

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MATTHEW WINSTEAD,

Claimant,

vs.

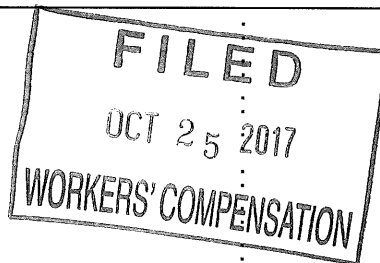
BROWN TRUCK LEASING CORP.,

Employer,

and

FARMERS INSURANCE,

Insurance Carrier,
Defendants.



File Nos. 5053950
5053951
5053952
5053953
5053954

ARBITRATION
DECISION

Head Note Nos.: 1402.20; 1801;
1802; 2802

Claimant Matthew Winstead filed five petitions in arbitration on February 24, 2016, alleging he sustained injuries while working for the defendant, Brown National Leasing Corp. ("Brown"), and also naming Brown's insurer, Farmers Insurance Exchange ("Farmers"), as a defendant. In File Number 5053950, Winstead alleges he sustained an injury to his neck due to his power washing work for the seven month period from January 2014 through July 29, 2014. In File Number 5053951, Winstead contends he sustained an injury to his low back due to power washing and repetitive work through January 21, 2015. In File Number 5053952, Winstead avers he sustained injuries to his chest, left arm, hands, and emotional problems due to an electrocution at work on March 6, 2015. In File Number 5053953, Winstead asserts he sustained an injury to his low back while lifting a garbage can on March 11, 2015. In File Number 5053954, Winstead claims he sustained cumulative injuries to his neck and back at work from March 31, 2015. Brown and Farmers filed answers to the petitions on March 10, 2016.

An arbitration hearing was held on March 23, 2017, at the Iowa Workforce Center in Waterloo, Iowa. Attorney Gregory Racette represented Winstead. Winstead appeared and testified. Alyssa Bradley, Winstead's girlfriend, appeared and testified on behalf of Winstead. Attorney Michael Miller represented Brown and Farmers. Brad Chubb appeared and testified on behalf of Brown and Farmers. Exhibits 1 through 26, and A through N were admitted into the record. The record was left open through June 15, 2017, for the receipt of supplementation to Exhibit 26 and post-hearing briefs. The supplemental documentation for Exhibit 26, and the briefs were received timely, and the record was closed on June 15, 2017.

Before the hearing the parties prepared hearing reports for each file, listing stipulations and issues to be decided. In File Numbers 5053950, 5053951, 5053953, and 5053954, Brown and Farmers assert the defense of lack of timely notice under Iowa Code section 85.23. Brown and Farmers waived all other affirmative defenses.

FILE NO. 5053950

STIPULATIONS

1. An employer-employee relationship existed between Winstead and Brown at the time of the alleged injury.
2. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.
3. At the time of the alleged injury, Winstead's gross earnings were \$296.54 per week, he was single and entitled to one exemption, and the parties believe the weekly rate to be \$198.90.
4. Although disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and Brown and Farmers are not offering contrary evidence.
5. Credits are no longer in dispute.
6. Costs have been paid.

ISSUES

1. Did Winstead sustain an injury on July 29, 2014, which arose out of and in the course of his employment with Brown?
2. Is Winstead's claim barred for failing to give timely notice under Iowa Code section 85.23?
3. Is the alleged injury a cause of temporary disability during a period of recovery?
4. If the alleged injury is a cause of temporary disability during a period of recovery, is Winstead entitled to recover temporary disability benefits from April 1, 2015 through March 7, 2016?
5. Is the alleged injury a cause of permanent disability?
6. If the alleged injury is a cause of permanent disability, what is the extent of disability?

7. If the alleged injury is a cause of permanent disability, is the commencement date for permanent partial disability March 8, 2016?

8. Is Winstead entitled to recover medical expenses?

9. Should costs be assessed against either party?

FILE NO. 5053951

STIPULATIONS

1. An employer-employee relationship existed between Winstead and Brown at the time of the alleged injury.

2. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.

3. At the time of the alleged injury Winstead was single and entitled to one exemption, and the parties believe the weekly rate to be the minimum rate of \$185.49.

4. Although disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and Brown and Farmers are not offering contrary evidence.

5. Credits are no longer in dispute.

6. Costs have been paid.

ISSUES

1. Did Winstead sustain an injury on January 21, 2015, which arose out of and in the course of his employment with Brown?

2. Is Winstead's claim barred for failing to give timely notice under Iowa Code section 85.23?

3. Is the alleged injury a cause of temporary disability during a period of recovery?

4. If the alleged injury is a cause of temporary disability during a period of recovery, is Winstead entitled to recover temporary disability benefits from April 1, 2015 through March 7, 2016?

5. Is the alleged injury a cause of permanent disability?

6. If the alleged injury is a cause of permanent disability, what is the extent of disability?

7. If the alleged injury is a cause of permanent disability, is the commencement date for permanent partial disability March 8, 2016?

8. Is Winstead entitled to recover medical expenses?

9. Should costs be assessed against either party?

FILE NO. 5053952

STIPULATIONS

1. An employer-employee relationship existed between Winstead and Brown at the time of the alleged injury.

2. Winstead sustained an injury on March 6, 2015, which arose out of an in the course of his employment with Brown.

3. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.

4. At the time of the alleged injury Winstead was single and entitled to one exemption, and the parties believe the weekly rate to be the minimum rate of \$185.49.

5. Although disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and Brown and Farmers are not offering contrary evidence.

6. Credits are no longer in dispute.

7. Costs have been paid.

ISSUES

1. Is the alleged injury a cause of temporary disability during a period of recovery?

2. If the alleged injury is a cause of temporary disability during a period of recovery, is Winstead entitled to recover temporary disability benefits from April 1, 2015 through March 7, 2016?

3. Is the alleged injury a cause of permanent disability?

4. If the alleged injury is a cause of permanent disability, what is the extent of disability?

5. If the alleged injury is a cause of permanent disability, is the commencement date for permanent partial disability March 8, 2016?

6. Is Winstead entitled to recover medical expenses?
7. Should costs be assessed against either party?

FILE NO. 5053953

STIPULATIONS

1. An employer-employee relationship existed between Winstead and Brown at the time of the alleged injury.
2. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.
3. At the time of the alleged injury Winstead was single and entitled to one exemption, and the parties believe the weekly rate to be the minimum rate of \$185.49.
4. Although disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and Brown and Farmers are not offering contrary evidence.
5. Credits are no longer in dispute.
6. Costs have been paid.

ISSUES

1. Did Winstead sustain an injury on March 11, 2015, which arose out of and in the course of his employment with Brown?
2. Is Winstead's claim barred for failing to give timely notice under Iowa Code section 85.23?
3. Is the alleged injury a cause of temporary disability during a period of recovery?
4. If the alleged injury is a cause of temporary disability during a period of recovery, is Winstead entitled to recovery temporary disability benefits from April 1, 2015 through March 7, 2016?
5. Is the alleged injury a cause of permanent disability?
6. If the alleged injury is a cause of permanent disability, what is the extent of disability?
7. If the alleged injury is a cause of permanent disability, is the commencement date for permanent partial disability March 8, 2016?

8. Is Winstead entitled to recover medical expenses?
9. Should costs be assessed against either party?

FILE NO. 5053954

STIPULATIONS

1. An employer-employee relationship existed between Winstead and Brown at the time of the alleged injury.
2. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.
3. At the time of the alleged injury Winstead was single and entitled to one exemption, and the parties believe the weekly rate to be the minimum rate of \$185.49.
4. Although disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and Brown and Farmers are not offering contrary evidence.
5. Credits are no longer in dispute.
6. Costs have been paid.

ISSUES

1. Did Winstead sustain an injury on March 31, 2015, which arose out of and in the course of his employment with Brown?
2. Is Winstead's claim barred for failing to give timely notice under Iowa Code section 85.23?
3. Is the alleged injury a cause of temporary disability during a period of recovery?
4. If the alleged injury is a cause of temporary disability during a period of recovery, is Winstead entitled to recover temporary disability benefits from April 1, 2015 through March 7, 2016?
5. Is the alleged injury a cause of permanent disability?
6. If the alleged injury is a cause of permanent disability, what is the extent of disability?
7. If the alleged injury is a cause of permanent disability, is the commencement date for permanent partial disability March 8, 2016?

8. Is Winstead entitled to recover medical expenses?
9. Should costs be assessed against either party?

FINDINGS OF FACT

Winstead lives in Waterloo with his girlfriend, Bradley. (Transcript, pages 12-13) Winstead graduated from high school in 2005.¹ (Tr., pp. 13-14; Exhibit E, p. 119) Winstead earned a B average in high school. (Ex. J, p. 142) At the time of the hearing Winstead was thirty. (Tr., p. 13)

After graduating from high school Winstead attended welding and auto collision repair courses through Hawkeye Community College for approximately one year. (Tr., p. 14; Ex. E, p. 119; J, p. 142) Winstead obtained certificates from his schooling, but he did not complete the program. (Tr., p. 14) Winstead has not worked as a welder or in auto collision repair. (Tr., pp. 14-15)

Winstead has worked in cabinet making, construction, rod fabrication, meat packing, service, power coating parts, and odd jobs. (Exs. 2, p. 2; F, p. 125; J, pp. 142-46; L, p. 180; M, p. 186; Tr., pp. 73-74) In 2013 Winstead was discharged by Allen Industrial Coatings for failing to attend work. (Tr., pp. 73-74) The position required Winstead to lift parts on a powder coat line. (Tr., p. 74) Winstead testified he left the position because his duties were too physically demanding. (Tr., p. 74)

On January 18, 2014, Brown hired Winstead to work part-time, twenty-eight hours per week, in the wash bay. (Exs. 3, p. 1; 15, p. 11; 17, p. 1; 19, p. 6; F, p. 125; Tr., pp. 17-18, 25) Brown paid Winstead \$11.00 per hour. (Ex. 3, p. 1) Winstead was responsible for power washing trucks, cleaning the shop, fueling trucks, retrieving parts, sweeping, and pushing a broom. (Ex. 19, p. 6)

Before his employment with Brown, Winstead had been diagnosed with attention deficit hyperactivity disorder, migraine headaches, and epilepsy. (Tr., p. 22; Exs. 1c, pp. 38-39, 45-46; B, pp. 62-74; C, p. 107) In 2005, Winstead received treatment for depression, including medication, after a good friend died. (Tr., pp. 20-21; Ex. 1a, p. 1) Winstead testified his symptoms resolved three or four months later. (Tr., p. 21) Winstead also reported having back pain to his primary care provider during an appointment on August 7, 2012. (Ex. 1, p. 2) And in October 2013, Winstead also reported he had been using his right arm at work and he was experiencing swelling in his right arm. (Ex. C, p. 48)

In May 2014, Winstead moved from the wash bay position in the shop to a mobile wash position where he worked outside, part-time, twenty-five to thirty hours per

¹ Claimant's post-hearing brief asserts Winstead dropped out of high school and later returned and received his GED. (Brief at 16) Winstead testified at hearing he graduated from Waverly-Shell Rock High School in 2005. (Tr., pp. 13-14)

week. (Tr., p. 26; Ex. 13, p. 1) Winstead received a pay increase to \$12.50 per hour. (Tr., p. 43; Ex. 13, p. 1) Winstead traveled from Cedar Falls to North Liberty, a round-trip of two hours, twice per week, for the mobile wash position. (Tr., pp. 26, 29)

On July 18, 2014, Winstead attended an appointment with Brian Burnett, M.D., a family practice physician, for "a regular check up." (Ex. 1a, p. 2) Dr. Burnett noted Winstead had been diagnosed with a seizure disorder, and noted Winstead did not have a history of arthralgias or myalgias, neck stiffness or pain, back stiffness or pain, joint swelling, limitation of joint movement, or leg pain. (Ex. 1a, p. 3) Dr. Burnett assessed Winstead as a healthy adult with generalized anxiety disorder and a seizure disorder. (Ex. 1a, p. 5)

I. Alleged First Cumulative Injury To The Cervical Spine

In his petition, Winstead alleges he sustained a cumulative injury to his neck from January 2014 through July 29, 2014. Winstead testified he believes his neck pain was caused by "[j]ust the twisting, the motion, having to move, and using the power washer constantly. It's got a good force to it, and you have a steady grip on it, climbing in and out of the trailers." (Tr., p. 32) Winstead relayed that he had to use a two-hand grip while using the power washer, and it took him approximately thirty minutes to wash each tractor. (Tr., pp. 32-33) Dr. Burnett documented Winstead did not have a history of neck pain or document any neck pain during his appointment eleven days earlier. (Ex. 1a, p. 3)

At hearing Winstead testified on July 29, 2014, he told Brad Shatzer or Mike Shatzer, "I was just – the neck injury and back, upper back and neck problems." (Tr., p. 31) When questioned about the response he received, Winstead relayed Brad Shatzer or Mike Shatzer said "[n]othing really," and he continued to work. (Tr., p. 31) Winstead's testimony at hearing differs from his answer to interrogatory number 3, which asked Winstead to identify individuals with knowledge of his injury. (Ex. E, p. 113) In his answer to interrogatory number 3, Winstead identified his coworker, "Ryan" and Chubb as having knowledge of the injury; he did not identify Brad Shatzer or Mike Shatzer. (Ex. E, p. 113)

On August 18, 2014, Winstead attended an appointment with a chiropractor, Travis Nuss, D.O. (Tr., p. 30; Ex. 1e, p. 81) Winstead testified he was experiencing severe neck pain that developed gradually. (Tr., pp. 30-31)

Winstead stopped working in the mobile wash unit on August 22, 2014. (Ex. 13, p. 2) Winstead testified he moved due to strain on his body, and he returned to his position in the fuel and wash bay. (Tr., pp. 27-28, 44) When Winstead left the mobile wash unit his pay was reduced back to \$11.00 per hour. (Tr., p. 44; Ex. 13, p. 2) Winstead testified that he cleaned three trucks while working in the wash bay, and while working in the mobile wash position he cleaned ten to fifteen trucks daily during the week, and fifty to sixty trucks on Saturdays. (Tr., p. 29) Winstead relayed that he would take about thirty minutes to wash each tractor. (Tr., p. 33)

Winstead returned to Dr. Nuss on August 27, 2014, for a chiropractic manipulation or adjustment. (Tr., pp. 33-34) Winstead reported his pain did not go away, but the adjustment helped his pain and he was able to continue working. (Tr., p. 34)

II. Alleged Second Injury To The Lumbar Back

In his petition, Winstead alleges he sustained a second cumulative injury to his low back on January 21, 2015. Winstead testified he was down in North Liberty and experiencing "pain in my shoulder, and I couldn't squeeze the trigger on the power washer, and my shoulder started spazzing out, and I just couldn't continue doing my work." (Tr., p. 34) Winstead reported the pain was in his lower back. (Tr., pp. 34-35) Winstead relayed he was "[h]opping in and out of trailers," bending, climbing in the back of trailers, and twisting, and taking out the trash. (Tr., p. 35) Winstead reported that when a diesel spill occurred, staff would cover it up with absorbent and shovel it into a diesel barrel that would be put in the trash. (Tr., p. 35) Winstead would lift two to three diesel barrels weighing seventy-five to 100 pounds twenty to thirty feet each. (Tr., p. 36)

Winstead attended an appointment with Dr. Nuss complaining of low back pain on January 21, 2015. (Tr., p. 34; Ex. 1e, p. 83) Dr. Nuss documented Winstead reported "[h]e does not know exactly what brought it on but notes that he does a lot of repetitive lifting at work." (Ex. 1e, p. 83) Dr. Nuss performed a chiropractic manipulation or adjustment. (Ex. 1e, p. 83) Winstead reported Dr. Nuss performed another adjustment, which helped with his pain, but he continued to have neck and low back pain. (Tr., p. 37) Winstead also took Aleve and used a heating pad, and he continued working. (Tr., pp. 37-38)

At hearing Winstead testified that on January 21, 2015, he informed "Brad or Chubb or Mike Shatzer" that his back was bothering him from work. (Tr., pp. 36-37) This testimony is inconsistent with Winstead's deposition testimony. During his deposition on August 26, 2016, Winstead testified, as follows:

Q. So January 2, 2015, you go see Doctor Nuss and you didn't tell anybody at Brown about that, correct?

A. No.

Q. Did you report to anyone at Brown in January of 2015 that your repetitive, heavy lifting at work was causing your problems?

A. Just from the first time I talked to Brad.

Q. So you are talking about back in August of 2014?

A. Yes.

Q. Nothing new was reported in January of 2015?

A. No.

Q. And you didn't report that you were having continued problems?

A. No.

(Ex. J, p. 154)

Winstead's testimony at hearing also differs from his answer to interrogatory number 3, which asked Winstead to identify individuals with knowledge of his injury. (Ex. E, p. 113) In his answer to interrogatory number 3, Winstead identified his coworker, "Ryan" and Chubb as having knowledge of the injury; he did not identify Brad Shatzer or Mike Shatzer. (Ex. E, p. 113)

III. Alleged Third Injury To The Chest, Left Arm, Hands, And Emotional Problems

Winstead testified on March 6, 2015,

I was just going down to do my daily routine down at Martin Bros., including on their semis down there, and I'd probably already done 25 to 30 of them. And I just walked up to the next one casually, and I grabbed the brush guard and just felt like something bit me, and it knocked me back down, and I fell down. It took me a minute just to kind of regain my wits and kind of realized what was going on, and then I just heard the humming and then realized that it had an electrical current going through it, and I just got an electrical shock. So I just took a minute, gathered my thoughts, and went back up to the shop and called Mike Shatzer on the phone. There wasn't a manager at the time, so I called to ask him what I needed to do. Through the confusion all I got out of the phone call was to go up to Convenient Care, and I went to Convenient Care, and they sent me to the ER at Covenant.

(Tr., pp. 38-39) Winstead could not drive and he had his girlfriend pick him up and she took him to the hospital. (Tr., pp. 39-40) Winstead reported that when he arrived at the emergency room, "[m]y chest was really bad, my heart rate. My right arm was completely numb. My hand was completely numb, just a really bad heart rate, sweating," and he was confused. (Tr., p. 40) Winstead reported he had not felt any similar symptoms before. (Tr., p. 40) Brown admitted Winstead sustained a work injury on March 6, 2015, which he reported to Brown.

Winstead went to Covenant Medical Center, reporting he had been electrocuted at work, and complaining of shortness of breath, chest pain, and pain in his right upper extremity. (Ex. 1c, p. 56) Hospital staff examined Winstead, ordered a chest x-ray,

which was found to be negative, and discharged him without restrictions. (Ex. 1c, pp. 60-61) Winstead missed one day of work. (Tr., p. 41) Winstead reported when he returned to work he was slower and he continued to experience chest pain. (Tr., p. 41)

Three days after the alleged injury, on March 9, 2015, Winstead attended a neurology appointment with the UHIC for his epilepsy. (Ex. 1d, p. 68) Winstead reported he was experiencing daily headaches, knee, and back pain. (Ex. 1d, p. 68) Winstead relayed he was looking for another job because he works around diesel fumes, which trigger his headaches. (Ex. 1d, p. 68) The neurology department did not document Winstead relayed that he had been electrocuted, or record any complaints of chest pain, or other pain related to the March 6, 2015 work injury. (Ex. 1d, pp. 68-70)

IV. Alleged Fourth Injury To The Lumbar Spine

Winstead testified that on March 11, 2015, he tried to pick up a barrel of absorbent and "I just felt like my lower back ripped in half," down by his tailbone. (Tr., pp. 41-42) Winstead testified at hearing he told Mike Shatzer what had happened and told him he was going to the chiropractor. (Tr., p. 42) Dr. Nuss performed a chiropractic manipulation or adjustment on Winstead. (Tr., pp. 42-43; Ex. 1e, p. 84)

Winstead's testimony at hearing differs from his answer to interrogatory number 3, which asked Winstead to identify individuals with knowledge of his injury. (Ex. E, p. 113) In his answer to interrogatory number 3, Winstead identified Chubb as having knowledge of the injury; he did not identify Mike Shatzer as a person with knowledge. (Ex. E, p. 114) In his answer to interrogatory number 5, Winstead reports he told Chubb about his injury "immediately." (Ex. E, p. 115) In his deposition from August 26, 2016, Winstead also identified Chubb as the person he reported his injury to, not Mike Shatzer. (Ex. J, p. 158)

V. Termination

Brown terminated Winstead's employment on March 31, 2015, for excessive absenteeism and insubordination. (Tr., p. 28; Exs. 10, pp. 1-2; 13, p. 4; 15, p. 16) Brown documented after Winstead received written work hours on March 27, 2015, he wadded up the paper, tossed it in the garbage and told Daryl Roth, the second shift foreman, "F&*K those guys, I'm not working these F^&K*g hours." (Ex. 10, p. 1) When management met with Brown on March 31, 2015, he did not deny using the foul language, management terminated his employment and "he stormed out" of the office and said "F^&k you guys again." (Exs. 10, p. 1; 15, p. 31) Winstead testified that prior to his termination he had not been missing work. (Tr., pp. 48-49)

VI. Alleged Fifth Cumulative Injury To The Cervical Spine And Lumbar Spine

In his Petition Winstead avers he sustained a fifth cumulative injury to his cervical spine and lumbar spine while working for Brown on March 31, 2015. In his answer to interrogatory number 3, Winstead identified Mike Shatzer and Chubb as having

knowledge of the injury. (Ex. E, p. 114) There is no documentation Winstead attended any medical appointments on March 31, 2015, or shortly thereafter.

At the time of his termination Winstead was not working under any physical restrictions. (Tr., p. 77) Winstead testified during his deposition that on the date of his termination he was capable of performing his job duties at Brown, noting "I was already doing them, so yes." (Ex. J., p. 161)

VII. Employer Response To Winstead's Allegations

Michael Shatzer is the branch manager for Brown at the location where Winstead worked. (Ex. 15, p. 4) During his deposition on August 26, 2016, Mike Shatzer testified he had only seen one incident report involving Winstead for the incident on March 6, 2015. (Ex. 15, pp. 37-38) Mike Shatzer denied hearing Winstead complain about injuries on the job, other than the incident on March 6, 2015. (Ex. 5, pp. 35-42)

Chubb is the area service manager for the Brown at the location where Winstead worked. (Tr., p. 123; Ex. 16, p. 5) Chubb testified Winstead did not report he was having any difficulties performing his duties in the mobile wash unit or any work injuries before he requested to return to the shop. (Tr., p. 130) Chubb reported Winstead told him he preferred working in the shop. (Tr., p. 130; Ex. 16, pp. 18-19)

Chubb denied that Winstead informed him that his neck had been bothering him before or after August 18, 2014, that his back was bothering him before or after January 21, 2015, or that his back was bothering him after March 11, 2015. (Tr., p. 131-33, 143, 162; Ex. 16, pp. 22-23) Chubb testified Winstead reported the March 6, 2015 injury. (Tr., p. 133) When questioned about Winstead's statements that he reported his injuries to Chubb in August 2014, January 21, 2015, and March 11, 2015, Chubb responded, "I would say he is lying." (Ex. 16, p. 24)

Brown and Farmers deny Winstead reported any physical difficulties until Winstead's March 6, 2015 work injury. (Exs. 24, p. 1; I, p. 137) Brown and Farmers aver they first learned of Winstead's alleged work injuries from July 29, 2014, January 21, 2015, March 11, 2015, and March 31, 2015, when they received correspondence from Winstead's counsel dated February 4, 2016, apprising them of the alleged dates of injury. (Ex. I, p. 137)

VIII. Subsequent Treatment And Employment

On April 13, 2015, Winstead fractured his ankle while playing basketball with friends. (Ex. 1f, pp. 93-94) The treating physician placed Winstead in a walking boot with crutches, and prescribed Vicodin for pain control. (Ex. 1f, p. 95)

On June 1, 2015, Winstead attended an appointment with Dr. Nuss, complaining of low back, mid back, and neck pain. (Ex. 1e, p. 86) Dr. Nuss documented Winstead reported "[h]e has been doing power washing, and he feels like the symptoms are caused by having his hands/arms up all the time." (Ex. 1e, p. 86) Dr. Nuss performed a

chiropractic manipulation or adjustment and encouraged Winstead to exercise. (Ex. 1e, p. 86) Winstead returned for additional manipulations or adjustments with Dr. Nuss. (Ex. 1e, pp. 87-90)

Winstead testified that he worked for Dan Deery for approximately two weeks starting on June 1, 2015, power washing cars, thirty-five hours per week. (Tr., pp. 63, 97; Ex. J, p. 147) Winstead testified he quit because he "couldn't do it. The pain, I just couldn't deal with it anymore." (Tr., p. 64) This testimony is inconsistent with his deposition testimony. (Ex. J, p. 148) During his deposition Winstead testified he did not have any problems performing his work with Dan Deery and he quit because he was offered another position, which paid more money. (Ex. J, p. 148)

James Schaller owns a vinyl siding business. (Tr., p. 63) Schaller hired Winstead to cut siding twelve feet long and a foot high, and to hang siding. (Tr., pp. 64-65) Winstead installed the siding on the lower portion of homes during the summer of 2015. (Tr., p. 65) Winstead reported he hammered nails into the siding, and worked on the lower portion and he did not climb any ladders. (Ex. J, p. 148)

On June 19, 2015, Winstead returned to Dr. Burnett, complaining of chest pain he described as right sided tightness following an electrocution at work, and intermittent shortness of breath. (Ex. 1a, p. 6) Dr. Burnett documented Winstead did not have any pain radiating into his back or arms and "[n]o limb stinging or weakness." (Ex. 1a, p. 6) Dr. Burnett assessed Winstead with chest pain, "[l]ikely chest wall strain," ordered a chest x-ray which he reported was normal, and prescribed anti-inflammatory medication. (Ex. 1a, pp. 6-7)

On July 5, 2015, Winstead attended an appointment with Dr. Burnett. (Ex. 1a, p. 8) Dr. Burnett documented Winstead reported he was experiencing problems with insomnia, anxiety, and depression, with "[n]o other problems or complaints at this time." (Ex. 1a, p. 8) Dr. Burnett assessed Winstead with anxiety and depression, prescribed Lexapro and Ativan, and referred Winstead to psychology. (Ex. 1a, p. 8)

Winstead returned to Dr. Burnett on August 9, 2015, complaining of chest and rib pain following an electrocution at work. (Ex. 1a, p. 10) Dr. Burnett documented Winstead had no numbness, tingling or weakness, but he was complaining of bilateral shoulder pain, chest pain, and rib pain. (Ex. 1a, p. 10) Dr. Burnett noted Winstead was treating with a psychiatrist and he had been prescribed clonazepam. (Ex. 1a, p. 10) Dr. Burnett documented Winstead's chest pain has an "unclear etiology," ordered physical therapy, and prescribed Mobic and Flexeril. (Ex. 1a, p. 10)

Dr. Burnett prepared a letter on August 26, 2015, noting he had treated Winstead for chest pain following an electrocution at work on March 6, 2015. (Ex. 1a, p. 12) Dr. Burnett documented he believed Winstead was experiencing musculoskeletal pain, he prescribed anti-inflammatory medication, he ordered physical therapy, and Winstead had seen a chiropractor. (Ex. 1a, p. 12) Dr. Burnett noted that if Winstead's symptoms persisted, he would refer him to a cardiothoracic surgeon. (Ex. 1a, p. 12)

On August 27, 2015, Winstead attended an appointment with Penumetsa Raju, M.D., a psychiatrist. (Ex. 1g, p. 102) Dr. Raju examined Winstead, diagnosed him with generalized anxiety disorder, and prescribed Zoloft and clonazepam. (Ex. 1g, p. 102) Winstead attended follow-up appointments with Dr. Raju on September 21, 2015, November 19, 2015, January 12, 2016, and March 16, 2016. (Exs. 1g, pp. 105-09, 118; A, pp. 3-5, 14) During the time Winstead treated with Dr. Raju his grandfather and another good friend passed away, and his grandmother was in hospice. (Tr., p. 71) During the hearing Winstead agreed the treatment he received from Dr. Raju, "was, at least in part, related to social events or occurrences unrelated to anything that had to do with Brown Truck." (Tr., p. 71)

On February 7, 2016, Winstead attended a follow-up appointment with Dr. Burnett complaining of increased chest discomfort and difficulty sleeping. (Exs. 1a, p. 13; A, p. 6) Dr. Burnett documented Winstead had discontinued his medication, his pain was predominantly in his right shoulder, and he had taken twenty physical therapy sessions for his right shoulder pain. (Exs. 1a, p. 13; A, p. 6) Dr. Burnett assessed Winstead with a right shoulder strain, ordered an x-ray, which was normal for the right shoulder, right ribs, and chest, and recommended Winstead be referred to a pain clinic for possible trigger point injections. (Ex. 1a, p. 14)

Dr. Burnett referred Winstead to Melissa Groeneveld, ARNP, for pain management. (Ex. 1h, p. 111) During his appointment on February 18, 2016, Groeneveld documented Winstead reported in March 2015

he picked up a frayed cord with his right hand while cleaning a semi trailer and was knocked back about 5 feet with an electric shock. He doesn't think he was ever knocked out. He remembers feeling tingling from his right hand fingers all the way to his right toes after the electric shock. He states he had chest pain, heart palpitations, and shortness of breath.

(Exs. 1h, p. 111; A, p. 7) Winstead complained of trouble sleeping, increased anxiety, depression, intermittent chest pain, a left chest ache above his breast and left of his sternum that radiates at times into his left shoulder and left upper ribs under his arm, lower right rib pain, right hand/finger numbness and tingling, and shortness of breath. (Exs. 1h, p. 111; A, p. 7) Groeneveld noted Winstead was not reporting current right shoulder discomfort, and he had recently developed left scapula and left neck trigger point pain. (Exs. 1h, p. 111; A, p. 7)

On February 8, 2016, Groeneveld examined Winstead and noted "[a]lthough he may have some costochondritis and some trigger points which could potentially respond to injection, it seems that most of his symptoms are more likely to be related to psychological issues. Dr. Federhofer doesn't think he would have any lingering physical issues from his electric shock injury," and recommended before he received an injection she wanted to review his mental health records from Dr. Raju. (Exs. 1h, pp. 116-17; A, p. 13)

On March 8, 2016, Famous Dave's hired Winstead as a part-time cook. (Exs. F, p. 125; M, p. 187; Tr., p. 66) Winstead worked twenty to twenty-five hours per week and he was paid \$10.00 per hour. (Ex. F, p. 125; Tr., pp. 66-67) Winstead's employment with Famous Daves ended in May 2016. (Ex. F, p. 126)

On April 15, 2016, Robert Federhofer, D.O., a pain management specialist, examined Winstead. (Exs. 1i, p. 129; 6, p. 24) Winstead relayed he was experiencing chest pain along the latissimus dorsi on the right, pain in his right arm with "a shooting component and numbness and tingling in the right arm ulnar nerve," a "minor degree of pain at the costal sternal junction on the right compared with the left," and right pain centered at the 4th rib at the sternum. (Exs. 1i, p. 129; A, p. 24) Dr. Federhofer recommended trigger point injections into the latissimus dorsi, and EMG/NCV testing with Winstead's neurologist at the University of Iowa for the right arm pain. (Exs. 1i, p. 130; A, p. 26)

Winstead received a trigger point injection on April 26, 2016. (Exs. 1i, p. 134; A, p. 30) Dr. Federhofer assessed Winstead with myositis, a muscle spasm, numbness and tingling of the right arm, and costochondritis. (Exs. 1i, p. 134; A, p. 30) During his follow-up appointment on May 3, 2016, Winstead reported no improvement since his last visit, and he was still receiving physical therapy. (Ex. 1i, p. 136; A, p. 32) Dr. Federhofer documented Winstead "hasn't done exercises as instructed," and complained of weakness in his right hand. (Exs. 1i, p. 136; A, p. 32) Winstead received another trigger point injection. (Exs. 1i, p. 138; A, p. 34)

On July 28, 2016, Winstead underwent electrodiagnostic testing of his right upper extremity with Sangeeta Shah, M.D. (Ex. A, p. 44) Winstead had reported that after his electrocution he had pain in his right upper extremity radiating from the upper arm into the shoulder and into his hands, with tingling and numbness in his hand, and reported he drops things occasionally when his fingers go numb, and denied having neck pain. (Ex. A, p. 45) Dr. Shah found the testing was normal. (Ex. A, p. 44)

Winstead attended an independent medical examination with Jeffrey Westpheling, M.D. on January 3, 2017. (Ex. D) Dr. Westpheling reviewed his prior medical records and examined him. (Ex. D) Dr. Westpheling assessed Winstead with right upper extremity paresthesias, diffuse chest pain, and intermittent back pain, and opined:

[i]s my opinion with a reasonable degree of medical probability, that his current conditions involving the chest, right upper extremity, and low back pain are not related to his prior work activities. The record indicates that he had intermittent exacerbations of low back discomfort which were related to work activities however, there does not appear to have been permanency associated with any of these exacerbations. The chiropractic note of July 27, 2015 indicates a complaint of back pain without a known etiologic event. There is report that he felt good after his prior visit. It is also my opinion that the symptoms involving the right upper extremity and

chest are unrelated to the work place electrical shock which occurred in March 2015. These symptoms have had variable presentations over multiple evaluations.

(Ex. D, p. 110) Dr. Westpheling found that Winstead was at maximum medical improvement from any of the prior alleged work injuries, he did not recommend permanent restrictions, and he opined there was no resulting permanent impairment. (Ex. D, p. 110)

On January 24, 2017, Farid Manshadi, M.D., a physiatrist, conducted an independent medical examination of Winstead. (Ex. 1j, p. 145) Dr. Manshadi reviewed Winstead's medical records and examined him. (Ex. 1j, pp. 145-48) Dr. Manshadi documented, "[a]fter reviewing a copious amount of medical records as well as evaluation and examination of Mr. Matthew Winstead, I believe he sustained multiple injuries while working for Brown Trucking Company. He sustained chest pain and costochondritis as well as neck pain and left-sided rotator cuff syndrome. Finally he sustained low back pain with clinical evidence of right-sided SI joint dysfunction." (Ex. 1j, p. 148) In his discussion of the work injuries, Dr. Manshadi documented Winstead was off work for three days following the March 6, 2015 work injury. (Ex. 1j, p. 146) This is inconsistent with Winstead's testimony that he missed one day of work. (Tr., p. 41)

Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Manshadi opined,

I used Chapter 15, Page 392, Table 15-5 and he falls under DRE Cervical Category 2 and I assign five (5) percent impairment of the whole person.

In regard to his right shoulder, I used Chapter 16, Pages 475-479 and as such, I assign eleven (11) percent impairment of the right upper extremity.

In regard to his low back pain, I used Chapter 15, Page 384 and he falls under DRE Lumbar Category 2 and I assign another five (5) percent impairment of the whole person.

(Ex. 1j, p. 148) Dr. Manshadi recommended restrictions of avoiding repetitive reaching, shoulder height or above activities, and lifting more than twenty pounds with the right upper extremity, avoiding lifting over twenty pounds, and avoiding repetitive twisting, bending, squatting, and twisting at his back. (Ex. 1j, p. 148) Dr. Manshadi recommended treatment for the right shoulder, including imaging, and injections for Winstead's low back. (Ex. 1j, p. 148)

On February 16, 2017, Dey Appliances hired Winstead to work in shipping and receiving, full-time, and pays \$11.50 per hour. (Exs. F, p. 126; L, p. 181) The position description provides that Winstead is responsible for checking on small parcel and pallet

seized parts and equipment, rotating stock while putting stock away, assigning locations to newly stocked parts and equipment, pulling parts and equipment off shelves, packing and shipping customer orders, maintaining inventory control, and using ladders, supply carts, two-wheeled carts, pallet jacks, and forklifts. (Ex. L, p. 182)

Winstead testified that since his termination from Brown he continues to have pain in his neck, lower neck right and left lower back, and in his shoulder blades. (Tr., pp. 51-53) Winstead reported he struggles when “[d]riving in a vehicle, to try to look to see if a car is coming, sometimes I can’t put it too far to see, so I have to ask the passenger in the car am I clear to go.” (Tr., p. 52) Winstead reported he also has a difficult time bending over to pick up things, twisting at the waist, and with his right chest wall. (Tr., p. 53) Winstead testified before his employment with Brown, Winstead did not have any problems with his neck, mid back, low back, chest, ribs, right arm, or right leg. (Tr., p. 19)

In his answers to interrogatories, Winstead reported if he is not working, he performs housework, including laundry and vacuuming at home. (Ex. E, p. 122) He relayed that he walks the dog, and “mainly takes it easy because he is still having problems with his neck, low back and chest area” and uses a heating pad around his ribs and chest and Aleve for his pain. (Ex. E, p. 122) Winstead testified that when he recently moved there were certain things he could not lift, including a love seat, due to his back. (Tr., p. 58)

CONCLUSIONS OF LAW

I. Notice To Brown

Winstead alleges he sustained two traumatic injuries while working for Brown, one to his chest, left arm, hands, and emotional problems due to an electrocution at work on March 6, 2015, File Number 5053952, and one to his low back on March 11, 2015, File Number 5053953. Winstead contends he sustained three cumulative injuries while working for Brown, to his neck due to power washing from January 2014 through July 29, 2014, File Number 5053950, to his low back due to power washing and repetitive work through January 21, 2015, File Number 5053951, and to his neck and back from March 31, 2015, File Number 5053954. Brown and Farmers contend Winstead failed to provide timely notice of his work injuries, other than the traumatic injury on March 6, 2015.

Iowa Code section 85.23 provides:

Unless the employer or the employer’s representative shall have actual knowledge of the occurrence of an injury received within ninety days from the date of the occurrence of the injury, or unless the employee or someone on the employee’s behalf or a dependent or someone on the dependent’s behalf shall give notice thereof to the employer within ninety

days from the date of the alleged occurrence of the injury, no compensation shall be allowed.

The purpose of the notice provision is to afford the employer the opportunity to investigate the circumstances of the injury when the information is fresh. Johnson v. Int'l Paper Co., 530 N.W.2d 475, 477 (Iowa Ct. App. 1995). "Actual knowledge must include information that the injury might be work related." Id. The employer bears the burden of proving the affirmative defense. DeLong v. Iowa State Highway Comm'n, 299 Iowa 700, 703, 295 N.W.2d 91, 92 (1940).

At hearing Winstead testified he informed Brad Shatzer, Mike Shatzer, or Chubb of his work injuries during his employment with Brown. (Tr., pp. 31, 36-37, 42) Chubb and Mike Shatzer deny Winstead reported the injuries other than the March 6, 2015 injury, and deny having actual knowledge of the injuries. (Exs. 15, pp. 35-42; 16, pp. 18-19, 22-24; Tr., pp. 130-33, 143, 162) This raises an issue of credibility.

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). During the hearing I did not observe Chubb or Winstead engage in any furtive or suspicious movements, their eye contact and rate of speech were both appropriate. Despite these observations, either Chubb or Winstead is telling the truth. Mike Shatzer did not testify live at hearing. His deposition was admitted as Exhibit 15.

Chubb and Mike Shatzer are employees of Brown, and thus have an interest in this case. Chubb testified by deposition and at hearing. Chubb's memory and knowledge of the facts was clear and he did not make inconsistent statements. Likewise, Mike Shatzer's memory and knowledge of the facts was clear and he did not make inconsistent statements. Based on my observations I find Chubb to be a credible witness. I also find Mike Shatzer's deposition testimony credible.

Winstead has an interest in this case because he is seeking workers' compensation benefits. I do not find Winstead's testimony credible. Winstead's testimony at hearing concerning who he allegedly reported his work injuries to differs from his deposition from August 26, 2016, and from his answers to interrogatories. His other testimony at hearing is inconsistent with his deposition and medical records.

At hearing Winstead testified on July 29, 2014, he told Brad Shatzer or Mike Shatzer, "I was just – the neck injury and back, upper back and neck problems." (Tr., p. 31) When questioned about the response he received, Winstead relayed Brad Shatzer or Mike Shatzer said "[n]othing really," and he continued to work. (Tr., p. 31) Winstead's testimony at hearing differs from his answer to interrogatory number 3, which asked Winstead to identify individuals with knowledge of his injury. (Ex. E, p. 113) In his answer to interrogatory number 3, Winstead identified his coworker, "Ryan"

and Chubb as having knowledge of the injury; he did not identify Brad Shatzer or Mike Shatzer. (Ex. E, p. 113)

Winstead's testimony that he was experiencing an ongoing problem from January 2014 through July 2014 is not supported by his medical records. During his appointment with Dr. Burnett on July 18, 2014, eleven days before, Dr. Burnett noted Winstead had no history of arthralgias or myalgias, neck stiffness or pain. (Ex. 1a, p. 3)

At hearing Winstead testified that on January 21, 2015, he informed "Brad or Chubb or Mike Shatzer" that his low back was bothering him from work. (Tr., pp. 36-37) This testimony is inconsistent with Winstead's deposition testimony. During his deposition on August 26, 2016, Winstead testified, as follows:

Q. So January 21, 2015, you go see Doctor Nuss and you didn't tell anybody at Brown about that, correct?

A. No.

Q. Did you report to anyone at Brown in January of 2015 that your repetitive, heavy lifting at work was causing you problems?

A. Just from the first time I talked to Brad.

Q. So you are talking about back in August of 2014?

A. Yes.

Q. Nothing new was reported in January of 2015?

A. No.

Q. And you didn't report that you were having continued problems?

A. No.

(Ex. J, p. 154)

Winstead's testimony at hearing also differs from his answer to interrogatory number 3, which asked Winstead to identify individuals with knowledge of his injury. (Ex. E, p. 113) In his answer to interrogatory number 3, Winstead identified his coworker, "Ryan" and Chubb as having knowledge of the injury; he did not identify Brad Shatzer or Mike Shatzer. (Ex. E, p. 113)

Brown admitted Winstead sustained his alleged third work injury on March 6, 2015. Winstead told hospital staff he had been electrocuted and complained of shortness of breath, chest pain, and pain in his right upper extremity. (Ex. 1c, p. 56)

Hospital staff examined Winstead, ordered a chest x-ray, which was found to be negative, and discharged him without any work restrictions. (Ex. 1c, pp. 60-61) Three days after the injury, on March 9, 2015, Winstead attended a neurology appointment with the UHIC for his epilepsy. (Ex. 1d, p. 68) Winstead reported he was experiencing daily headaches, knee, and back pain. (Ex. 1d, p. 68) Winstead relayed he was looking for another job because he works around diesel fumes, which trigger his headaches. (Ex. 1d, p. 68) Winstead did not report to his neurologist that he had been electrocuted, or complain of any chest pain, or other pain. (Ex. 1d, pp. 68-70)

Winstead testified on March 11, 2015, he tried to pick up a barrel of absorbent and "I just felt like my lower back ripped in half," down by his tailbone. (Tr., pp. 41-42) Winstead testified at hearing he told Mike Shatzer what had happened and told him he was going to the chiropractor. (Tr., p. 42)

Winstead's testimony at hearing differs from his answer to interrogatory number 3, which asked Winstead to identify individuals with knowledge of his injury. (Ex. E, p. 113) In his answer to interrogatory number 3, Winstead identified Chubb as having knowledge of the injury; he did not identify Mike Shatzer as a person with knowledge. (Ex. E, p. 114) In his answer to interrogatory number 5, Winstead reported he told Chubb about his injury "immediately." (Ex. E, p. 115) In his deposition from August 26, 2016, Winstead also identified Chub as the person he reported his injury to, not Mike Shatzer. (Ex. J, p. 158)

In his Petition Winstead avers he sustained a fifth cumulative injury to his cervical spine and lumbar spine while working for Brown on March 31, 2015. In his answer to interrogatory number 3, Winstead identified Mike Shatzer and Chubb as having knowledge of the injury. (Ex. E, p. 114) There is no documentation Winstead attended any medical appointments on March 31, 2015, or shortly thereafter for treatment of his cervical and lumbar spine. Winstead testified in his deposition that the day he was fired he was capable of performing his job duties at Brown because "I was already doing them, so yes." (Ex. J, p. 161)

Dan Deery hired Winstead after Brown terminated his employment. Winstead testified at hearing that he quit his power washing job with Dan Deery because he "couldn't do it. The pain, I just couldn't deal with it anymore." (Tr., p. 63) This testimony is inconsistent with his deposition testimony. (Ex. J, p. 148) During his deposition Winstead testified he did not have any problems performing his work with Dan Deery and quit because he was offered another position, which paid more money. (Ex. J, p. 148)

Winstead did not receive any work restrictions from a physician during his employment with Brown. He performed his normal duties without accommodation and he only missed one day of work following the admitted work injury of March 6, 2015. There is no evidence Chubb, Mike Shatzer, or any management employee at Brown had actual knowledge of Winstead's alleged injuries. When Winstead reported his March 6, 2015 work injury, Brown authorized medical treatment for Winstead and

completed an incident report. I do not find Winstead's testimony credible that he reported the alleged injuries apart from the March 6, 2015 injury to Brown. I find that Brown and Farmers first received notice of the alleged injuries through correspondence from Winstead's counsel dated February 4, 2016. (Ex. I, p. 137) The correspondence was sent more than ninety days after the purported injuries. Brown and Farmers have proven the affirmative defense. Winstead shall take nothing with respect to File Numbers 5053950, 5053951, 5053953, and 5053954.

II. Nature Of The Injury

Winstead alleges he sustained a traumatic injury to his chest, left arm, hands, and emotional problems due to an electrocution at work on March 6, 2015, File Number 5053952. Brown and Farmers aver Winstead has failed to prove that he sustained a permanent impairment as a result of the work injury.

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

It is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of the employer.

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

An injury to one part of the body can later cause an injury to another. Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 16-17 (Iowa 1993) (holding a psychological condition can be caused or aggravated by a scheduled injury). The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11,

17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997). “In order for a cause to be proximate, it must be a ‘substantial factor.’” Ayers, 731 N.W.2d at 17. A probability of causation must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997).

The question of medical causation is “essentially within the domain of expert testimony.” Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must “weigh the evidence and measure the credibility of witnesses.” Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert’s education, experience, training, and practice, and “all other factors which bear upon the weight and value” of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

Brown and Farmers retained Dr. Westpheling, an occupational medicine physician, and Winstead retained Dr. Manshadi, a physiatrist, to conduct independent medical examinations of Winstead. Dr. Westpheling opined Winstead did not sustain permanent impairments to his chest, right upper extremity, or low back. (Ex. D, p. 110) Dr. Manshadi provided permanent impairment ratings concerning Winstead’s right shoulder, cervical spine, and lumbar spine caused by his work injuries. (Ex. 1j, p. 148) Dr. Manshadi did not provide a permanent impairment rating regarding Winstead’s chest, chest cartilage, or ribs. No physician has provided a permanent impairment rating regarding Winstead’s chest, chest cartilage, ribs, left arm, or hands. Winstead has not met his burden of proof that he sustained a permanent impairment to this chest, chest cartilage, ribs, left arm, or hands.

Dr. Manshadi provided a permanent impairment rating for Winstead’s right shoulder and he recommended ongoing treatment for Winstead’s right shoulder. (Ex. 1j, pp. 146-48) Dr. Westpheling documented right upper extremity complaints, but did not find the right upper extremity complaints were related to Winstead’s work activities with Brown. (Ex. D, p. 110) Winstead did not allege an injury to his right shoulder in the five petitions he filed, or move to amend any of the petitions to assert a right shoulder injury at any time before the case was fully submitted. Winstead is not entitled to workers’ compensation benefits related to an alleged right shoulder injury.

In his petition Winstead also avers he sustained emotional problems as a result of the March 6, 2015 work injury. Brown and Farmers reject his assertion. While Winstead treated with Dr. Raju for generalized anxiety disorder, Dr. Raju, has not offered an opinion causally relating Winstead’s anxiety to the March 6, 2015 work injury. (Exs. 1g, pp. 105-09; 118; A, pp. 3-5, 14) The evidence also supports that during the time Winstead treated with Dr. Raju his grandfather and a good friend passed away, and his grandmother as living in hospice. (Tr., p. 71) Winstead admitted at hearing that the treatment he received from Dr. Raju “was, at least in part, related to social events or

occurrences unrelated to anything that had to do with Brown Truck.” (Tr., p. 71)
Winstead has not met his burden of proof that he sustained a permanent impairment as a result of the March 6, 2015 work injury.

III. Temporary Benefits

Winstead seeks to recover temporary disability benefits from April 1, 2015 through March 7, 2016, following his termination from Brown. Brown and Farmers contend Winstead is not entitled to temporary disability benefits.

Iowa Code section 85.33 governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa App. 2012). As a general rule, “temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition.” Clark v. Vicorp Restaurants, Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to “partially reimburse the employee for loss of earnings” during a period of recovery from the condition. Id. An award of healing period benefits or total temporary disability benefits is not dependent on a finding of permanent impairment. Dunlap, 824 N.W.2d at 556. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Id.

“[A] claim for permanent disability benefits is not ripe until maximum medical improvement has been achieved.” Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 201 (Iowa 2010). “Stabilization of the employee’s condition ‘is the event that allows a physician to make the determination that a particular medical condition is permanent.’” Dunlap, 824 N.W.2d at 556 (quoting Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 200). If the employee has a permanent disability, then payments made prior to permanency are healing period benefits. Id. If the injury has not resulted in a permanent disability, then the employee may be awarded temporary total benefits. Id. at 556-57. The record does not support Winstead sustained a permanent disability. Therefore, if he is entitled to temporary benefits, he is entitled to temporary disability benefits.

Iowa Code section 85.33(2) governs temporary disability benefits, as follows:

“Temporary partial disability” or “temporarily, partially disabled” means the condition of an employee for whom it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, but is able to perform other work consistent with the employee’s disability. “Temporary partial benefits” means benefits payable, in lieu of temporary total disability and healing period benefits, to an employee because of the employee’s temporary partial reduction in earning ability as a result of the employee’s temporary partial disability. Temporary partial benefits shall not be considered benefits payable to an employee, upon

termination of temporary partial or temporary total disability, the healing period, or permanent partial disability, because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of injury.

Under Iowa Code section 85.33(6), “employment substantially similar to the employment in which the employee was engaged at the time of the injury’ includes, for purposes of an individual who was injured in the course of performing as a professional athlete, any employment the individual has previously performed.”

Brown terminated Winstead's employment on March 31, 2015, following an incident where he directed vulgar language toward a supervisor, Roth. (Ex. 10, p. 1) Following his March 6, 2015 work injury Winstead missed one day of work. From period when he returned to work until his termination Winstead did not receive any work restrictions from a physician. Winstead performed his normal duties for Brown without accommodation. Winstead has not established a claim for temporary disability benefits from April 1, 2015 through March 7, 2016.

IV. Medical Expenses

Winstead seeks to recover medical expenses set forth in Exhibit 26, which included charges for four chiropractic treatments he received from Dr. Nuss between March 11, 2015, March 13, 2015, June 1, 2015, and June 16, 2015, totaling \$132.00, and medical bills for treatment he received April 26, 2016 through January 5, 2017 with Covenant Medical Center, Dr. Shah, and Stacy Carlin totaling \$1,036.55. (Exs. 2; 26)

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

The Iowa Supreme Court has held an employer may be responsible for unauthorized care “upon proof by a preponderance of the evidence that such care was reasonable and beneficial,” meaning “it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer.” Gwinn, 779 N.W.2d at 206.

The March 11, 2015 and March 13, 2015 appointments with Dr. Nuss relate to the alleged work injury of March 11, 2015, File Number 5053953. (Ex. 1e, pp. 84-85) The June 1, 2015 and June 16, 2015 appointments with Dr. Nuss do not reference the March 6, 2015 work injury. (Ex. 1e, pp. 86-87) Winstead provided timely notice to Brown regarding the March 6, 2015 work injury for File Number 5053952, but he did not provide timely notice concerning the work injuries for File Numbers 5053950, 5053951, 5053953, and 5053954. Winstead is not entitled to recover the \$132.00 in medical bills for treatment he received from Dr. Nuss, set forth in Exhibit 26.

Winstead did not provide a full explanation of the charges set forth in Exhibit 2 at hearing. The treatment does not appear to be related to the March 6, 2015 admitted work injury, and lists treatment for right arm pain, cervicalgia, and cervicobrachial syndrome. (Ex. 2) Winstead is not entitled to recover the \$1,036.55 in medical expenses set forth in Exhibit 2.

V. Independent Medical Examination

Winstead seeks to recover the \$300.00 cost of Dr. Manshadi’s examination, and the \$1,100.00 cost of Dr. Manshadi’s report. After receiving an injury, the employee, if requested by the employer is required to submit to examination at a reasonable time and place, as often as reasonably requested to a physician, without cost to the employee. Iowa Code § 85.39. If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes the evaluation is too low, the employee “shall, upon application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee’s own choosing.” Id. Dr. Manshadi’s examination occurred after Dr. Westpheling conducted his examination, finding no permanent impairment, in compliance with the statute.

In the case of Des Moines Area Regional Transit Authority v. Young, the Iowa Supreme Court held:

[w]e conclude section 85.39 is the sole method for reimbursement of an examination by a physician of the employee’s choosing and that the expense of the examination is not included in the cost of a report. Further, even if the examination and report were considered to be a single, indivisible fee, the commissioner erred in taxing it as a cost under administrative rule 876-4.33 because the section 86.40 discretion to tax costs is expressly limited by Iowa Code section 85.39.

867 N.W.2d 839, 846-47 (Iowa 2015). Dr. Manshadi's bill is itemized. Under Young, Winstead is entitled to recover the \$300.00 cost of Dr. Manshadi's examination. Id.

VI. Costs

Winstead seeks to recover the \$100.00 filing fee for the petition, the \$491.01 cost of the depositions of Shatzer, Chubb, and Winstead, and the \$1,100.00 cost of Dr. Manshadi's report. (Ex. 26) Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides,

[c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

The administrative rule expressly allows for the recovery of the costs Winstead seeks to recover. Using my discretion, I find the requested costs should be assessed to Brown and Farmers.

ORDER

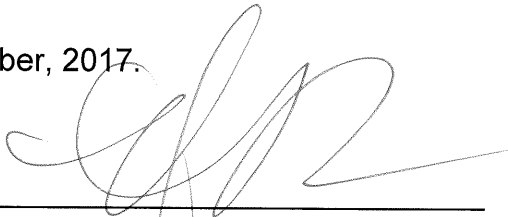
IT IS THEREFORE ORDERED, THAT:

Claimant shall take nothing with respect to File Numbers 5053950, 5053951, 5053952, 5053953, and 5053954.

Defendants are assessed one thousand four hundred and 00/100 dollars (\$1,400.00) for the cost of Dr. Manshadi's examination and report, one hundred and 00/100 dollars (\$100.00) for the filing fee, and four hundred ninety one and 01/100 dollars (\$491.01) for the depositions of Shatzer, Chubb, and Winstead.

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

Signed and filed this 25th day of October, 2017.


HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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HLP/kjw

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.