairly reflects claimant's customary earnings. Thus, I adopt the rate calculation as set forth in Defendants' Exhibit F. I find that claimant's average weekly wages at the time of the injury were $400.41. The parties stipulated that claimant was single and entitled to one exemption. Therefore, I conclude that claimant's weekly workers' compensation rate is $258.01.

Claimant was asserting an underpayment due to improper rate calculation by the defendants. However, because I did not find an improper rate calculation by the defendants this issue is rendered moot.

Claimant is seeking reimbursement under Iowa Code section 85.39 for the IME performed by Dr. Jacobus in the amount of $900.00. It appears the prerequisites of 85.39 were met. Defendants make no argument why the IME should not be paid. I find that defendants shall reimburse claimant for the IME in the amount of $900.00.

Claimant is asking for alternate medical care under Iowa Code section 85.27. However, it appears that the treatment he is seeking is for the conditions which were found to be not related to the work injury. Thus, claimant's request for alternate medical care is denied. However, defendants continue to be reasonable for all reasonable and necessary medical treatment related to the work injury. As noted above, I found that claimant's right inguinal hernia and abdominal muscle wall strain were caused by the work injury.

Finally, claimant is seeking an assessment of costs. I find that claimant was generally successful in his claim. Thus, I exercise my discretion and find an assessment of costs against the defendants is appropriate. I find that it is appropriate to assess the costs of the $100.00 filing fee and the deposition transcript of the claimant in the amount of $212.20. 876 IAC 4.33 (1) & (7). However, I find it is not appropriate to assess costs for medical record retrieval; this is not an allowable cost under rule 4.33. Thus, defendants are assessed costs in the amount of $312.20.

CONCLUSIONS OF LAW

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

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Based on the above findings of fact, I conclude that claimant did sustain a compensable injury on March 29, 2014, which resulted in right inguinal hernia and

abdominal muscle wall strain. As a result of that injury, I further concluded that he sustained permanent disability to his body as a whole.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Based on the above findings of fact, I conclude that claimant sustained ten percent industrial disability as a result of the work injury. As such, he is entitled to 50 weeks of permanent partial disability commencing on April 23, 2015.

The parties could not agree on the appropriate rate in this case. Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Any week that does not fairly reflect the employee's customary earnings is excluded, however. Section 85.36(6).

Based on the above findings of fact, I concluded that defendants had properly calculated the rate. Thus, as noted above, defendants' rate calculation was adopted.

Claimant is seeking reimbursement for an IME. 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.

I conclude that the prerequisites of Iowa Code section 85.39 were met. Thus, defendants shall reimburse claimant for the IME in the amount stated above.

Claimant is also seeking medical treatment under Iowa Code section 85.27. The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Defendants are only responsible for the reasonable and necessary medical treatment for the work-related conditions. Based on the above findings of fact, I concluded that the only conditions related to the work injury were the right inguinal hernia and the abdominal muscle wall strain. Thus, claimant's request for alternate medical care for the remaining conditions is denied.

Costs are to be assessed at the discretion of the deputy hearing the case. 876 IAC 4.33. I exercised my discretion and assessed costs as stated above.

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the rate of two hundred fifty-eight and 01/100 dollars ($258.01).

Defendants shall pay fifty (50) weeks of permanent partial disability benefits commencing on April 23, 2015.

All past due weekly benefits shall be paid in lump sum with applicable interest pursuant to Iowa Code section 85.30.

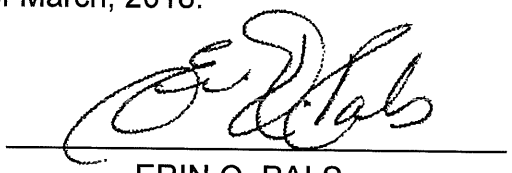
Defendants shall be entitled to credit for all weekly benefits paid to date.

Defendants shall reimburse claimant for the IME in the amount of nine hundred and no/100 dollars ($900.00).

Defendants shall reimburse claimant's costs in the amount of three hundred twelve and 20/100 dollars ($312.20).

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

Signed and filed this 8th day of March, 2018.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Nicholas L. Shaull
Attorney at Law
2423 Ingersoll Ave.
Des Moines, IA 50312
Nick.Shaull@sbsattorneys.com

Charles A. Blades
Attorney at Law
PO Box 36
Cedar Rapids, IA 52406
cblades@scheldruplaw.com

EQP/sam

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.