

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MATTHEW MILLER,

Claimant,

vs.

FARNER-BOCKEN,

Employer,

and

AMERICAN ZURICH INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

File No. 5068118

ARBITRATION DECISION

Head Note Nos.: 1107, 1402.3, 2907

Claimant Matthew Miller filed a petition in arbitration on April 11, 2019, alleging sustained a cumulative injury to his back which manifested on April 13, 2017, while working for Defendant, Farner-Bocken Company ("Farner-Bocken"). Farner-Bocken and its insurer, Defendant American Zurich Insurance Company ("American Zurich"), filed an answer on May 8, 2019, denying Miller sustained a work injury.

An arbitration hearing was held *via* CourtCall video conference on January 11, 2021. Attorney Laura Pattermann represented Miller. Miller appeared and testified. Attorney Adam Bates represented Farner-Bocken and American Zurich. Amy Ross and Isaiah Goetz appeared and testified on behalf of Farner-Bocken and American Zurich. Joint Exhibits ("JE") 1 through 4, and Exhibits 1 through 6 and A through D were admitted into the record. The parties submitted a hearing report, listing stipulations and issues to be decided. Farner-Bocken and American Zurich asserted the affirmative defenses of lack of timely notice under Iowa Code section 85.23 and untimely claim under Iowa Code section 85.26, and waived all other affirmative defenses.

The record was held open through February 12, 2012, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

STIPULATIONS

1. An employer-employee relationship existed between Farner-Bocken and Miller at the time of the alleged injury.

2. Temporary benefits are no longer in dispute.
3. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.
4. The commencement date for permanent partial disability benefits, if any are awarded, is July 13, 2017.
5. At the time of the alleged injury Miller's gross earnings were \$628.64 per week, he was single and entitled to one exemption, and the parties believe the weekly rate is \$390.36.
6. The costs listed in Exhibit 6 have been paid.

ISSUES

1. Did Miller sustain an injury, which arose out of and in the course of his employment with Farner-Bocken on April 11, 2017?
2. Is the alleged injury a cause of temporary disability during a period of recovery?
3. Is the alleged injury a cause of permanent disability?
4. What is the extent of disability?
5. Is Miller entitled to payment of medical expenses set forth in Exhibit 4?
6. Is Miller entitled to recover the cost of an independent medical examination under Iowa Code section 85.39?
7. Is Miller entitled to an award of penalty benefits?
8. Should costs be assessed against either party?

FINDINGS OF FACT

Miller lives in Storm Lake with his sister. (Transcript, page 10) At the time of the hearing he was twenty-nine. (Tr., p. 11)

Miller graduated from high school in 2009. (Exs. 3, p. 16; B, p. 3 (Depo., p. 9); Tr., pp. 11-12) After high school Miller attended Iowa Central Community College for one year and left because he was not interested in pursuing further education. (Exs. 3 p. 16-17; B, pp. 3-4 (Depo., pp. 9-10); Tr., p. 12)

After he left college, Miller worked for Walmart full-time as a tire and lube tech performing oil changes and changed tires, as a coil assembler for Evapco, and as a harvest helper for Don's Farm Supply. (Tr., pp. 12-20)

On January 16, 2015, Miller commenced full-time employment as a full-case picker for Farner-Bocken. (Tr., p. 33) Farner-Bocken supplies gas stations with motor oil, Gatorade, water, food, and cigarettes. (Tr., p. 22) In the full-case department Miller picked entire pieces and items for gas stations, including bottled water, Gatorade, and oil. (Exs. 3, p. 21; B, p. 8 (Depo., p. 27)) Miller also worked in the freezer department at least once per week for a few hours. (Tr., pp. 24-25) Miller testified his job required him to bend and twist ninety-nine percent of the time, and required him to regularly lift up to forty pounds in the full-case department and up to eighty pounds in the freezer department. (Tr., pp. 23-24) Miller participated in the incentive program, which rewarded employees for picking items quickly and accurately. (Tr., p. 25)

Miller sustained an injury to his groin while working for Farner-Bocken. (Tr., p. 28) Miller reported the injury to Goetz, his supervisor. (Tr., p. 29) Goetz completed paperwork and told Miller he could go to a chiropractor or a physician. (Tr., p. 29) Miller elected to go to the chiropractor. (Tr., p. 29) Miller did not take any time off as a result of the injury and he worked light duty for three to five weeks when he was released to full duty. (Tr., pp. 30-32) Miller did not receive any weekly workers' compensation benefits for the groin injury. (Tr., p. 34)

Miller sustained a second injury when a piece of wood from a pallet stabbed him in the leg. (Tr., p. 35) Miller reported the injury to Goetz and Goetz transported him to the emergency room where he received stitches. (Tr., pp. 35-36) Miller reported he worked one or two days light duty before he returned to full duty. (Tr., p. 36) Miller did not receive any weekly workers' compensation benefits for this injury. (Tr., p. 36)

Miller testified at hearing that on April 11, 2017, at the end of his shift he felt "particularly sore" in his lower back when he was leaving work. (Tr., pp. 37-38) Miller had worked in the freezer that day, lifting eighty-pound boxes. (Tr., p. 38) Miller relayed he had felt sore before, but not terribly sore. (Tr., p. 38) Miller testified he could not get comfortable during his thirty-minute commute home and he had a constant ache in his lower back. (Tr., pp. 41-42) Miller worked the night shift in April 2017.

Defendants propounded interrogatories on Miller. (Ex. C) Miller testified he answered the interrogatories alone. (Tr., p. 89) Interrogatory Number 11 asked Miller to describe the incident leading to his work injury and Miller responded, "[t]o the best of his knowledge and belief, Claimant states that on 4/13/2017, Claimant was performing his routine job duties for Defendant Employer. As Claimant was lifting a product, he felt immediate pain in his back." (Ex. C, p. 2) Miller testified at hearing he could not recall what he wrote exactly, "but I believe I would have said it if it's there." (Tr., p. 89) At hearing, Miller testified there was not a specific incident like lifting a product where he had immediate pain. (Tr., p. 89)

Goetz testified he kept notes of voicemail messages from Miller and conversations he had with Miller, which he typed in one document, Exhibit A, pages 15 and 16. (Tr., p. 133) Goetz signed the typed summary on April 26, 2017. (Ex. A, p. 16)

Goetz testified the quotations are a verbatim recounting of the voicemails Miller left. (Tr., p. 133)

Goetz documented Miller called and left him the following voicemail at 11:30 a.m. on April 11, 2017:

[h]ey Isaiah, this is Matt Miller. I don't know what I did, but when I got home I twisted my back and now whenever I turn or anything there's a sharp pain in my back. Anyways I have been trying to sleep for like 4 hours and I haven't fallen asleep yet obviously. So, just wanted to call and let you know that I'd try and wake up at 4:30 (PM) and see if my back feels fine. I'll leave you another voicemail whenever I wake up. I wanted to call and let you know sooner rather than later. Thanks.

(Ex. A, p. 15) Goetz wrote that afternoon Miller called at 5:32 p.m. and left a voicemail stating he was calling again to let Goetz know "my back is still messed up. I'm just not going to be in today. Hopefully tomorrow I'll go see the chiropractor regardless of whether or not it's hurting and just try to get it figured out. Thanks." (Ex. A, p. 15)

Miller testified Goetz's summary that he was injured at home is inaccurate, through the following exchange on direct examination,

Q. And how do you believe it's inaccurate?

A. Just that it specifically states that I was hurt at home. I believe I told him that I realized when I got home that my back was hurting. Whether when it was – when I was twisting or whatever I was doing, it was hurting.

Q. And when you were referring to twisting when you left the message, were you referring to twisting at home or were you referring to twisting when you had been at work?

A. I believe I was just – I told him I left work with my back hurting and when I got home it was hurting more and more, even whether I was twisting or just taking a breath or whatever it might have been; but there was no instance, no specific instance, of me getting home, twisting my back and, oh, I hurt my back. It was I left work with my back hurting and when I got home I realized it was something more serious and I needed to let work know.

(Tr., pp. 46-47) Miller testified he did not report the soreness before he left work because he thought it would resolve as his soreness in the past had and that when he realized the soreness was not going away, he called Goetz at 11:30 a.m. (Tr., p. 48) Miller testified during the second message he told Goetz he would not be in to work that evening. (Tr., pp. 44-45)

In his answer to Interrogatory Number 12, Miller reported he told Goetz he injured his back at work at the end of his shift on April 13, 2017. (Ex. C, p. 2) During the hearing he testified he called Goetz and reported his work injury on April 11, 2017. (Tr., pp. 91-92)

Goetz documented he received the following voicemail message from Miller on April 12, 2017, at 10:58 a.m.:

[h]ey Isaiah, this is Matt Miller. I went to the chiropractor and he suggested that I made [sic] an appointment with the doctor, which I did and I just got out of that appointment. He suggested I take off the rest of the week, but I told him I would probably definitely need to be there Thursday since we're short-staffed. He put me on lifting restrictions. But uh, so yeah, I'm not really sure how . . . if I have any vacation left or how I'm sitting right there. You need to see the note? Would I be able to text it to you? If not, I can have my friend pick it up and take it to work . . . or . . . I don't know. Just give me a call back and we can figure something out.

(Ex. A, p. 15)

On April 12, 2017, Miller attended an appointment with David Crippin, M.D., his family medical physician, complaining of back pain for more than twenty-eight days. (JE 1, pp. 10, 12) Miller denied having an injury, but reported he lifted up to eighty pounds "all day long." (JE 1, pp. 10-12) Dr. Crippin wrote "[h]e has chronic intermittent flare ups of upper and lower back pain. No radicular pain or numbness." (JE 1, p. 12) Dr. Crippin documented Miller reported he had been seeing a chiropractor and not receiving relief and that his back hurts worse in the middle lately. (JE 1, pp. 10-11) Dr. Crippin assessed Miller with a lumbar strain and imposed a forty pound lifting restriction for two weeks and ordered physical therapy. (JE 1, pp. 10, 12-13)

Miller testified when he saw Dr. Crippin he told him he hurt his back at work and explained "at my job I'm constantly lifting boxes, bending and twisting and lifting heavy boxes up to 80 pounds." (Tr., p. 51) Miller testified Dr. Crippin's record documenting he had been seeing a chiropractor without relief was inaccurate because he had not recently seen a chiropractor and reported he told Dr. Crippin he was planning on seeing a chiropractor. (Tr., pp. 52, 98) Miller further reported Dr. Crippin's note that he had been experiencing back pain for more than twenty-eight days was also inaccurate. (Tr., p. 98)

Goetz received a doctor's note stating Miller needed to be off on April 11, 2017 and April 12, 2017, and that he could return to work on April 13, 2017, with a restriction of no lifting over forty pounds for the next two weeks. (Ex. A, p. 15) Farnier-Bocken granted Miller vacation for April 11, 2017 and April 12, 2017, which exhausted his leave. (Ex. A, pp. 2-3, 15)

Miller returned to work and worked for Farner-Bocken on April 13, 2017, April 17, 2017, and April 18, 2017, with a forty-pound work restriction. (Ex. A, p. 15) Goetz documented on April 18, 2017, Miller told him he wanted to take a week off because he did not believe his back was getting better and he wanted to go to the chiropractor. (Ex. A, p. 15) Goetz documented he told Miller he could have April 19, 2017, off, but he wanted to see how he was feeling and that he should call in if he needed additional time off. (Ex. A, pp. 15-16)

During his deposition, counsel for Farner-Bocken and American Zurich asked Miller when he reported his work injury and he responded, as follows:

Q. So prior to that, had you informed Farner that you had an injury to your back?

A. Yes

Q. When did you do that?

A. April 13th, 2017.

Q. Tell about that. Who did you tell and what did you tell?

A. I told my supervisor, Isaiah Goetz, that I needed to go on restriction, like a lifting restriction.

Q. Did you tell your supervisor that your back pain was because of your job at Farner?

A. I didn't feel I needed to.

Q. Why is that?

A. I think it was suggested. I think. I think I told him my back was sore just from working previously. Up to that point, it was, I guess, known already.

Q. When you say it was known already, known by whom?

A. By Isaiah Goetz.

Q. Did you ever talk to anybody other than Isaiah about your back pain from work?

A. Yes.

Q. Who else did you talk to about it?

A. I talked to my team lead at the time, Matt Johnson.

Q. Tell me about that conversation.

A. I don't recall the conversation, I guess. I remember speaking to him.

Q. Did that happen before or after the conversation with Isaiah in April?

A. I guess after.

(Exs. 3, p. 20; B, p. 7 (Depo., pp. 23-25))

During the hearing, Miller testified when he returned to work he reported his work injury to his team lead, as follows:

Q. What do you mean when you say you couldn't work on those restrictions as well?

A. My back was just becoming progressively worse while I was working. I remember trying to work. Actually, this was after I got put on even further restriction. Trying to finish a shift, and that was -- that was when I got -- I got put on a second restriction of no more than 20 pounds.

And I remember working a Thursday and I just -- I couldn't keep working. I went and talked to my team lead John Mengwasser about it, and I remember just sitting in the office while everybody else continued to work.

Q. And when you talked to John, was John aware that you had injured your back at work?

A. Yes.

Q. And was he aware that it was continuing to get worse while working?

A. Yes.

Q. Did he make any suggestions to you as far as what you needed to do going forward?

A. No. He just -- at some point I know he asked me to leave the office. He wanted me to just try to keep on working or just at least look busy.

(Tr., pp. 53-54)

On April 20, 2017, Miller attended an appointment with his chiropractor, Lance Jenkins, D.C., complaining of generalized back pain, primarily lower lumbar which he “attributed to bending over ‘thousands’ of times per day at work,” noting the pain began “a couple of week ago” and had been consistent since. (JE 2, p. 49) Dr. Jenkins assessed Miller with other specified dorsopathies, lumbosacral region, segmental and somatic dysfunction of the cervical, thoracic, lumbar, and sacral regions, and muscle spasm of back, and performed manipulations. (JE 2, pp. 49-50)

Goetz documented Miller left him the following voicemail message at 3:16 p.m. on April 20, 2017:

[h]ey Isaiah, or John (John Mengwasser, Night Ambient Pick Team Lead), or whoever listens to this. Letting you know I'm not coming in today either. Just got out of my chiropractic appointment. It's feeling a little bit better, but not to where I want to come in and work a full shift and make it feel worse again. So, yeah, I'll see you Monday. Thanks.

(Ex. A, p. 16) Miller received the remainder of his paid time off balance for April 19, 2017 and April 20, 2017. (Ex. A, pp 4-5, 16)

Goetz documented on April 24, 2017, Mengwasser called him about Miller and Goetz called Miller himself. (Ex. A, p. 16) Goetz documented,

Matt told me that even after his long weekend his back was feeling even worse. He was wondering what he could do. I told him that I knew he was out of vacation and PTO, but due to his constant communication I would allow him to use an “Unpaid Day Off ‘Record Only’ for the day. He said that he had tried to get into his doctor today, but they were gone so he was going to get in tomorrow. I told him that I would need any change in restriction documentation since he originally stated that this was an injury that happened outside of work. I made sure that he was aware to call and let us know if he was unable to work each day this week as I would allow him to utilize his remaining “record only” days on a day by day basis this week. I informed him that should his restriction be any less than the 40 pounds I would not be able to allow him to come back until his restriction was lifted. We discussed the possibility of a “Leave of Absence,” but I told him that my knowledge was limited so Amy Ross would be who he would want to speak with. He said that he may call her later this week.

(Ex. A, p. 16) Goetz granted Miller an unpaid day off on April 24, 2017. (Ex. A, p. 6)

Goetz documented at 4:17 p.m. on April 25, 2017, at 4:17 p.m. Miller left him the following voicemail message:

[h]ey Isaiah, this is Matt Miller. I went to the doctor today. He took . . . had me take the week off. He wrote me a note for it. I, uh, to avoid driving there again just to drop it off, I gave it to Andy Hutchinson, so he should have it. If you don't get it then, I don't know. Um, I'll be there tomorrow at 3:30 . . .so . . .I don't know if you'll be there for that. I talked to Amy Ross about the short time [sic] disability leave paperwork, whatever the title of it was. Um, yeah, so I'm gonna get that figured out and uh, hopefully I'll be good by next week. If not I'll let you know Monday. Thank you.

(Ex. A, p. 16)

On April 25, 2017, Miller returned to Dr. Crippin complaining of back pain. (JE 1, p. 15) Dr. Crippin documented Miller reported doing a lot of bending and lifting at work and that he strained his back there, and that he had seen a workers' compensation doctor, but he continued to have ongoing pain in his lower back and tightness in both hamstring muscles, but no radicular pain or numbness. (JE 1, p. 17) Dr. Crippin diagnosed Miller with a low back strain and directed him to take Naprosyn two times per day. (JE 1, p. 18) Goetz received a doctor's note stating Miller would be off work through April 28, 2017, and that he could return on April 29, 2017. (Ex. A, p. 16)

Goetz documented at 3:30 p.m. on April 26, 2017, he met with Miller and Ross, the director of human resources, to discuss a leave of absence. (Ex. A, p. 16) Goetz noted Miller received documentation pertaining to the process and that he would have a doctor appointment on Monday and if he was unable to return to work he would call Goetz by 8:00 p.m. on Monday, May 1, 2017, to provide an update on his leave. (Ex. A, p. 16) Goetz testified during the meeting Miller did not report he believed his back pain was because of his employment with Farner-Bocken. (Tr., p. 134)

Goetz testified the quotations in his summary, Exhibit A pages 15 and 16 are verbatim recounting of the voicemail messages Miller left for him and that he accurately recounted and transcribed those voicemails. (Tr., p. 133) On cross-examination Goetz reported he wrote down everything and listened to the messages repeatedly to make sure he had everything down verbatim. (Tr., p. 136) Goetz reported Miller never told him that he believed his back pain was work-related. (Tr., pp. 133-34)

On April 27, 2017, Miller applied for short-term disability. (Ex. A, p. 9) Ross documented Miller had been on family medical leave from April 19, 2017 through May 1, 2017, and he was applying for short-term disability. (Ex. A, p. 9) Miller testified he received short-term disability benefits. (Tr., p. 70) Miller admitted on cross-examination that when he applied for short-term disability benefits he did not report his condition was work-related. (Tr., pp. 97-98)

On May 1, 2017, Miller attended a follow-up appointment with Dr. Crippin, reporting he had attended physical therapy three times, but he had not received much relief from his symptoms and reporting the stretches seemed to cause more tightness.

(JE 1, pp. 20-23) Dr. Crippin prescribed Flexeril as needed for muscle spasms, Naprosyn, and a prednisone taper, and discussed a lifting restriction of twenty pounds. (JE 1, pp. 20-24)

On May 15, 2017, Miller complained of ongoing lower back pain with tightness into the lower back radiating into his buttocks with no weakness or numbness. (JE 1, pp. 25-27) Dr. Crippin diagnosed Miller with acute bilateral low back pain with bilateral sciatica and continued his prescriptions. (JE 1, pp. 25-28)

Miller attended a follow-up appointment with Dr. Crippin on June 12, 2017, complaining of back pain. (JE 1, p. 29) Dr. Crippin documented Miller had been on a lifting restriction of forty pounds for two months and his employer was not wanting him to return with any restrictions. (JE 1, p. 31) Dr. Crippin documented Miller relayed he was experiencing minor improvement with non-steroidal anti-inflammatory drugs, but he was still feeling a lot of tightness down his right leg, and that magnetic resonance imaging showed non-surgical disease of the lower back. (JE 1, pp. 31-32) Dr. Crippin diagnosed Miller with right side sciatica and continued his medication. (JE 1, pp. 29-30)

On June 19, 2017, Miller attended an appointment with Wade Lukken, M.D., a pain specialist with Siouland Pain Clinic, complaining of low back pain primarily on the right side. (JE 4) Dr. Lukken documented Miller reported he was injured at work and that “[h]is job included lifting a lot of boxes. One evening while he was off of work took a deep breath and he had a sudden onset of back pain and it has been present ever since,” and is worse with bending and moving and that he had been experiencing back pain for several months. (JE 3, p. 131) Dr. Lukken assessed Miller with lumbar facet syndrome and lumbar spondylosis, and administered right sided lumbar facet injections for diagnosis. (JE 3, pp. 133-35)

Miller testified Dr. Lukken’s records contain inaccuracies. Dr. Lukken documented Miller had been referred by Dr. Carew. Miller testified he does not know a Dr. Carew, and that he had been referred to Dr. Lukken by Dr. Crippin. (Tr., p. 58) Dr. Lukken documented Miller admitted to a previous problem with alcohol, which he denied on direct examination and is not present in any of his records. (Tr., pp. 59-60; 100) Miller testified Dr. Lukken’s statement that he had a several-month history of back pain was inaccurate because it had only been two months. (Tr., p. 101) Miller admitted a several month history would be consistent with Dr. Crippin’s note that Miller had been experiencing back pain for more than twenty-eight days when he saw him for the first time. (Tr., p. 101)

Miller testified Dr. Lukken’s documentation that “[o]ne evening while he was off of work took a deep breath and he had a sudden onset of back pain and it has been present ever since” is inaccurate. (Tr., pp. 58-59; 100) Miller explained “I think I was explaining to him that things like taking a deep breath caused pain. I was going over all the – all the things that like increased the pain. (Tr., p. 59) On cross-examination, Miller admitted both Goetz’s statement and Dr. Lukken’s record document Miller’s pain started at home. (Tr., p. 101)

On June 26, 2017, Miller attended an appointment with Dr. Crippin, complaining of lumbar pain. (JE 1, p. 34) Dr. Crippin documented Miller had attended physical therapy and received steroid injections from a pain clinic, and that he continued to experience pain in his lower back and down his leg following the injections. (JE 1, pp. 34-36)

Between April 26, 2017 and July 5, 2017, Miller attended thirteen sessions of physical therapy ordered by Dr. Crippin for his low back pain. (JE 3) Miller did not attend his physical therapy session on July 6, 2017. (JE 3, p. 126) According to the physical therapy notes, Miller later called the physical therapy office and told the secretary he was "feeling good and is going to discontinue therapy," and he was discharged. (JE 3, p. 128) Miller testified he believes the statement he was discontinuing physical therapy because he was feeling good is inaccurate. (Tr., p. 103)

Miller returned to Dr. Lukken on July 17, 2017, and reported he received no significant benefit from the facet injections he received, that he was continuing to have intermittent back pain, and "[d]oing planks and pushups seem to be the most problematic for him." (JE 4, p. 136) Dr. Lukken noted his magnetic resonance imaging was unremarkable and he was not quite certain what was causing his pain. (JE 4, p. 136) Dr. Lukken assessed Miller with myofascial pain syndrome and recommended he continue with chiropractic treatment and prescribed tizanidine. (JE 4, p. 137)

On July 10, 2017, Core-Mark purchased Farner-Bocken. (Tr., p. 117) Ross continues to work for Core-Mark as a human resources manager and Goetz continues to work as the night ambient pick supervisor. (Tr., pp. 117, 128) Ross testified she contacted all of the employee who were on a leave of absence the week of July 18, 2017, and offered the employees ninety days to determine if they wanted to continue their employment with Core-Mark, including Miller, and that she never heard back from Miller. (Tr., p. 122)

Miller testified Farner-Bocken did not inform him when he was fired and he found out he had been fired when his doctor told him his insurance had been cancelled. (Exs. 3, p. 20; B, p. 7 (Depo, pp. 22-23); Tr., p. 61) Miller reported his doctor referred him to a pain specialist in Dakota Dunes and after he scheduled the appointment he received a call from the doctor informing him that his insurance had been rejected, so he called Farner-Bocken and learned that he had been terminated. (Exs. 3, p. 20; B, p. 7 (Depo. p. 23); Tr., p. 61) Miller testified during his deposition Farner-Bocken fired him "regarding my injury and how long it was taking." (Exs. 3, p. 20; B, p. 7 (Depo., p. 22))

On July 21, 2017, Miller returned to Dr. Jenkins for chiropractic manipulation, complaining of generalized back pain, noting the pain continues at the "L/S junction, without distal radiation" with "[o]ccasional pain on the right at the T/L junction." (JE 2, p. 51) During an appointment on July 25, 2017, Miller reported "[l]eft SI joint and left L/S junction are quite painful today" and he had not noticed any improvement. (JE 2, p. 52)

On July 26, 2017, Dan Connell, an attorney representing Miller, sent a letter to Farner-Bocken, indicating Miller had sustained an injury to his back while working for Farner-Bocken the week of April 13, 2017, and requesting workers' compensation benefits. (Ex. A, p. 14) Ross testified this was the first notice she had received Miller was claiming he hurt his back at work. (Tr., p. 118)

On August 3, 2017, Ross sent a response to Connell, reporting Farner-Bocken's records did not reflect his client sustained a back injury in the workplace during the week of April 13, 2017, and reporting the company records indicated Miller started a leave of absence after he twisted his back at his own residence. (Ex. A, p. 13)

Ross contacted Goetz after she received Connell's letter. (Ex. A, p. 17) Goetz sent Ross an e-mail stating, "Matt Miller's injury, from what he told me, occurred after he left work and got back to his place of residence. I recall even asking him if something happened at work, and he told me that it did not. Matt stated that he twisted and hurt his back after he got home." (Ex. A, p. 17)

On August 1, 2017, Dr. Crippin sent a letter to Miller's counsel, providing a summary of his treatment of Miller, noting at the time of his last encounter with Miller a month before he continued to complain of pain and opined:

[t]here's certainly no question in my mind that he was injured at work and that he has significant sciatic nerve pain and muscle spasm affecting his employability. I do not know how long this will take to heal and certainly will place some limits on future lifting and employability as well. He needs to continue with physical therapy and continue with meds including anti-inflammatories and should see a pain clinic for consideration of epidural or other type of injections or possible radiofrequency.

(JE 1, p. 38)

Miller continued to treat with Dr. Jenkins and received chiropractic adjustments with each visit in August 2017. (JE 2) During an appointment on August 1, 2017, Miller reported he received relief for about one day after his last adjustment, but the pain returned to pre-treatment intensity the next day. (JE 2, p. 54) During a visit on August 9, 2017, Miller reported he received two to three days of relief after his last visit, and while his pain never fully resolved, it "did decrease in intensity to manageable levels," noting the pain persists at "the L/S junction and on the right at the T/L junction." (JE 2, p. 56) On August 14, 2017, Miller attended a follow-up appointment with Dr. Jenkins, reporting he received one full day of relief after his last adjustment, noted the pain remains localized "primarily at the L/S junction," and that the pain is "mostly manageable, but worse when bending over and reaching." (JE 2, p. 58) During an appointment on August 21, 2017, Miller relayed he "was mostly pain-free since his last treatment," reported he "is still sore in the lower lumbar after a full day, but the twinge at the T/L junction has not returned since his last visit." (JE 2, p. 60)

In August 2017, Miller applied for unemployment benefits. (Tr., p. 63) Farner-Bocken contested his claim and he was ultimately awarded unemployment benefits. (Tr., pp. 63-64)

Miller's attorney sent another letter requesting workers' compensation benefits on April 5, 2018. (Ex. A, pp. 11-12) On April 11, 2018, Ross sent a letter to Miller's counsel, indicating she had received her inquiry from April 5, 2018, and that she was the second attorney who had contacted Farner-Bocken about Miller. (Ex. A, p. 10) Ross relayed the company records did not reflect Miller sustained a back injury in the workplace during the week of April 13, 2017, and that the company records indicated Miller started a leave of absence after he twisted his back at his own residence. (Ex. A, p. 10)

In March 2018, Miller commenced part-time seasonal employment with Domino Motors as a car detailer. (Exs. 3, p. 19; B, p. 6 (Depo., p. 20)) Miller testified during the hearing the position required a lot of bending and twisting, but he was able to work at his own pace. (Tr., p. 85) Miller reported during his deposition he was physically able to perform the job. (Exs. 3, p. 19; B, p. 6 (Depo., p. 20))

Miller returned to Dr. Jenkins on June 25, 2018, complaining of neck and upper back pain over the weekend, noting he was unsure of the exact causative factor for the pain onset, but reporting he has varied job duties at Domino Motors, so the onset may be attributable to some from that. (JE 2, p. 62) Miller did not report any low back symptoms or problems. (JE 2, p. 62)

Tyson Foods hired Miller in September 2018, as a part-time security officer. (Exs. 3, p. 18; B, p. 5 (Depo., p. 14); Tr., p. 77) Miller secured a full-time position in December 2018. (Exs. 3, p. 18; B, p. 5 (14); Tr., p. 77) Miller is responsible for monitoring the daily traffic of people walking in and out of the plant and trucks arriving and leaving the plant. (Exs. 3, p. 18; B, p. 5 (Depo., p. 15); Tr., p. 76) The position does not require any lifting. (Exs. 3, p. 18; B, p. 5 (Depo, p. 16); Tr., p. 76) Miller is able to sit and stand as needed, and reported he can sit for three to four hours without feeling like he needs to adjust and noted he can stand longer. (Exs. 3, p. 18; B, p. 5 (Depo., p. 16))

Miller attended a pre-employment physical with David Archer, M.D. for Tyson, on September 13, 2018. (Ex. D) Dr. Archer documented Miller had right sided sciatica and documented Miller had a history of "neck, shoulder and back problems treated conservatively and resolved," nothing he last saw physical therapy in June 2017. (Ex. D, p. 1-2) Dr. Archer examined Miller, and noted "no joint tenderness, deformity or swelling, no muscle tenderness noted, full range of motion without pain of neck, upper extremities, low back and lower extremities. In particular, no abnormalities on neck, shoulder and back exams." (Ex. D, pp. 2-3) Dr. Archer opined Miller had no employment restrictions based on his examination. (Ex. D, p. 3)

Miller testified Dr. Archer's statement that he has full range of motion without pain in his neck, upper extremities, low back and lower extremities is inaccurate. (Tr., p. 81) Miller reported he continues to have pain in his low back. (Tr., pp. 81, 105)

On July 10, 2020, Charles Taylon, M.D., a neurosurgeon, conducted an independent medical examination for Miller. (Ex. 1) Dr. Taylon reviewed Miller's medical records and examined him. (Ex. 1) Miller reported to Dr. Taylon he had to lift items off pallets onto a conveyor belt weighing forty to fifty pounds one to two times per day with bending, and stated he developed progressive back problems over a week's time, reporting a work injury on April 13, 2017, when he realized the soreness was not going away. (Ex. 1, p. 1) Dr. Taylon noted Miller's gait and station were stable, his lumbar region was nontender, and he had a mild decreased range of motion. (Ex. 1, p. 2) Dr. Taylon opined Miller sustained a mechanical musculoligamentous injury to his lumbar spine and found he had reached maximum medical improvement. (Ex. 1, p. 2) Dr. Taylon assigned a permanent impairment rating of five percent, but he did not reference which version of the AMA Guides he used in reaching his conclusion, and he assigned a permanent lifting restriction of fifty pounds, and restrictions of no repetitive bending or twisting with the ability to change positions every two hours. (Ex. 1, p. 2)

CONCLUSIONS OF LAW

I. Applicable Law

This case involves several issues, including whether Miller sustained an injury arising out of and in the course of employment, extent of disability, recovery of penalty benefits, recovery of the cost of an independent medical examination, recovery of costs, and interest. In March 2017, the legislature enacted changes (hereinafter "Act") relating to workers' compensation in Iowa. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code sections 85.34 and 85.39 apply to injuries occurring on or after the effective date of the Act. This case involves a work injury occurring before July 1, 2017, therefore, the provisions of the new statute with the exception of interest do not apply. The calculation of interest is governed by Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

II. Arising Out of and in the Course of Employment

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:

[i]t 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 his employer.

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

Whether a claimant’s injury arises out of the claimant’s employment is a “mixed question of law and fact.” Lakeside Casino v. Blue, 743 N.W.2d 169, 173 (Iowa 2007). The Iowa Supreme Court has held,

[t]he factual aspect of this decision requires the [trier of fact] to determine “the operative events that [gave] rise to the injury.” Meyer v. IBP, Inc., 710 N.W.2d 213, 218 (Iowa 2006). Once the facts are determined, a legal question remains: “[W]hether the facts, as determined, support a conclusion that the injury ‘arose out of . . . [the] employment,’ under our workers’ compensation statute.”

Id.

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 cause does not need to be the only cause, “[i]t only needs to be one cause.” Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 64 (Iowa 1981).

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 deputy 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).

Miller asserts he sustained a cumulative injury to his low back while working for Farner-Bocken. A cumulative injury is an occupational disease that develops over time, resulting from cumulative trauma in the workplace. Baker v. Bridgestone/Firestone, 872 N.W.2d 672, 681 (Iowa 2015); Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842, 851 (Iowa 2009); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368, 372-74 (Iowa 1985). “A cumulative injury is deemed to have occurred when it manifests – and ‘manifestation’ is that point in time when ‘both the fact of the injury and the causal relationship of the injury to the claimant’s employment would have become plainly apparent to a reasonable person.’” Baker, 872 N.W.2d at 681. The Iowa Supreme Court has held:

[a] cumulative injury is manifested when the claimant, as a reasonable person, would be plainly aware (1) that he or she suffers from a condition or injury, and (2) that this condition or injury was caused by the claimant’s employment. Upon the occurrence of these two circumstances, the injury is deemed to have occurred.

Herrera v. IBP, Inc., 633 N.W.2d 284, 288 (Iowa 2001).

Miller avers he sustained a cumulative injury to his low back arising out of and in the course of his employment. Farner-Bocken and American Zurich allege Miller has not met his burden of proof and aver he is not a credible witness. Miller testified he reported his work injury to Goetz. Goetz alleges Miller reported he injured his back at home.

During the hearing I assessed the credibility of Miller and Goetz by considering whether their testimony was reasonable and consistent with other evidence I believe, whether they had made inconsistent statements, their “appearance, conduct, memory and knowledge of the facts,” and their interest in the case. State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990). During the hearing I had the opportunity to observe Miller and Goetz under oath.

After the alleged work injury, Core-Mark acquired Farner-Bocken. At the time of the hearing Goetz worked for Core-Mark. Goetz served as a supervisor both for Farner-

Bocken and for Core-Mark. During the hearing Goetz engaged in direct eye contact, his rate of speech was appropriate, and he did not engage in any furtive movements. While Goetz did not have personal recollection of many of the circumstances in this case at the time of the hearing, more than three years from the alleged date of injury, he testified he kept contemporaneous notes of his communications with Miller, which he typed and are found in Exhibit A, pages 15 and 16. (Tr., pp. 133-4) Goetz was not deposed before the hearing. Based on my personal observations, I found his testimony and recordkeeping to be credible.

Miller has an obvious interest in the outcome of this case. During the hearing Miller engaged in direct eye contact, his rate of speech was appropriate, and he did not engage in any furtive movements. Miller's testimony at hearing was not consistent with his interrogatory answers or his deposition testimony. Miller alleges multiple medical providers he spoke with have inaccurate records, and that Goetz's records are inaccurate as well. I do not find his testimony reasonable or consistent with the other evidence I believe. I do not find him to be a credible witness.

The first discrepancy is whether the injury was traumatic or cumulative. Defendants propounded interrogatories on Miller. Miller testified he answered the interrogatories alone. (Tr., p. 89) Interrogatory Number 11 asked Miller to describe the incident leading to his work injury and Miller responded, "[t]o the best of his knowledge and belief, Claimant states that on 4/13/2017, Claimant was performing his routine job duties for Defendant Employer. As Claimant was lifting a product, he felt immediate pain in his back." (Ex. C, p. 2) Miller testified at hearing he could not recall what he wrote exactly, "but I believe I would have said it if it's there." (Tr., p. 89) At hearing, Miller testified there was not a specific incident like lifting a product where he had immediate pain. (Tr., p. 89)

The second discrepancy is where the actual injury actually occurred. Miller testified on April 11, 2017, at the end of his shift he felt "particularly sore" in his lower back when he was leaving work. (Tr., pp. 37-38) Miller testified when he got in his car he had a constant ache starting in his lower back and he could not get comfortable during his thirty-minute commute home. (Tr., pp. 41-42)

Goetz documented at 11:30 a.m. on April 11, 2017, Miller left him the following voicemail message,

[h]ey Isaiah, this is Matt Miller. I don't know what I did, but when I got home I twisted my back and now whenever I turn or anything there's a sharp pain in my back. Anyways I have been trying to sleep for like 4 hours and I haven't fallen asleep yet obviously. So, just wanted to call and let you know that I'd try and wake up at 4:30 (PM) and see if my back feels fine. I'll leave you another voicemail whenever I wake up. I wanted to call and let you know sooner rather than later. Thanks.

(Ex. A, p. 15)

Miller testified at hearing Goetz's noted that he was injured at home is inaccurate, as follows:

Q. And how do you believe it's inaccurate?

A. Just that it specifically states that I was hurt at home. I believe I told him that I realized when I got home that my back was hurting. Whether when it was – when I was twisting or whatever I was doing, it was hurting.

Q. And when you were referring to twisting when you left the message, were you referring to twisting at home or were you referring to twisting when you had been at work?

A. I believe I was just – I told him I left work with my back hurting and when I got home it was hurting more and more, even whether I was twisting or just taking a breath or whatever it might have been; but there was no instance, no specific instance, of me getting home, twisting my back and, oh, I hurt my back. It was I left work with my back hurting and when I got home I realized it was something more serious and I needed to let work know.

(Tr., pp. 46-47) Miller reported he could not get comfortable at home, so he left a second message for Goetz stating he would not be in. (Tr., p. 44-45)

A third discrepancy is if and when Miller reported the injury to Goetz. Goetz testified Miller never told him that he believed his back pain was work-related. (Tr., pp. 133-34) In his answer to Interrogatory Number 12, Miller reported he told Goetz he injured his back at work at the end of his shift on April 13, 2017. (Ex. C, p. 2) During his deposition, Defendants' counsel inquired and Miller responded,

Q. So prior to that, had you informed Farnar that you had an injury to your back?

A. Yes

Q. When did you do that?

A. April 13th, 2017.

Q. Tell about that. Who did you tell and what did you tell?

A. I told my supervisor, Isaiah Goetz, that I needed to go on restriction, like a lifting restriction.

Q. Did you tell your supervisor that your back pain was because of your job at Farnar?

A. I didn't feel I needed to.

Q. Why is that?

A. I think it was suggested. I think. I think I told him my back was sore just from working previously. Up to that point, it was, I guess, known already.

Q. When you say it was known already, known by whom?

A. By Isaiah Goetz.

Q. Did you ever talk to anybody other than Isaiah about your back pain from work?

A. Yes.

Q. Who else did you talk to about it?

A. I talked to my team lead at the time, Matt Johnson.

Q. Tell me about that conversation.

A. I don't recall the conversation, I guess. I remember speaking to him.

Q. Did that happen before or after the conversation with Isaiah in April?

A. I guess after.

(Exs. 3, p. 20; B, p. 7 (Depo., pp. 23-25)) During the hearing he testified he called Goetz and reported his work injury to Goetz on April 11, 2017. (Tr., pp. 91-92)

At hearing Miller challenged the accuracy of statements made by the treating medical provider he selected. He also challenged the accuracy of Dr. Archer's records from his pre-employment physical for Tyson.

Following the alleged work injury, Miller scheduled an appointment with his family physician, Dr. Crippin. (JE 1, p. 10) During the appointment, Dr. Crippin documented Miller denied having an injury, but that he lifted eighty pounds all day long and he had chronic intermittent flare ups of upper and lower back pain. (JE 1, pp. 10-12) Dr. Crippin documented Miller had seen a chiropractor without relief and that his pain had lasted more than twenty-eight days. (JE 1, pp. 10-12) Miller testified Dr. Crippin's record documenting he had been seeing a chiropractor without relief was inaccurate because he had not recently seen a chiropractor and he reported he told Dr. Crippin he was planning on seeing a chiropractor. (Tr., pp. 52, 98) Miller further reported Dr.

Crippin's note that he had been experiencing back pain for more than twenty-eight days was also inaccurate. (Tr., p. 98)

Miller also challenged the accuracy of Dr. Lukken's records. Dr. Lukken documented Miller reported he was injured at work and that "[h]is job included lifting a lot of boxes. One evening while he was off of work took a deep breath and he had a sudden onset of back pain and it has been present ever since," and is worse with bending and moving and that he had been experiencing back pain for several months. (JE 3, p. 131) Dr. Lukken's report documents Miller experienced a sudden onset of back pain when taking a "deep breath" while Miller was off work. Miller challenges this statement, noting Dr. Lukken's report mentions Miller was referred by a Dr. Carew, when he was referred by Dr. Crippin, and also indicates Miller had a history of an alcohol problem, which is not present in his medical records. (Tr., pp. 58-60) While the circumstances differ, Miller admitted both Goetz's statement and Dr. Lukken's record document Miller's pain started at home. (Tr., p. 101)

Miller testified Dr. Lukken's statement that he had a several -month history of back pain was inaccurate because it had only been two months. (Tr., p. 101) Miller admitted a several month history would be consistent with Dr. Crippin's note that Miller had been experiencing back pain for more than twenty-eight days when he saw him for the first time. (Tr., p. 101)

According to the physical therapy notes, Miller later called the physical therapy office and told the secretary he was "feeling good and is going to discontinue therapy," and he was discharged. (JE 3, p. 128) Miller testified he believes the statement he was discontinuing physical therapy because he was feeling good is inaccurate. (Tr., p. 103)

During his pre-employment physical for Tyson on September 13, 2018, Dr. Archer documented Miller had right sided sciatica and a history of "neck, shoulder and back problems treated conservatively and resolved," noting Miller last attended physical therapy in June 2017. (Ex. D, p. 1-2) Dr. Archer examined Miller and noted "no joint tenderness, deformity or swelling, no muscle tenderness noted, full range of motion without pain of neck, upper extremities, low back and lower extremities. In particular, no abnormalities on neck, shoulder and back exams." (Ex. D, pp. 2-3) Dr. Archer opined Miller had no employment restrictions based on his examination. (Ex. D, p. 3) Miller testified Dr. Archer's report that indicates he has full range of motion without pain in his neck, upper extremities, low back and lower extremities is inaccurate. (Tr., p. 81) Miller reported he continues to have pain in his low back. (Tr., pp. 81, 105) Dr. Archer has no connection to Farnier-Bocken.

Less than two months before his visit with Dr. Archer, Miller attended an appointment with Dr. Jenkins, complaining of neck and upper back pain he thought may be attributable to Domino Motors. (JE 2, p. 62) During that appointment there is no mention of Goetz having any low back symptoms or problems. (JE 2, p. 62) Miller had treated with Jenkins for low back pain in the past.

Based on the foregoing, considering the discrepancies between Miller's answers to interrogatories, deposition testimony, hearing testimony, medical records, and Goetz's notes and testimony, I do not find Miller to be a credible witness. I do not believe he sustained an injury to his back at work. I do not find he has met his burden of proof that he sustained an injury arising out of and in the course of his employment. Based on this finding the issues of entitlement to medical expenses and penalty benefits are moot.

III. Independent Medical Examination

Miller seeks to recover the \$2,500.00 cost of Dr. Taylor's independent medical examination under Iowa Code section 85.39. Farner-Bocken and American Zurich contend Miller is not entitled to recover the cost of the independent medical examination.

Iowa Code section 85.39, provides, in part:

[a]fter an injury, the employee, if requested by the employer, shall submit for examination at some reasonable time and place and as often as reasonably requested, to a physician or physicians authorized to practice under the laws of this state or another state, without cost to the employee; but if the employee requests, the employee, at the employee's own cost, is entitled to have a physician or physicians of the employee's own selection present to participate in the examination. If an employee is required to leave work for which the employee is being paid wages to attend the requested examination, the employee shall be compensated at the employee's regular rate for the time the employee is required to leave work, and the employee shall be furnished transportation to and from the place of examination, or the employer may elect to pay the employee the reasonable cost of the transportation. . . . If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the 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 choice, and reasonably necessary transportation expenses incurred for the examination. . . .

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).

Farner-Bocken and American Zurich did not offer any treatment in this case or seek an independent medical examination before Dr. Taylor conducted his exam and issued his report. Under the statute, Miller is not entitled to recover the \$2,500.00 cost of Dr. Taylor's independent medical examination.

IV. Other Costs

Miller also seeks to recover the \$100.00 filing fee, \$79.65 cost of records, and \$90.20 cost of Miller's deposition, and the cost of Dr. Taylor's report. Farner-Bocken and American Zurich aver Miller is not entitled to recover costs.

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 Iowa Administrative Code 4.33, provides costs may be taxed by the deputy workers' compensation commissioner for: (1) the attendance of a certificated shorthand reporter for hearings and depositions; (2) transcription costs; (3) the cost of service of the original notice and subpoenas; (4) witness fees and expenses; (5) the cost of doctors' and practitioner's deposition testimony; (6) the reasonable cost of obtaining no more than two doctors' or practitioners' reports; (7) filing fees; and (8) the cost of persons reviewing health service disputes. Miller was not successful in proving his case. I find the parties should be responsible for their own costs.

ORDER


IT IS THEREFORE ORDERED, THAT:

Claimant shall take nothing in this case.

The parties are responsible for their own costs.

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 4th day of May, 2021.


HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Laura Pattermann (via WCES)

Adam Bates (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.