BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| TYE MEDHAUG,<br><br>Claimant,<br><br>vs.<br><br>BURKE CORPORATION,<br><br>Self-Insured Employer,<br><br>Defendant. | : | File No. 21013184.01<br><br>ARBITRATION DECISION<br><br>Head Note Nos.: 1100, 1108, 1402.30, 1402.50, 1403.30, 2401, 2501, 2701, 2803 |

## STATEMENT OF THE CASE

Claimant Tye Medhaug filed a petition in arbitration seeking worker's compensation benefits against Burke Corporation, self-insured employer, for an alleged work injury date of January 17, 2021. The arbitration hearing began before the undersigned on June 2, 2022. (See Claimant's Exhibit 9, pg. 63; Transcript Volume 1, page 1). Pursuant to an order of the Iowa Workers' Compensation Commissioner, this case took place live video hearing via Zoom, with all parties and the court reporter appearing remotely. One of defendant's witnesses, Robert Foglesong, testified out of order due to his availability. (Cl. Ex. 9, p. 64; Tr. Vol. I, pp. 4-5) After Mr. Foglesong testified, claimant orally moved to amend the date of injury to conform to proof. (Cl. Ex. 9, p. 70; Tr. Vol. I, pp. 27-29) Counsel provided argument, and over defendant's objections, the motion to amend was granted to conform to the proof in the record. (Cl. Ex. 9, pp. 70-72; Tr. Vol. I, pp. 29-37) However, the amendment substantially changed the issues, as defendant had alleged an affirmative defense of lack of timely notice pursuant to Iowa Code section 85.23. The changed date of injury affected that defense. As such, the hearing was recessed in order to allow defendants time to investigate the case and present a full defense, given the amended date of injury. (Cl. Ex. 9, pp. 72-73; Tr. Vol. I, pp. 37-39).

The hearing resumed on October 11, 2022, on which date it was completed.

The parties filed a hearing report. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 9, Claimant's Exhibits 1 through 12, and Defendants' Exhibits A through I.

Claimant testified on his own behalf. Dickie Medhaug also testified on behalf of claimant. Robert Foglesong and Robert Gray testified on behalf of the employer. The evidentiary record was left open at the conclusion of the evidentiary hearing to allow for claimant's exhibit 12, which was submitted shortly thereafter. The parties submitted post-hearing briefs on November 18, 2022, and the case was considered fully submitted on that date.

## ISSUES[1]

1. Whether claimant sustained an injury arising out of and in the course of employment on or around January 17, 2021;
2. Whether claimant provided defendant employer with proper notice of his claim under Iowa Code section 85.23;
3. Payment of medical expenses;
4. Alternate medical care; and
5. Taxation of costs.

## FINDINGS OF FACT

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

At the time of hearing, claimant was 37 years old. (Hearing Transcript, Volume II, p. 71) Claimant lives with his wife and their children in Marshalltown, Iowa. Claimant attended Marshalltown High School but did not graduate. He later earned his GED. (Tr., p. 72) He worked at Wendy's fast-food restaurant during high school, and then worked at Lennox for a short time. (Tr., pp. 72-73) On November 27, 2006, claimant began working for JBS. (Defendant's Exhibit C, p. 19) Claimant sustained a right shoulder injury on February 20, 2008, while working at JBS, which ultimately resulted in surgery that took place in 2010. (Def. Ex. C, pp. 19-21) It appears he returned to work at JBS following surgery for a period of time, but it is unclear when he left his employment at JBS. (Def. Ex. C, p. 22)

In 2011, claimant went to work with his father. The two started a tree service business called Tye's Touch, which was later renamed Dickie's Tree Service. (Tr., pp. 60; 66-67) There are some inconsistencies in the record as to how long claimant worked with his father. Dickie Medhaug, claimant's father, testified that claimant left the business in 2017 or 2018 due to a family dispute. (Tr., pp. 60-61) Claimant testified that it was 2017 when he left, which is consistent with his answers to interrogatories. (Tr., p. 73; Def. Ex. F, p. 27) However, on job applications he indicated he worked there until November of 2019. (Def. Ex. A, pp. 2-3; Def. Ex. B, p. 14) He testified at hearing that he must have written the year down incorrectly on the job applications. (Tr., pp. 85-86)

[1] Claimant included a claim for penalty benefits on the hearing report. However, in claimant's brief, that claim was withdrawn as claimant has not yet had surgery and as such, no healing period benefits have yet to accrue should the claim be found compensable.

Claimant testified that he next went to work for Iowa Premium in Tama and was then incarcerated for a short period of time. (Tr., p. 73) He then went to work at Lennox. His application for employment at Lennox is dated November 12, 2019. (Def. Ex. B, p. 15) His employment with Lennox was terminated on August 26, 2020, due to failing to show up for work, as well as exceeding the allotted number of absences during his employment. (Def. Ex. B, pp. 16-18)

Claimant began working at Burke Corporation, defendant employer, on August 24, 2020. (Def. Ex. A, p. 1) He was hired as a laborer. Robert Foglesong was his supervisor and testified that claimant worked in the receiving department unloading trailers. (Cl. Ex. 9, p. 64; Tr. Vol. I, p. 5) Mr. Foglesong testified that claimant's job was to unload incoming trailers, including the spice trailer. (Cl. Ex. 9, p. 65; Tr. Vol. I, p. 6) He stated that most of the spice came in 50-pound bags, but some are lighter.

Claimant testified that he was injured at work while he was restacking or reorganizing bags of spices on a pallet. (Tr., pp. 75-76) He was in the process of transferring one pallet of spice to another because it needed to be restacked and secured as some of the product had fallen over on the first pallet. (Tr., p. 76) He reached down for a bag to stack on the new, organized stack, and as he was placing it on the new stack, he felt his left shoulder pop. (Tr., p. 75)

The events following this alleged incident, as well as the date on which it occurred, are in dispute. Claimant initially plead December 1, 2020, as the date of injury. (See Original Notice and Petition, filed April 6, 2021) At claimant's deposition, taken April 7, 2022, claimant's attorney advised that the actual date of injury was uncertain, and it may have been later than December of 2020. (Def. Ex. I, pp. 44-45; Depo. Tr., pp. 25-26) Claimant then testified that he thought the injury occurred in either December of 2020 or January of 2021. (Def. Ex. I, p. 45; Depo. Tr., p. 26) Then, as noted above, during the first part of the hearing, claimant orally moved to amend the date of injury to conform to proof. (Cl. Ex. 9, p. 70; Tr. Vol. I, pp. 27-29) After argument from both parties, the undersigned granted the motion and paragraph three of the petition was amended to allege the date of injury was "on or about January 17, 2021." (See Ruling on Claimant's Oral Motion to Amend Petition, filed June 2, 2022)

The date of injury is significant in this case as defendant has alleged a notice defense. Defendant argues that claimant did not report a work injury until March 17, 2021. If the date of injury was actually December 1, 2020, failing to report the injury until March 17, 2021 would violate the notice provisions of Iowa Code section 85.23. However, if the date of injury is on or around January 17, 2021, then claimant reported the injury timely. In other words, it is not disputed that on March 17, 2021, defendant had notice of claimant's alleged injury. That means that if the injury occurred any time prior to December 17, 2020, claimant did not provide timely notice of the claim under section 85.23.

Claimant has testified repeatedly that he reported the injury immediately after it occurred. At both his deposition and at hearing, claimant testified that after he felt the

pop in his shoulder, he went to his supervisor, Bob Foglesong, and told him what happened. (Tr., p. 76; Def. Ex. I, p. 45; Depo. Tr., p. 26) According to claimant, Mr. Foglesong told him to go to see the company nurse, but she was not there. When claimant returned and advised Mr. Foglesong that the nurse was out, he testified that Mr. Foglesong said he would send the nurse an email. (Tr., p. 76; Def. Ex. I, p. 45; Depo. Tr., pp. 26-27) The next day, claimant asked Mr. Foglesong about it, and was told that the nurse said to ice his shoulder and it would be okay. (Tr., pp. 76-77; Def. Ex. I, p. 45; Depo. Tr., p. 27) Claimant testified that a month or two later, his shoulder was getting worse and he was having trouble sleeping, so he went back to the nurse, which is when he learned that there were no records of his initial report of the injury. (Tr., p. 77; Def. Ex. I, p. 45; Depo. Tr., pp. 27-28) As such, the official report of injury is dated March 17, 2021. (Def. Ex. A, p. 6)

Claimant testified that after he saw the nurse, his supervisor, Mr. Foglesong, was called, along with Robert Gray. (Def. Ex. I, p. 45; Depo. Tr., pp. 28-29) He stated that Mr. Foglesong admitted he had lost the initial paperwork regarding the injury, and Mr. Gray “jumped him pretty hard” about it. (Def. Ex. I, pp. 45-46; Depo. Tr., pp. 29-30; See also Tr., pp. 88-89) Claimant said coworkers named Sheila and Brenda were there. Claimant said he was then put on a light duty job and was to see the in-house physical therapist for initial treatment. (Def. Ex. I, p. 46; Depo. Tr., p. 30)

Robert Foglesong testified at the first part of the hearing on June 2, 2022. (Cl. Ex. 9) He was the production supervisor between December 2020 and March 2021, and claimant worked directly under him during those times. (Cl. Ex. 9, pp. 64-65; Tr. Vol. I, pp. 5-6) He testified about the protocol for when an employee reports an injury. (Cl. Ex. 9, p. 65; Tr., Vol. I, pp. 6-7) He stated that the employee would be asked to complete an injury report with the supervisor, and there is a form attached where the employee is asked to rate their pain each day for the next seven days on a scale of zero to ten. The employee would also be sent to the in-house nurse in order to determine whether treatment was needed. (Cl. Ex. 9, p. 65; Tr., Vol. I, p. 7) Mr. Foglesong denied that claimant ever reported an injury to him in December of 2020 or January of 2021. (Cl. Ex. 9, p. 65; Tr., Vol. I, pp. 7-8) He stated that if claimant had gone to the nurse and found she was not there, he would have had claimant return the next day, and would have still completed an injury report, as that is the procedure. (Cl. Ex. 9, p. 65; Tr., Vol. I, p. 8) He denied sending any emails to the nurse regarding claimant and denied telling claimant the nurse said to ice his shoulder. He further denied being disciplined or otherwise engaging in a conversation with Mr. Gray regarding a failure to report claimant’s alleged injury. (Cl. Ex. 9, p. 65; Tr., Vol. I, pp. 8-9)

Mr. Foglesong agreed, however, that claimant did report a shoulder injury to him, and he believed it was sometime in March, 2021. (Cl. Ex. 9, pp. 66-67; Tr., Vol. I, pp. 13-14) He could not recall all of the details but thought claimant reported the injury occurred while lifting a bag of spice. (Cl. Ex. 9, p. 67; Tr., Vol. I, p. 15) He agreed that he and claimant completed the injury report on March 17, 2021, because it was his practice to complete the report as soon as he is made aware of an injury. (Cl. Ex. 9, p. 67; Tr., Vol. I, pp. 15-16) He further testified that once the injury was reported, claimant

would have been seen by the company nurse and, if needed, the on-site physical therapist. (Cl. Ex. 9, p. 69; Tr., Vol. I, p. 25) He had no knowledge of claimant receiving any medical care following the in-house treatment. (Cl. Ex. 9, p. 70; Tr., Vol. I, p. 26) Mr. Foglesong is no longer an employee of Burke, and left employment there at the end of March, 2022. (Cl. Ex. 9, p. 66; Tr., Vol. I, p. 12)

Robert Gray also testified, via deposition on September 28, 2022, and at hearing on October 11, 2022. (Cl. Ex. 5, p. 35; Tr., pp. 91-97) Mr. Gray is the lead supervisor of operations at Burke and has worked there for 35 years. (Cl. Ex. 5, p. 36; Depo. Tr., pp. 6-7) He testified at his deposition that he first came to learn about claimant's work injury during one of his daily walk-throughs of the plant. (Cl. Ex. 5, p. 36; Depo. Tr., p. 8) He noticed that claimant was not on the dock, and asked Mr. Foglesong where he was. That was when he was told claimant had an injury. Mr. Gray said he told Mr. Foglesong to be sure to get his paperwork done. About one week later, the company nurse and the safety manager asked Mr. Gray whether there was any light-duty work available for claimant, and he said yes. (Cl. Ex. 5, p. 37; Depo. Tr., pp. 11-12) He recalled the light duty work he provided for claimant was meat inspection. (Cl. Ex. 5, p. 38; Depo. Tr., p. 14) He also recalled that claimant's injury occurred when he was moving spice.

Mr. Gray denied, both at his deposition and at hearing, that he ever reprimanded Mr. Foglesong for failing to file an injury report. (Tr., pp. 91-92; Cl. Ex. 5, p. 39; Depo. Tr., p. 18) He also testified, at hearing, that the stacks of spice bags on pallets are 4.5 to 5 feet tall at most. (Tr., p. 92) Therefore, he did not believe claimant would have lifted a bag of spice as high as or over shoulder level. (Tr., pp. 92-93) He confirmed, however, that there are times when a pallet of spice bags will need to be restacked due to some of the boxes falling off the side. (Tr., pp. 95-96)

I find both Mr. Foglesong and Mr. Gray to be credible witnesses. There was nothing about either gentleman that gave me reason to doubt their veracity. However, I also find claimant to be a credible witness. He is not the best historian. However, his general description of how the work injury occurred has not waivered. The only inconsistencies in claimant's testimony occur when he is asked about dates. This is true regarding his reporting of the injury, and true regarding his work history. However, while he may have difficulty keeping timelines straight, the other details regarding his injury were clear and consistent. During hearing he engaged in direct eye contact, his rate of speech was appropriate, and he did not engage in any furtive movements. Overall, from my observation of claimant's demeanor at hearing, he appeared sincere. Poor historians can be credible witnesses. Overall, claimant is found to be credible.

There are additional records that support claimant's allegation that the injury occurred on or around January 17, 2021. There is no dispute that defendant employer had notice of the injury on March 17, 2021. On that date, claimant and his supervisor, Mr. Foglesong, completed an injury report. (Def. Ex. A, p. 6) The report notes that the left shoulder injury occurred when claimant was stacking bags of spice and felt his shoulder pop. Claimant reported his pain at a level 8 out of 10 on each day he worked for the next week. (Def. Ex. A, p. 7) On March 18, 2021, claimant saw Jason Horras,

DPT, who provides in-house physical therapy to Burke employees. (Cl. Ex. 9, p. 67; Tr. Vol. I, p. 16; Def. Ex. A, p. 11) His notes indicate that claimant reported left shoulder pain originally two months prior while lifting at work. (Def. Ex. A, p. 11) The pain then got better, but got worse again over the last few days. He reported he had not been lifting but had mainly been driving a forklift. He rated his pain at a level 8 or 9 out of 10, and said it was horrible at night. He indicated he does not do any other outside work and was not sure what caused the recent exacerbation. The note also indicates that claimant said he reported the incident and irritation two months prior, but there were no records found and claimant's supervisor did not recall any prior report. The record concludes with the sentence: "Possible other activities outside of work caused exacerbated situation." DPT Horras provided claimant with a sling, and advised he should rest his arm and avoid lifting. He told claimant to return the following Monday.

Claimant next saw DPT Horras on the following Monday, which was March 22, 2021. (Def. Ex. A, p. 10) He reported using the sling, but was "still miserable." He was unable to sleep and felt no better. He again denied "having or doing outside work." Moderate to severe palpable tenderness was noted on objective examination. DPT Horras noted that claimant had left shoulder pain "for many weeks," and that the exact cause was "unknown but may be outside of work activity." His report states that no reports of an incident were found, and that claimant was very adamant he wanted to seek help. The plan was to have the on-site nurse work with the safety manager to set up an evaluation with occupational health. In the meantime, claimant was to continue to use ice and the sling, work in the meat inspection department, and not use his left upper extremity.

There is another note dated March 22, 2021, from the in-house nurse at Burke. (Def. Ex. A, p. 9) The signature is illegible, but Robin Sly, who is a nurse once contracted to work at Burke, testified in her deposition that the nurse who saw claimant was Tiffany McSkimming. (Cl. Ex. 4, p. 27; Depo. Tr., p. 8) Nurse McSkimming asked claimant how the injury happened and reported that he stated he was "stacking spices two months ago and felt a pop. (Def. Ex. A, p. 9) He said he told Bob [Robert Foglesong] and was told that the nurse told him to use ice. I do not recall seeing him for this – and I know that Bob and I would both have any injured employee see one of us nurses and not just 'apply ice' and call it good." She then states that claimant agreed he had not seen the nurse after his initial report, but two weeks prior while driving a forklift he noted his shoulder was not getting any better. This is consistent with what claimant reported to DPT Horras. Nurse McSkimming then states that claimant "declines (sic) doing any sort of side work outside of Burke. I asked him flat out, with Jason [Horras] present. If he is, he just lied to us about it. His face is bright red, like sunburnt." [2] The note continues to state that claimant was not happy about his inability to sleep at night, and stated he was "worn out" emotionally and physically. He requested to see a doctor and said he "wants it fixed." Nurse McSkimming then noted that she thought he was "magnifying the pain," and x-rays would help confirm or eliminate whether something

[2] Claimant testified at hearing that he has a condition called discoid lupus, which can cause a rash on his face and make it look sunburnt. (Tr., pp. 78-79) Medical records confirm this diagnosis. (Jt. Ex. 1, p. 3)

was wrong. She then stated, “My guess is, is that he wants some stronger pain medication as well.” (Def. Ex. A, p. 9)

It appears Nurse McSkimming was out of the country and unavailable to testify live at hearing or via deposition. (See Cl. Ex. 7, p. 52; Depo Tr., p. 18) However, as noted above, Robin Sly testified via deposition taken on September 28, 2022. (Cl. Ex. 4) Ms. Sly is a registered nurse who worked for MedCore during the relevant time and was contracted through MedCore to provide nursing services at Burke. (Cl. Ex. 4, p. 27; Depo. Tr., p. 5) Nurse Sly testified that she did not directly deal with claimant, but the other nurse, Tiffany McSkimming, mainly handled his case. (Cl. Ex. 4, pp. 27-28; Depo. Tr., pp. 8-12) She did not personally observe any “drug seeking” behavior from claimant and did not know what Nurse McSkimming meant in her note regarding stronger pain medication. (Cl. Ex. 4, p. 28; Depo. Tr., pp. 9-10) She did recall that claimant was eventually sent to see an occupational health doctor. (Cl. Ex. 4, pp. 28-29; Depo. Tr., pp. 12-13) She also testified that she had heard somewhere that claimant had another business “on the side,” she thought perhaps tree trimming. (Cl. Ex. 4, p. 29; Depo. Tr., pp. 14-15) After reviewing Nurse McSkimming’s notes, Nurse Sly could not say with certainty what caused or contributed to his shoulder injury. (Cl. Ex. 4, pp. 29-30; Depo. Tr., pp. 15-19)

Claimant saw Sherman Jew, D.O., at Occupational Medicine Clinic on March 22, 2021. (Joint Exhibit 7, p. 48) His note indicates claimant reported that he started having left shoulder pain two months prior. He explained that he was restacking a pallet with bags of spices, reached down to grab a bag of spice, reached up and extended his arm to stack the bag and felt a pop. He described again telling his supervisor, his supervisor emailing the nurse, and later telling claimant to ice the shoulder. He stated that the pain had gotten worse in the past week and was now radiating to his back and he had numbness in his left thumb. (Jt. Ex. 7, p. 49) The on-site physical therapy he had done was not helping, nor were over-the-counter pain medications. On physical examination, Dr. Jew found pain with flexion and extension plus signs of impingement. He recommended using Bengay, a Lidocaine patch, ice, and daily shoulder exercises. (Jt. Ex. 7, p. 50)

Claimant returned to see Dr. Jew on March 31, 2021. (Jt. Ex. 7, p. 51) At that time, his pain was unchanged, and he reported numbness in the left thumb into the wrist, as well as pain radiating up his neck on the left side. (Jt. Ex. 7, p. 52) He reported that he was “taking some time off” from work, in the hope the pain would improve. Physical examination of the shoulder was essentially the same, an examination of the neck was noted to be “abnormal,” with palpable pain in the lower, mid c-spine and left SCM (sternocleidomastoid muscle), and pain and stiffness in SCMs with rotation. X-rays showed nothing acute. Dr. Jew noted that the cause of claimant’s problem appeared to be, in part, related to work activities. He recommended claimant start physical therapy, and provided prescription medications, including amitriptyline and Medrol. (Jt. Ex. 7, p. 53)

Claimant returned to Dr. Jew on April 12, 2021. (Jt. Ex. 7, p. 57) He reported he had been terminated from employment and was not working. Employment records show he was terminated on April 6, 2021, due to unexcused absences. (Def. Ex. A, p. 12) Claimant reported that he still had no improvement but had been attending physical therapy twice per week. (Jt. Ex. 7, p. 58) Physical examination was largely unchanged. Dr. Jew recommended claimant avoid repetitive use of his left arm and avoid lifting above chest level and ordered an MRI and continued physical therapy. (Jt. Ex. 7, pp. 59-60) He was to return in ten days for follow-up.

Claimant did not receive the MRI that Dr. Jew recommended. He testified that his physical therapy was also cancelled at that point. (Tr., pp. 79-80) He does not know who cancelled it, but it occurred after his termination from employment. He was not allowed to return to Dr. Jew, and it appears his claim was then denied. (See also Def. Ex. I, pp. 46-47; Depo. Tr., pp. 33-34) While there is no formal letter denying the claim in evidence, claimant filed his petition in this matter on April 6, 2021, and defendant filed an answer denying the claim on April 15, 2021.

I find that defendant employer had actual notice of the alleged work injury no later than March 17, 2021. All of the medical evidence in the file supports that the injury occurred on or around January 17, 2021 – about two months prior to the formal report of injury. There is nothing to indicate the injury occurred earlier than that, other than the original petition, which has since been amended to conform to the evidence. There is no requirement in the statute that the claimant must provide a date certain when giving notice. The statute merely requires that the employer have notice of the occurrence of an injury. As such, I find that defendant had timely notice of claimant's injury claim under Iowa Code section 85.23.

Defendant also argues that claimant cannot meet his burden to prove that an injury actually occurred, due to his inconsistent testimony regarding how it occurred, and the lack of medical causation evidence. With respect to how the injury occurred, claimant has consistently stated that the injury occurred while he was transferring 50-pound bags of spice from one pallet to another. This is the information he told his supervisor when he reported the injury, the in-house nurse and physical therapist at Burke, the outside medical providers he saw, and was his testimony at both his deposition and at hearing. The idea that he may have been injured while working at a side job is not supported by the evidence. Both claimant and his father testified that claimant was not working for Dickie's Tree Service in 2020 or early 2021. (Tr., pp. 62, 82, 89-90) Claimant testified he did not have any outside employment, including roofing work or construction work, while he worked at Burke. (Tr., pp. 89-90)

Additionally, the witnesses who were deposed did not provide any actual proof that claimant was injured elsewhere. Sheila Tankersly works as a facilities technician at Burke. (Cl. Ex. 8, p. 59; Depo. Tr., p. 7) She was a trainer in the grind room when claimant worked there, and testified at her deposition that she had heard claimant was also doing roofing work and felt that was how he was injured. (Cl. Ex. 8, p. 60; Depo. Tr., p. 9) She testified that a coworker, Brenda Valladares, told her that claimant had

hurt himself roofing one weekend. (Cl. Ex. 8, p. 59; Depo. Tr., pp. 9-10) However, when Brenda Valladares was deposed, she denied telling Ms. Tankersly that he injured his shoulder doing roofing work. (Cl. Ex. 6, p. 45; Depo. Tr., p. 10) She later testified that claimant told her he was working construction but did not tell her he was injured at the other job. (Cl. Ex. 6, p. 45; Depo. Tr., p. 11) She then said she only knew he had pain in his shoulder, and she did not know where the injury occurred, at Burke or somewhere else. (Cl. Ex. 6, p. 45; Depo. Tr., p. 12) When questioned by defense counsel, she clarified that she told Ms. Tankersly that claimant had another job, but she did not know if it was roofing and thought it was construction. (Cl. Ex. 6, p. 46; Depo. Tr., p. 14) However, she denied saying he was injured at his other job, because she did not know where it happened. Overall, Ms. Valladares' testimony was confusing and did not appear to be reliable as she was adamant she did not know where or how claimant injured his shoulder. The fact that Ms. Tankersly's source of the information regarding the alleged side job was not reliable does not lend credence to the argument that claimant was injured someplace other than Burke.

James Stevens also testified via deposition. (Cl. Ex. 7) He works as the safety manager at Burke. (Cl. Ex. 7, p. 52; Depo. Tr., p. 19) He also testified that he heard from Ms. Tankersly that claimant had a roofing business at the same time he worked for Burke. (Cl. Ex. 7, p. 57; Depo. Tr., pp. 37-38) As noted above, the source of Ms. Tankersly's information was not reliable. Claimant denies having a roofing or other construction business and denies working anywhere else while he was employed at Burke.

With respect to the mechanism of injury, defendant argues that claimant's testimony that he was stacking 50-pound bags of spices and had to lift the bags at and above shoulder level was not credible. First, claimant's testimony at hearing was that he reached down to pick up a bag of spice and stack it on an organized stack and he felt his shoulder pop. (Tr., p. 75) This is consistent with his deposition testimony, in which he said he was stacking bags of spices, and lifted one and went to extend his arms out to stack it up on top of the pile on the pallet and felt something in his shoulder pop. (Def. Ex. I, p. 44; Depo. Tr., pp. 24-25) This testimony is also consistent with how he described the injury to Dr. Jew. (Jt. Ex. 7, p. 48) On cross-examination, he was asked if he ever described lifting above shoulder level when injured, and he responded, "eventually the stacks get that high, yes." (Tr., p. 83) He also noted that 50 pounds was just his estimate of the weight. (Tr., pp. 83-84)

Mr. Gray testified that the stacks of spices are generally 4.5 to 5 feet tall. (Tr., p. 92) He also testified that stacks of salt bags only reach waist-level. (Tr., p. 93) Mr. Foglesong testified that most of the bags of spice are 50 pounds, but some are lighter. (Cl. Ex. 9, p. 65; Tr. Vol. I, p. 6) According to medical records, claimant is 69 inches tall. (Jt. Ex. 7, p. 49) This means if a stack of spices were to reach 54 to 60 inches tall, in order to place a bag on top of the stack, claimant would have to reach up to about shoulder level. As such, defendant's argument is not convincing in this regard.

Looking at the medical evidence, after his claim was denied, claimant did not seek treatment on his own until he saw Brian Crites, M.D., on May 9, 2022. (Jt. Ex. 9, p. 63) At his deposition he testified that he did not know he could use his health insurance to see a doctor for his work injury, and he did not want to get into trouble. (Def. Ex. I, p. 47; Depo. Tr., pp. 34-35) Dr. Crites noted that claimant had injured his left shoulder about one year prior while working, when lifting a 50-pound bag of spice to shoulder height. (Jt. Ex. 9, p. 64) He felt a pop, and had experienced loss of motion, loss of strength, popping, and catching, as well as numbness and tingling into his left thumb. He reported previously completing two full months of physical therapy with minimal improvement. Dr. Crites' assessment was possible rotator cuff tear, and he ordered an MRI. (Jt. Ex. 9, p. 65)

The MRI took place on May 16, 2022. (Jt. Ex. 9, p. 66) Kraig Kirkpatrick, M.D., read the results, and his impression was mild AC joint osteoarthritis with 2 to 3 millimeter hypertrophic changes. He also found the underlying rotator cuff to be intact. Claimant returned to Dr. Crites the same day, and Dr. Crites reported that the MRI showed moderate tendinopathy of the supraspinatus with a central area of partial tear of approximately 80 percent of the tendon thickness. (Jt. Ex. 9, p. 69) He also found severe AC joint arthropathy. Dr. Crites discussed both surgical and nonsurgical treatment options with claimant, and claimant wanted to proceed with surgery. Dr. Crites recommended arthroscopy of the left shoulder with mini open cuff repair, subacromial decompression, and distal clavicle excision.

On May 18, 2022, Dr. Crites signed a letter, authored by claimant's attorney, in which he confirmed his opinion that claimant's left shoulder injury and need for treatment was related to the work injury. (Cl. Ex. 1, p. 1) The letter indicates that Dr. Crites was provided with Dr. Jew's medical records as well. Claimant returned to Dr. Crites on June 6, 2022. (Jt. Ex. 9, p. 70) The records of that date indicate that claimant had been scheduled for surgery, but his insurance denied the surgery and was requiring claimant to perform two different forms of 12 weeks of non-operative treatment. (Jt. Ex. 9, p. 71) Dr. Crites notes that claimant already completed approximately 2 months of physical therapy with Story Medical in Nevada. As such, he gave claimant a subacromial injection, and told him to follow up as needed. (Jt. Ex. 9, p. 72)

On June 2, 2022, defense counsel wrote to Dr. Crites, with additional questions. (Cl. Ex. 1, pp. 3-4) In that letter, defense counsel notes that claimant had surgery on his right shoulder in 2009, after which he complained of "severe pain" until 2018. (Cl. Ex. 1, p. 3) However, in July of 2018, the records indicate claimant had ongoing struggles with opiate use for the prior 8 years, which started after surgery, as well as methamphetamine use. (Cl. Ex. 1, p. 3; See also Jt. Ex. 2, pp. 7-30) Defense counsel also pointed out inconsistencies in the records regarding the exact date of injury. (Cl. Ex. 1, p. 3) Defense counsel then asked a series of questions, which Dr. Crites answered on July 22, 2022. (Cl. Ex. 1, pp. 5-6)

Dr. Crites' response indicated that it was possible that claimant's date of injury was anywhere between December 1, 2020 and March 17, 2021. (Cl. Ex. 1, p. 5) He

also stated that despite the inconsistencies in the date of injury, he still opined that the incident at work when he felt his shoulder pop while moving bags of spice was a direct and/or aggravating factor in his left shoulder injury. He further noted that it is not uncommon for patients to have "vague recollections of specific dates." Dr. Crites noted he was not aware that claimant had not worked since April of 2021, but stated that it is not unusual that his symptoms progressed with time regardless of activity. He did not believe there was any reason claimant would not be able to drive a car over the past year, and he again reiterated that claimant's current shoulder condition was related to his employment. (Cl. Ex. 1, p. 6) Finally, in response to the question of whether he still recommended surgery knowing claimant's history of methamphetamine and opioid abuse, Dr. Crites stated that a history of addiction is not an absolute contraindication for other medical treatment, and it would be unethical for him to withhold treatment because of that prior history. However, he noted that such a history is not entirely discounted, and postoperative pain management would be altered with things such as pain contracts and treatment with a certified pain specialist.

Claimant returned to Dr. Crites on August 3, 2022. (Jt. Ex. 9, p. 76) His condition had not changed, and Dr. Crites noted that physical therapy and cortisone injection had both failed. (Jt. Ex. 9, p. 78) He continued to recommend surgery, and claimant again wished to proceed. It appears surgery was scheduled for August 25, 2022. (Jt. Ex. 9, pp. 78-79) Claimant's attorney sent another letter to Dr. Crites on August 4, 2022, again asking him to confirm his opinion that the left shoulder injury was caused by claimant's work, and that the surgery was necessitated by the work injury. (Cl. Ex. 1, p. 8) Dr. Crites signed the letter on August 8, 2022, indicating his agreement.

On August 23, 2022, claimant had another MRI of the left shoulder. (Jt. Ex. 9, p. 87) It is unclear why the second MRI was ordered, but it was similar to the prior MRI on May 16, 2022. Dr. Kirkpatrick again read the results as showing no rotator cuff or labral pathology, and mild AC joint osteoarthritis with 2 to 3 millimeter hypertrophic changes. It is unclear why the second surgery was cancelled, but it appears to have something to do with claimant's insurance. (See Cl. Ex. 2, p. 13) As of the date of hearing, claimant had not had any surgery for his left shoulder condition. (Tr., p. 81)

Defendant solicited an opinion from Steven Aviles, M.D. (Def. Ex. D) Defendant's initial letter to Dr. Aviles is not in evidence, but his response, dated September 12, 2022, indicated he reviewed medical records from Burke, Dr. Jew, and Dr. Crites. [3] (Def. Ex. D, p. 23) Dr. Aviles noted that both MRI reports were read by Dr. Kirkpatrick, "esteemed musculoskeletal fellowship trained radiologist," and he read the MRIs as normal with the exception of mild arthritis at the acromioclavicular joint. In response to defendant's questions, Dr. Aviles opined that on his own review of both MRIs, he agreed with Dr. Kirkpatrick that he saw no evidence of any rotator cuff pathology on either MRI. (Def. Ex. D, pp. 23-24) Based on the results of both MRIs, he would not recommend surgery to claimant's left shoulder. (Def. Ex. D, p. 24) He further stated that he did not see any MRI findings that correlated to any "pop or acute lifting injury" in the

[3] Dr. Aviles letter states he reviewed records from "York Corporation," which appears to be a typographical error as the records were from Burke Corporation.

left shoulder. He saw no evidence of swelling, bleeding, or edema in the subacromial space, and no evidence of any fluid in the joint to suggest inflammation or bleeding. He saw no evidence of any soft tissue injury or any acute lifting injury. Dr. Aviles opined that the report of a "pop" and instant pain in the shoulder was not consistent with claimant's ability to continue to work with no complaints, visible signs of pain, or reduction in hours. He states it is traditionally "very difficult" to do a manual labor job with an acute shoulder injury. He stated that claimant's history of substance abuse caused him to worry about the credibility of his subjective complaints. Finally, with respect to "the inconsistent dates in reporting," he did not believe an injury occurred while claimant was working at Burke. That, combined with the two normal MRI studies, led him to "feel very comfortable indicating" there was not injury at Burke. He opined the date of maximum medical improvement (MMI) would be claimant's last visit with Dr. Jew, on April 12, 2021, and that claimant would have zero permanent impairment. (Def. Ex. D, pp. 24-25) He did not believe claimant required any permanent restrictions or future medical care. (Def. Ex. D, p. 25)

Dr. Crites was provided with a copy of Dr. Aviles' letter, and prepared a response dated October 17, 2022. (Cl. Ex. 12, p. 88) Dr. Crites noted that "medicine is both an art and a science," and agreed that Dr. Kirkpatrick is a well-respected musculoskeletal radiologist. He then stated that the interpretation of an MRI image is an example of both the art and science aspect of medicine. Because it is an interpretation of a computer-generated image, two different, well trained medical professionals can have different interpretations of the same image. He also noted that MRIs are not infallible, and it is not uncommon for surgeons to find pathology during surgery that did not show up on the MRI. In this case, Dr. Crites respectfully disagreed with Dr. Kirkpatrick's interpretations of the MRIs. Dr. Crites noted that he interpreted specific images as showing a partial thickness tear and based his interpretation on 25-years of experience viewing MRI images and what he has found during surgery. He acknowledged that his interpretation might be wrong, as no one is 100 percent accurate, but noted that he also uses his clinical exam, which is consistent with rotator cuff pathology. He also noted that claimant failed "extensive" nonoperative treatment for his pain, including injections and physical therapy. He stated that even if he is wrong and claimant does not have a significant rotator cuff tear, "his clinical picture and course would warrant a shoulder arthroscopy with subacromial decompression and distal clavicle excision or at the very least a diagnostic arthroscopy."

Dr. Crites also pointed out that he previously addressed the date of injury and substance abuse issues in his previous letters and added that at no time in any interaction with him had claimant tried to use this shoulder injury to obtain narcotic medications. Dr. Crites does not believe claimant's remote history of substance abuse has any correlation to his current credibility.

I find Dr. Crites' opinions to be the most credible. He has personally examined claimant on more than one occasion. (Jt. Ex. 9) Dr. Aviles, to the contrary, has neither examined nor interviewed claimant personally. Defendant urges that Dr. Aviles' opinions are more credible and attempts to discredit Dr. Crites' opinions. Defendant argues that

Dr. Crites' opinions are based on "nothing more than a discussion with claimant's counsel and a few records from Dr. Jew." (Def. Brief, p. 9) Defendant further argues that after a single visit with claimant, Dr. Crites recommended surgery rather than conservative care or injections. Additional issues defendant has with Dr. Crites include his lack of explanation for why his interpretation of the MRI was different from Dr. Kirkpatrick's; the lack of information he provided about why the injection failed; his failure to recommend physical therapy; his ignorance of the mechanism of injury; his refusal to "objectively review all new medical information;" his misstatement of the medical history; and his statement that claimant never tried to obtain narcotics when "at claimant's first medical visit it was noted that claimant was already on Tramadol." (Def. Brief, pp. 7-12)

First, claimant's first visit with Dr. Crites took place on May 9, 2022. At the outset, it should be noted that the record does not state that claimant was taking Tramadol at that time; rather, it indicates that claimant is allergic to Tramadol. (Jt. Ex. 9, p. 63) This is consistent with other medical records in evidence noting his allergy to Tramadol. (See Jt. Ex. 1, p. 2) Second, Dr. Crites notes at that first visit that claimant had previously completed two full months of physical therapy. (Jt. Ex. 9, p. 64) Defendant insists that claimant never attended physical therapy, because it was not approved when the claim was denied. (Def. Brief, p. 9) However, Dr. Jew's records indicate claimant was attending physical therapy, and claimant testified that he had been attending but future appointments were cancelled when the claim was denied. (See Jt. Ex. 7, pp. 52-59; Tr., p. 79) Finally, Dr. Crites did not recommend surgery at the first visit with claimant. He recommended an MRI and wanted to see him back after the study. (Jt. Ex. 9, p. 65) After his review of the MRI, he discussed both surgical and nonsurgical options with claimant, and claimant wished to proceed with the surgery. (Jt. Ex. 9, p. 69)

With respect to defendant's other critiques of Dr. Crites' opinions, I find that Dr. Crites did appear to have an accurate understanding of the mechanism of injury, as he notes the injury occurred when claimant was lifting a 50-pound bag of spice to shoulder height and felt a pop. (Jt. Ex. 9, p. 64) It is well documented in the records that claimant had a cortisone injection that failed. (Jt. Ex. 9, p. 78) Additionally, Dr. Crites did review and consider "all new medical information," when he reviewed Dr. Aviles' report and responded on October 17, 2022. (Cl. Ex. 12, p. 88) He explained in detail why he disagreed with Dr. Kirkpatrick's interpretation of the MRI studies, and why he continues to recommend surgery. Dr. Crites' opinions are based on multiple visits with claimant that included physical examinations, as well as prior medical records, claimant's history, the mechanism of injury, and failed conservative measures including physical therapy and an injection.

To the contrary, Dr. Aviles' opinion is based on a review of medical records. (Def. Ex. D) He did not have the opportunity to examine or interview claimant personally. It appears he did not have an accurate understanding of claimant's work after the injury, as he notes that claimant continued to do manual labor after the injury. (Def. Ex. D, p. 24) In fact, claimant worked mainly driving a forklift after the injury, until he was placed on light duty and ultimately terminated for unexcused absences. Claimant related the

absences to his injury, stating he was in too much pain to drive to work. (Tr., pp. 86-87) It is unclear what information Dr. Aviles was provided regarding claimant's prior issues with substance abuse, or what basis he had for his concerns in that regard without speaking to claimant directly. Finally, his declaration of MMI as of claimant's last visit with Dr. Jew is inconsistent with Dr. Jew's own records, as he recommended an MRI and additional physical therapy at his last visit. (Jt. Ex. 7, pp. 59-60) If claimant was at MMI and did not require additional medical treatment at that time, Dr. Jew would not have made said recommendations.

Based on the evidence as a whole, I find that claimant sustained an injury to his left shoulder arising out of and in the course of his employment with Burke, on or around January 17, 2021. He timely reported the injury on March 17, 2021. Therefore, defendants are liable for claimant's left shoulder injury, and shall provide reasonable medical treatment pursuant to Iowa Code section 85.27.

## 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. 6.904(3)(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, 150 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309, 311 (Iowa 1996). The words "arising out of" refer 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, 128 (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 at 311. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1, 3 (Iowa 2000); Miedema, 551 N.W.2d at 311. 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 at 150.

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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. Id.; see also Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

The first issue for consideration is whether claimant has sustained an injury arising out of and in the course of his employment. Defendants argue that claimant has not met his burden to prove his injuries were caused by his employment, due to his "inconsistent testimony on how and when the injury occurred as well as how and when it was reported." Defendants also argue that claimant lacks persuasive medical causation for the injury. A large portion of the argument is based on defendants' position that claimant is not credible. However, as noted above, I found that overall, claimant was a credible witness.

When assessing witness credibility, the trier of fact "may consider whether the testimony is reasonable and consistent with other evidence, whether a witness has made inconsistent statements, the witness's appearance, conduct, memory and knowledge of the facts, and the witness's interest in the [matter]." State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990). As noted above, claimant is not the best historian. However, his testimony was consistent regarding how the injury occurred, and his recollection of reporting the injury. The only inconsistencies in claimant's testimony occur when he is asked about dates. This is true regarding his reporting of the injury, and true regarding his work history. I do not find the inconsistencies in his testimony regarding the timeline of events warrant a finding that he is not a credible witness. Based on my personal observations of his rate of speech, eye contact, and body language, I found him to be a credible witness at hearing.

I also found the opinions of Dr. Crites to be more credible than those expressed by Dr. Aviles. As detailed above, Dr. Crites had the benefit of examining and interviewing claimant and has formed his opinions and made his recommendations for treatment based on a full picture of claimant's condition. His opinions are entitled to more weight. Based on all of the evidence in the record, I found that claimant has met

his burden to prove he sustained a left shoulder injury arising out of and in the course of his employment with defendant employer.

The next issue to determine is whether claimant provided timely notice of the injury to defendant employer under Iowa Code section 85.23. The Iowa Workers' Compensation Act imposes time limits on injured employees both as to when they must notify their employers of injuries and as to when injury claims must be filed. Iowa Code section 85.23 requires an employee to give notice of the occurrence of an injury to the employer within 90 days from the date of the occurrence, unless the employer has actual knowledge of the occurrence of the injury.

The purpose of the 90-day notice or actual knowledge requirement is to give the employer an opportunity to timely investigate the facts surrounding the injury. The actual knowledge alternative to notice is met when the employer, as a reasonably conscientious manager, is alerted to the possibility of a potential compensation claim through information which makes the employer aware that the injury occurred and that it may be work related. Dillinger v. City of Sioux City, 368 N.W.2d 176 (Iowa 1985); Robinson v. Department of Transp., 296 N.W.2d 809 (Iowa 1980).

Failure to give notice is an affirmative defense which the employer must prove by a preponderance of the evidence. DeLong v. Highway Commission, 229 Iowa 700, 295 N.W. 91 (1940). In this case, it is undisputed that defendant employer had notice of the injury on March 17, 2021. Based on the evidence detailed above, I found that the injury occurred on or around January 17, 2021. As such, defendant has not established its notice defense pursuant to Iowa Code section 85.23.

Claimant seeks payment of medical expenses and alternate medical care under Iowa Code section 85.27. Under Iowa law, once defendant denied compensability for claimant's alleged injuries, it lost the right to choose the medical providers for that care during the period of denial. "[T]he employer has no right to choose the medical care when compensability is contested." Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). Further, when compensability is contested, "the employer cannot assert an authorization defense in response to a subsequent claim by the employee for the expenses of the alternate medical care." R. R. Donnelly & Sons v. Barnett, 670 N.W.2d at 197-198 (Iowa 2003). As such, claimant is entitled to reimbursement for medical care he received related to the left shoulder injury after the date of defendant's denial.

The next issue to determine is claimant's request for alternate medical care pursuant to Iowa Code section 85.27. Under Iowa law, 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 Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury or has abandoned care. Iowa Code § 85.27(4); Bell Bros., 779 N.W.2d at 204. If the employee establishes

the compensability of the injury at a contested case hearing, then the statutory duty of the employer to furnish medical care for compensable injuries emerges to support an award of reasonable medical care the employer should have furnished from the inception of the injury had compensability been acknowledged. Id.

Defendant has not authorized medical care since their denial of the claim in April 2021. Therefore, claimant has proven that the employer is not authorizing medical care that is effective and reasonably suited to treat his injury. Defendant shall authorize and pay for all reasonable and causally related expenses with respect to claimant's ongoing treatment related to his left shoulder injury, including but not limited to additional treatment with Dr. Crites.

Finally, claimant has requested a taxation of costs. Assessment of costs is a discretionary function of this agency. Iowa Code § 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. Claimant has requested reimbursement of the following costs:

Filing fee - $103.00

Huney-Vaughn Court Reporters, deposition transcript - $110.40

Huney-Vaughn Court Reporters, hearing transcript - $96.60

Dr. Crites – responsive report - $350.00

Sweeney Court Reporting – deposition transcripts - $1,389.68

(Cl. Ex. 3, pp. 14-25)

All of the costs that claimant has requested are allowed under Rule 876-4.33. Claimant was successful in his claim. As such I exercise my discretion and award claimant total costs in the amount of $2,049.68.

## ORDER

THEREFORE, IT IS ORDERED:

Claimant is entitled to alternate medical care. Defendant shall immediately authorize and timely pay for claimant's continuing care related to the compensable left shoulder injury with providers of claimant's choice, including but not limited to Dr. Brian Crites, M.D.

Defendant is responsible for any causally related medical care claimant received related to the left shoulder injury after the date of defendant's denial.

Defendant shall reimburse claimant's costs in the amount of two thousand forty-nine and 68/100 dollars ($2,049.68), as outlined above.

Defendant 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 2nd day of June, 2023.

JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Christopher Spaulding (via WCES)

Abigail Wenninghoff (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.