BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RONALD CHRISTIANSON, Claimant, vs. SNAP-ON TOOLS, INC., Employer, Self-Insured, Defendant.	: : : : : : : : : : :	File No. 5038898 APPEAL DECISION Head Note Nos: 1803, 1806, 2501

Defendant Snap-On Tools, self-insured employer, appeals from a review-reopening decision filed on August 28, 2015. The case was heard on January 16, 2015, and it was considered fully submitted on February 17, 2015, in front of the deputy workers' compensation commissioner.

Claimant Ronald Christianson filed a petition seeking review-reopening of a prior decision of this agency. Specifically, claimant seeks to review and reopen a June 4, 2013, arbitration decision. In the underlying arbitration decision, the deputy commissioner found claimant sustained an injury arising out of and in the course of his employment on October 7, 2011. The deputy commissioner further determined because claimant had not yet reached maximum medical improvement (MMI) he was entitled to a running award of healing period benefits. The deputy commissioner further concluded claimant was also entitled to reasonable medical treatment under Iowa Code section 85.27.

Claimant filed a review-reopening petition on February 7, 2014. The parties stipulated claimant has now reached MMI. The parties are seeking a determination of the extent of industrial disability claimant sustained as a result of the injury. Defendant also asserted an apportionment claim under Iowa code section 85A.7. Additionally, the parties sought a determination regarding whether claimant is entitled to recover certain expenses under Iowa Code section 85.27.

The deputy commissioner awarded claimant permanent total disability benefits at the stipulated weekly benefit rate of $513.82. The deputy commissioner determined defendant is not entitled to apportionment under Iowa Code section 85A.7. The deputy commissioner also awarded payment of medical expenses including a home forced air furnace and air conditioner. Defendant asserts on appeal that the deputy commissioner erred in all three findings. Claimant did not cross-appeal.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I modify the analysis, findings and conclusions reached by the deputy commissioner.

FINDINGS OF FACT

Pursuant to Iowa Code sections 86.24 and 17A.5, I affirm and adopt as the final agency decision those portions of the proposed review-reopening decision filed on August 28, 2015, which relate to issues properly raised on intra-agency appeal with the following modifications and analysis:

At the time of the review-reopening hearing claimant was in his late fifties. He is a high school graduate and he attended two years of community college in retail marketing. He then took classes in elementary education at Buena Vista University but never graduated. He is approximately one semester short of receiving his Bachelor's Degree. He resides on an acreage north of Bode, Iowa, with his wife. They live in a remodeled four bedroom, two and a half story farm house which was originally built in 1910. They have horses, peacocks, and pigeons on their acreage. (Ex. G, pp. 13-15; Ex. H, p. 14, 24)

Claimant's primary work at defendant involved welding. His past work experience also involved working part-time for marketing at New Cooperative and working part-time in retail sales for Kinney Shoes. (Ex. G, pp.19-20) After claimant graduated from Iowa Central Community College, he utilized his retail marketing degree as an assistant manager for Kinney Shoes in Marshalltown. (Ex. G, p. 20) He left that job to move back to Bode where his wife had obtained a teaching job. Claimant then worked as a janitor for Kossuth Hospital until he was hired by defendant in July, 1979. (Ex. G, p. 21)

While employed by defendant, claimant first worked as a welder for one year and then transferred to a brake press job. He also worked in the packing department. For the last 10 to 12 years, claimant was primarily a brake press operator but would also weld on occasion. Claimant also owned and operated his own convenience store for a few years in the mid-2000's while he worked for defendant. (Ex. G, p. 24)

Claimant has not worked anywhere since leaving defendant on December 2, 2011. He did apply for, and eventually received, Social Security Disability benefits. Claimant did apply for eight jobs in March, April, and July of 2012. He has not applied for any job since the arbitration hearing in January, 2013. Claimant has not looked into returning to school to complete his bachelor's degree or obtain any additional education. (Ex. G; Ex. H, p. 9)

Claimant contends he is permanently and totally disabled as a result of the work injury. Defendant disputes the claim of permanent total disability.

Defendant argues claimant lacks motivation to return to the workforce. Defendant points to the recommendation of the authorized treating physician in this case, Arvind Perathur, M.D. of Mercy Pulmonary Critical Care. As early as February of 2012, Dr. Perathur noted claimant was still trying to work on getting his disability done and that he had a lawyer working on his case. Dr. Perathur went on to state, "I have also advised him to work on finding another job, given his young age and normal pulmonary function tests. If he could find a job without any significant smoking exposure, it would be good for his mental health." (Ex. 1, p. 22)

In December, 2013, Dr. Perathur saw claimant in routine follow-up. Claimant had been doing reasonably well since Dr. Perathur saw him six months earlier. Dr. Perathur noted claimant's symptoms stabilized significantly since he was no longer working for defendant. Dr. Perathur suggested claimant should go back to doing part time work. (Ex. 1, pp. 32-33)

Dr. Perathur re-evaluated claimant on June 27, 2014, and noted claimant's condition was worse:

> Overall I think his breathing is a little worse compared to what it was. I would now grade his asthma as moderate persistant [sic]. Hence further increasing the step Rx is going to help.
>
> He is diabled [sic] from his lung. Any humidicty [sic] or temperature change and exposure to perfume will bring on his symptoms. He has been given a prescription of a hospital grade air conditioner.

(Ex. 1, p. 37)

Dr. Perathur saw claimant again on October 28, 2014. The doctor noted claimant now had the hospital grade air conditioning and this helped his breathing. Dr. Perathur felt claimant was stable on his current medications. (Ex. 1, pp. 38-40)

In his January 2015 deposition, Dr. Perathur was asked about claimant's ability to work:

> Q. So if the environment were a clean environment where he wasn't going to be exposed to cold or excessive heat or smoke, say, an office-type environment, would there – there wouldn't be any reason that he couldn't go full time in that type of environment, would there?
>
> A. So my fear as a physician when I was taking care of him – as I'm still taking care of him – one of the things we try to do is – for younger patients we don't want them to go out of work completely because that, in fact, tends to worsen their overall decline. So my point to him was, given his age and given the situation, I thought that it would be worthwhile for him to consider some kind of a work environment to keep him, you know –

> to help prevent such a decline. Because as I told you, deconditioning is something that tends to set in, and then it can spiral down.

(Ex. I, pp. 32-33)

Dr. Perathur felt the only way to know how much work claimant could tolerate would be for him to obtain a job and then watch his symptoms. (Ex. I, pp. 15-35)

Dr. Perathur is not the only physician to offer opinions in this case. Joel Kline, M.D., professor of medicine and director of the University of Iowa Asthma Center, examined claimant on December 1, 2014. Dr. Kline determined claimant sustained 25 percent permanent impairment of the whole person as a result of the work injury. However, Dr. Kline did not address work or other activity restrictions. (Ex. E, p. 54)

Defendant sent claimant to Patrick Hartley, M.D., at the University of Iowa Hospitals and Clinics, for an independent medical evaluation (IME) on January 14, 2013. Dr. Hartley opined claimant had a 21 percent impairment of the whole person as a consequence of asthma. With respect to restrictions, Dr. Hartley stated:

> Work Status
>
> I would recommend that Mr. Christianson not work in an environment where he is exposed to fumes, smoke, dust or irritant chemicals. Because we do not know whether he is sensitized to something in his workplace, it is difficult to state whether use of a respirator would provide sufficient protection to allow him to resume working in his former position at Snap-On Tools. I would recommend that these restrictions be considered permanent.

(Ex. E, p. 53)

After reviewing Dr. Perathur's report of June 27, 2014, Dr. Hartley, authored a report to defense counsel dated January 9, 2015. In that report, Dr. Hartley reiterated claimant's permanent restrictions as follows: no work in an environment where he is exposed to fumes, smoke, dust or irritant chemicals and avoid extreme temperature and humidity. Further, Dr. Hartley indicated it would be difficult to state whether the use of a respirator would provide sufficient protection to allow claimant to resume working in his former position at defendant. It was Dr. Hartley's opinion claimant could return to the workforce with those restrictions. (Ex. E, pp. 58-63)

With respect to future medical care, Dr. Hartley stated:

> Mr. Christianson will need to have follow-up care for his asthma. He should be followed by a pulmonologist or primary care provider on at least an annual basis, and should have spirometry performed annually to assess his pulmonary function. He is currently on a number of prescription medications which will need to be refilled periodically. He

> may experience periodic exacerbations of his asthma associated with viral respiratory tract infections or other nonspecific triggers, and exacerbations may necessitate treatment with prednisone, and more severe exacerbations may necessitate visits to an urgent care clinic or Emergency Department.

(Ex. E, p. 63)

In addition to the opinions of the medical experts, each party offered reports from vocational counselors. Claimant offered the December 5, 2012, report of Rick Ostrander, a rehabilitation counselor. Mr. Ostrander interviewed claimant on November 20, 2012. In that interview, claimant told Mr. Ostrander he had been limited by Dr. Perathur to working four hours or less with breaks. (Ex. 2, p. 3) Based on those limitations, Mr. Ostrander opined "no work could be identified within his labor market for which he would have the necessary physical and vocational capabilities." (Ex. 2, p. 6) Mr. Ostrander stated claimant had likely suffered a 100 percent reduction in employability and earning capacity. (Ex. 2) Mr. Ostrander's report does not take into consideration any of the information or medical opinions since December of 2012. Mr. Ostrander's report clearly is based on an incomplete and inaccurate history. Because Mr. Ostrander's report is based on an incomplete history, I find his opinions are not persuasive.

Defendant offered a vocational report dated December 15, 2014, from Scott Mailey, a vocational case manager. Mr. Mailey provided a list of eleven job openings which he felt were appropriate for claimant based on his education, training, work experience, and transferable skills. Mr. Mailey conducted a vocational analysis and concluded claimant experienced a loss of access of 60 to 70 percent of the occupations for which claimant was suited prior to the work injury. (Ex. F) As pointed out in claimant's brief, Mr. Mailey's report also contains inaccuracies. Therefore, I do not find Mr. Mailey's report to be persuasive.

A review of the expert medical opinions in this case reveals that while claimant does have restrictions placed on his activities, no medical expert has opined claimant cannot work. The medical experts have stated claimant is capable of working within his restrictions. In fact, claimant's authorized treating physician has indicated returning to the workforce would actually be helpful to clamant. While claimant has not put forth much effort to return to the workforce, the evidence does demonstrate his restrictions are significant. I find claimant cannot return to his previous job at defendant. I find claimant has sustained a significant loss in actual earnings and a significant loss of earning potential. Although his access to the competitive labor market has been greatly reduced, claimant has been less than zealous in his efforts to re-enter the workforce. Considering all of the evidence and all of the factors of industrial disability set forth above, I find claimant has suffered a 75 percent loss of earning capacity.

We now turn to the issue of apportionment under Iowa Code section 85A.7(4). This statutory section states:

> Where such occupational disease is aggravated by any other disease or infirmity not of itself compensable, or where disability or death results from any other cause not of itself compensable but is aggravated, prolonged or accelerated by such an occupational disease, and disability results such as to be compensable under the provisions of this chapter, the compensation payable shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease was the sole cause of the disability or death, as such occupational disease bears to all the causes of such disability or death. Such reduction or limitation in compensation shall be effected by reducing either the number of weekly payments or the amount of such payments as the workers' compensation commissioner may determine is for the best interests of the claimant or claimants.

"Under section 85A.7(4) compensation must be reduced and limited to such proportion that would be payable if the occupational disease was the sole cause of the disability." Apling v. John Deere Waterloo Tractor Works, 1 Iowa Industrial Comm'r. Report 8,11 (Appeal 1981). It is also noted that statutes are to be liberally constructed in favor of the claimant. See e.g. Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 135 (Iowa 2010) and cases cited therein.

Defendant argues that 60 percent to 70 percent of claimant's condition and disability is causally related to his exposure to smoke and fumes at defendant. Therefore, defendant contends claimant's award of industrial disability must be reduced by 30 percent to 40 percent. However, defendant's argument is not persuasive.

Because apportionment is an affirmative defense, defendant has the burden of proof. Defendant argues that based upon Dr. Perathur's testimony, claimant's symptoms improved from 60 to 70 percent after he was removed from the work environment. However, that argument is inconsistent because Dr. Perathur then goes on to agree with counsel's question that 60 to 70 percent of claimant's condition was related to work exposure. Defendant ultimately argues that whatever industrial disability claimant is awarded must be reduced by 40 percent based upon those answers from Dr. Perathur. It is noteworthy that Dr. Perathur erroneously stated there were birds living inside of claimant's home. Both Dr. Kline and Dr. Hartley opined claimant suffered occupational asthma caused by exposure to fumes and other airborne substances at work. Both physicians were aware of claimant's occasional contact with the animals roaming outside his home and neither expert offered an opinion that such contact played any part in causing claimant's lung condition. Furthermore, Dr. Perathur, Dr. Kline, and Dr. Hartley all opined as to claimant's permanent impairment and work restrictions and in no case did they indicate the impairment was due to anything other than the work exposure. Apportionment is an affirmative defense and the greater weight of the evidence does not support defendant's argument regarding this affirmative defense. I therefore find defendant is not entitled to apportionment under 85A.7.

Next, we turn to the issue of whether defendant should pay for the forced air furnace and central air conditioning system claimant installed in his home. Claimant seeks reimbursement of this expense under Iowa Code section 85.27. Defendant contends this cost was not a reasonable and necessary medical expense payable under Iowa code section 85.27 and, further, the system was not authorized by defendant.

The record establishes claimant did not request authorization from defendant for the system. Prior to the installation of this system, claimant's home, which was built in the early 1900's, had radiator hot water heat and no furnace. For cooling, claimant had a window air conditioner in an upstairs bedroom. Claimant testified he began looking into installing the new system when Dr. Perathur brought it up when he first became ill, so he looked into it for two, maybe three years. Claimant admitted he did not contact defendant to obtain approval for the system. Claimant testified in his deposition he needed the system, and he had enough money to purchase it, so he had it installed. (Ex. H, depo. pp. 35-44) Claimant argues defendant was less than diligent in complying with its statutory obligation to provide appropriate and timely medical care. The record is void of any explanation from defendant as to what, if anything, it offered to claimant to comply with Dr. Perathur's June 2014 prescription for a hospital grade air conditioner.

Whether something is reasonable and necessary is largely dictated by expert testimony. In this case, the authorized physician, Dr. Perathur, prescribed a hospital grade air conditioner. (Ex. 1, p. 37) Defendant argues it was not reasonable and necessary to provide heating and air conditioning for the entire home. Claimant testified the only way to install the air conditioning system was to also install the heating system. Defendant offered no evidence to the contrary. To support its position to not reimburse claimant for the cost of the system, defendant relies on the following deposition testimony of Dr. Perathur:

> Q. And, I guess, this is – my next question is: Is there a medical reason that you can state that he had to have the whole house air conditioned as opposed to just one room covered, with hospital grade air condition?
>
> A. No, he could have gotten along with one room. One room should have been plenty.

(Ex. I, pp. 22-23)

However, in its appeal brief, defendant failed to include the testimony from Dr. Perathur which immediately precedes the above quote:

> Q. Was there a reason that just air-conditioning in the bedroom wasn't sufficient?
>
> A. I never thought of it in that way. I mean, you know, it could basically have, you know, secured him to just one room, but –

Q. But from a medical standpoint –

A. Medically I don't think he – it could have – medically what I think is he was not – that window air conditioner was not keeping the symptoms adequate, and, you know, I don't know the make of the air conditioner and all the details, but that was not working, and it was not doing the job.

(Ex. I, depo. p. 22)

Thus, while Dr. Perathur did state that just one room with a hospital grade air conditioner could have been enough from a medical standpoint, practically speaking it would have confined claimant to live in one room of his home. I find confining claimant to one room in his home is not reasonable.

While I find claimant's installation of the forced air furnace and central air conditioning system was not authorized by defendant, the record clearly demonstrates the system has been beneficial to claimant's health. (Ex. 1, pp. 38-40; Testimony) On June 27, 2014, Dr. Perathur prescribed a hospital grade air conditioner to be installed in claimant's home. In Iowa, a claimant may be reimbursed for unauthorized medical care if the care was reasonable and beneficial. Claimant's prior air conditioner was not adequate to filter out contaminants and maintain stable temperature and humidity. (Ex. 1, p. 20, 25) The system claimant installed removes dust, dirt, pollen, and allergens and helps with odors and chemical vapors. (Ex. 11, p. 11) The record establishes the system claimant installed has been beneficial to his health. Furthermore, the record is void of any offer from defendant to provide claimant with any alternative care which complies with Dr. Perathur's prescription. I find the system installed by claimant provided a more favorable medical outcome than likely would have been achieved by what defendant actually offered claimant, which was nothing. Therefore, I find the system installed by claimant was reasonable, necessary, and beneficial. I further find defendant is responsible for the cost of the system and for the cost of installation as requested by claimant.

CONCLUSIONS OF LAW

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

Claimant brings this review-reopening proceeding. A review-reopening proceeding is appropriate whenever there has been a substantial change in condition since a prior arbitration award or settlement. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387 (Iowa 2009). Under Iowa Code section 86.14(2), this agency is authorized to reopen a prior award or settlement to inquire about whether the condition of the employee warrants an end to, diminishment of, or increase of compensation. Id.

Upon review-reopening, claimant has the burden to show a change in condition related to the original injury since the original award or settlement was made. The change may be either economic or physical. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). A mere difference of opinion of experts as to the percentage of disability arising from an original injury is not sufficient to justify a different determination on a petition for review-reopening. Rather, claimant's condition must have worsened or deteriorated since the time of the initial award or settlement. Bousfield v. Sisters of Mercy, 249 Iowa 64, 86 N.W.2d 109 (1957). A failure of a condition to improve to the extent anticipated originally may also constitute a change of condition. Meyers v. Holiday Inn of Cedar Falls, Iowa, 272 N.W.2d 24 (Iowa App. 1978). In this case, there is no dispute that there has been a change of condition since the time of the arbitration decision. At the time of the arbitration decision claimant had not yet reached Maximum Medical Improvement. In this review-reopening proceeding the parties have stipulated that claimant has now reached MMI and therefore, the issue of permanency is ripe.

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

Based on the above findings of fact, I conclude claimant has sustained 75 percent industrial disability. Therefore, claimant is entitled to 375 weeks of permanent partial disability benefits.

Defendant asserts apportionment under Iowa Code section 85A.7. Iowa Code section 85A.7(4). This section states:

> Where such occupational disease is aggravated by any other disease or infirmity not of itself compensable, or where disability or death results from any other cause not of itself compensable but is aggravated, prolonged or accelerated by such an occupational disease, and disability results such as to be compensable under the provisions of this chapter, the compensation payable shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease was the sole cause of the disability or death, as such occupational disease bears to all the causes of such disability or death. Such reduction or limitation in compensation shall be effected by reducing either the number of weekly payments or the amount of such payments as the workers' compensation commissioner may determine is for the best interests of the claimant or claimants.

"Under section 85A.7(4) compensation must be reduced and limited to such proportion that would be payable if the occupational disease was the sole cause of the disability." Apling v. John Deere Waterloo Tractor Works, 1 Iowa Industrial Comm'r. Report 8,11 (Appeal 1981). It is also noted that statutes are to be liberally constructed in favor of the claimant. See e.g. Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 135 (Iowa 2010) and cases cited therein.

Apportionment is an affirmative defense; therefore, defendant bears the burden of proof. Based on the above findings of fact, I conclude defendant failed to carry its burden of proof to show by a preponderance of the evidence that claimant's compensation should be reduced. Defendant's contention that apportionment is appropriate is simply not supported by the preponderance of the expert medical opinions in this matter.

Defendant also appealed claimant's right to recover for the forced air furnace and central air conditioning system under Iowa Code section 85.27. (Ex. 11) Iowa Code section 85.27 states in pertinent part:

> 1. The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services. The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one set of permanent prosthetic devices.

Iowa Code section 85.27(2013)

Section 85.27 further provides:

> The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services *and supplies* therefor and shall allow reasonably necessary transportation *expenses* incurred for such services. The employer shall also furnish reasonable and necessary crutches, artificial members and *appliances*....

Iowa Code section 85.27 (first unnumbered paragraph) (emphasis added).

Defendant argues that this code section does not require an employer to pay for retrofitting a claimant's home with a forced air furnace and central air conditioning system. In the present case, the authorized physician prescribed a hospital grade air conditioning system for claimant's home. Defendant argues this cooling system does not fall within the purview of section 85.27. However, in light of long-standing agency and court precedent, I find defendant's argument is not persuasive. The case law states defendant is responsible to provide supplies for all conditions compensable under the workers' compensation law. See Manpower Temporary Services v. Sioson, 529 N.W.2d 259 (Iowa 1995) (defendants ordered to pay for a specially modified van); Quaker Oats, Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996) (defendants ordered to pay for van and home modifications); Stone Container Corp. v. Castle, 657 N.W.2d 485 (Iowa 2003) (defendants ordered to pay for laptop computer); Krieg v. American Eagle Airlines, File No. 5048407 (Alt. Med., June 27, 2014) (defendants ordered to pay for aqua therapy and biofeedback treatment and to pay for acupuncture); Nevels v. State of Iowa, File No. 1037781 (Alt. Med., February 19, 2014) (defendants ordered to pay for handicap bathtub and hydrotherapy massage); Walterblodgett v. Mercy Hospital, File No. 5042533 (Alt. Med., December 28, 2012) (defendants ordered to pay for therapeutic massage on weekly or biweekly basis). Thus, defendant's argument that the forced air furnace and central air conditioning system is not something the employer is obligated to pay under section 85.27 fails. I conclude such a system prescribed by the treating physician is appropriate as a medical expense under section 85.27.

Defendant also argues it should not be responsible for the cost of the forced air furnace and central air condition systems because the system was not authorized by the defendant. The Iowa Supreme Court has stated:

> Although an employee may assert a claim for expenses of the unauthorized medical care, the employee must prove the unauthorized care was reasonable and beneficial under all the surrounding circumstances, including the reasonableness of the employer-provided care, and the reasonableness of the decision to abandon the care furnished by the employer in the absence of an order from the commissioner authorizing alternative care. Consistent with the rationale for giving the employer control over medical care, the concept of reasonableness in this analysis includes the quality of the alternative care and the quality of the employer-provided care. As we have already noted,

> the question of whether the unauthorized care was beneficial focuses on whether the care provided a more favorable medical outcome than would likely have been achieved by the care authorized by the employer.

Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 208 (Iowa 2010).

Based on the above findings of fact, I conclude that although the expense was not authorized, defendant is still responsible for that expense. I find claimant carried his burden of proof to show by a preponderance of the evidence that the system installed in his house was reasonable and beneficial. Thus, I find defendant is responsible under Iowa Code section 85.27 for the forced air furnace and central air conditioning system claimant installed in his home.

Costs are to be assessed at the discretion of the agency. 876 IAC 4.33. Exercising the agency's discretion, I conclude the parties should split the costs of the appeal.

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision of August 28, 2015, is MODIFIED as follows:

Defendant shall pay claimant three hundred seventy-five weeks (375) of permanent partial disability benefits commencing October 31, 2014, at the weekly rate of five hundred thirteen and 82/100 dollars ($513.82).

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

Defendant shall pay claimant's medical expenses directly and defendant shall reimburse claimant those amounts claimant has personally paid for the forced air furnace and central air conditioning system. .

Pursuant to rule 876 IAC 4.33, defendant shall pay the costs of the arbitration proceeding and the parties shall pay their own costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed this 28th day of February, 2017.

Joseph S. Cortese II

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