BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL WARREN, Claimant, vs. ALTEC, INC., Employer, and SENTINEL INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5067532 A R B I T R A T I O N D E C I S I O N Head Notes: 1108.50, 1402.40, 1803, 2501, 2907

STATEMENT OF THE CASE

Michael Warren, claimant, filed a petition in arbitration seeking workers' compensation benefits from Altec, Inc., employer and Sentinel Insurance Company, insurance carrier as defendants. Hearing was held on December 12, 2019 in Des Moines, Iowa.

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

Michael Warren, Jeanette Warren, Dan Sullivan, and Jeff Greer all testified live at trial. The evidentiary record also includes joint exhibits JE1-JE9, claimant's exhibits 1-10, and defendants' exhibits A-F. Defendants objected to claimant's exhibit 6, pages 1 and 2 which were medical bills. Defendants objected to the admission of the medical bills without the supporting clinical records. The objection was overruled; claimant was given additional time to submit the supporting records. The records were marked as joint exhibit 8A and were filed on December 26, 2019 and are admitted into the record. The evidentiary record closed at that time.

The parties submitted post-hearing briefs on January 23, 2020, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained permanent disability as a result of the stipulated March 22, 2017, work injury. If so, the nature and extent of permanent disability claimant sustained.
2. Claimant's gross earnings at the time of the alleged injury.
3. Payment of past medical expenses.
4. Whether claimant is entitled to additional medical care.
5. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Michael Warren, was 62 years old at the time of hearing. He began working for Altec, Inc. in May of 2016. Michael started working in the body shop repairing tanks and toppers. He then moved to the job of spraying jell coating on the tanks. This was the job he was performing at the time of the injury.

On March 22, 2017, Mr. Warren fell back and hit his head when a J-hook he was using came unhooked from a tank he was pulling. Michael remembers the beginning of the fall and his next memory is from the hospital talking to his wife. According to the accident reports, Michael fell and hit the back of his head on the bottom of a unit. He was taken via ambulance to Clarke County Hospital Emergency Room. (Exhibit B, pages 26, 28, Claimant's Ex. 8, p. 7)

The Clarke County Hospital notes indicate that Michael did not remember anything after the beginning of the fall until after his arrival in the emergency department. He reportedly lost consciousness, at least briefly, was confused on site, and gradually regained his senses. He fell and hit a fiberglass unit, then fell on his back and hit his head on a concrete floor. He was noted to have a small abrasion on the right side of his head. He reports some posterior head soreness, especially with movement of his head. He felt very tired and had some blurry vision which cleared. No vomiting. He was positive for dizziness, syncope, headaches, and confusion. Michael reported feeling tired and sore, but otherwise denied any complaints. He had full range of motion of his neck without pain. His head CT was negative. He was counseled to take it easy for the rest of the day and a discussion was held about concussions. He was to see occupational medicine the next day to discuss return to work plans. The final diagnoses consisted of concussion, with loss of consciousness of 30 minutes or less. (Joint Exhibit 1, pp. 1-7)

Michael saw Jenny A. Butler, M.D. on March 23, 2017. Her notes indicate that Michael regained consciousness within a few minutes of the fall; however, Michael did not remember that time period. He reported no neck pain or confusion. He slept most of the evening and had a full night of sleep last night, which is not normal for him. He

normally does not require much sleep. He reported a mild headache, mild dizziness, and mild nausea. He had some shoulder, elbow, and right groin soreness. The plan was complete brain rest until Monday. He was to gradually advance mental and physical activity and continue Tylenol, as needed. He was to remain off of work and return to the clinic Monday. (JE1, pp. 8-12)

Michael returned to the doctor's office on Monday, March 27, 2017. He felt he had been doing better over the weekend, but he was starting to stress about missing work and had to think about getting to the doctor on time. He felt this has made his dizziness and word-finding worse. He was dizzy, tired, and having difficulty concentrating. He described his headache as mild. He was kept off work and was to return to the clinic on Thursday for reevaluation. (JE1, pp. 13-15)

Michael did return to the clinic on March 30, 2017, as scheduled. He reported that he was doing better, but then he started to get ready to come to the clinic and started to notice symptoms again. Driving during the day is fine for him, but driving at night is not good because of glare and the lights are too bright. He still tires easily. He reported sleeping well. He was released to work for two hours starting on March 31 and two hours again on Monday. He was to return to the clinic on Tuesday. (JE1, pp. 16-18)

By Tuesday, April 4, 2017, Michael felt about the same. After significant concentration he notices that his eyes do not converge for a few seconds. He feels as though things are out of focus, but it resolves quickly. He was cutting papers at work the last few days and he had a hard time cutting them perfectly even. He has had some headaches, depending on his activity. The headaches are worse when thinking and concentrating. Saturday night he sanded a truck in his shop. This did not give him symptoms of a headache or nausea, but he was tired. He avoids driving at night. The decrease in his income has been stressful. He likes the routine of getting up and going to work. Michael still had some symptoms of concussion that increase with emotional stress and mental activity. Overall, he was doing better. Dr. Butler did not feel a neurology referral was necessary at that time. Neurologists recommend at least two months of symptoms before neurological specialty evaluation in a situation where the neurological exam is normal. Michael was to continue working two hours per day, with minimal physical and mental exertion. (JE1, pp. 19-22)

Michael returned to the clinic on April 11, 2017. He felt he was getting better, but some days he worried that he is getting worse. He is especially dizzy when he first awakens or when getting up quickly from a chair. No vision changes. He does not have any confusion, but does have a hard time remembering names at times. He worked in his garage all day on Saturday and this wore him out. He noticed increased fatigue and headache when he tries to concentrate. He had normal range of motion of his neck. He was to increase to four hours of total work per day, with a half-hour break in the middle. His break was to be spent in a quiet environment. (JE1, pp. 23-26)

On April 25, 2017 Michael reported that overall he was doing better, but he still got tired very quickly. After four hours of work, he has to take a nap. He takes his 30-

minute lunch break in his car. He had four beers last weekend with his son. He had a headache the next day and was very tired. He still experiences dizziness when he spins too fast. At work he is cutting out stickers and labels. He tried scanning and filing, but that made his headaches worse. His neck had normal range of motion. He is not improving as fast as he thinks he should. He was to continue working four hours. He was to avoid alcohol. Additionally, he was to avoid any physical exertion at home that was greater than what was allowed at work. (JE1, pp. 27-29)

Michael returned to the clinic on May 1, 2017. He continued with slow improvement. He reported he was the most stressed over the truck that he is supposed to be working on at home in his free time because he gets calls from the owner of the truck wondering when it will be done. Prior to his concussion, he worked in his garage and that was his stress relief. He still needs a nap after four hours of work. He is still working cutting labels. He cannot stand too long due to balance issues. He is starting physical therapy today for tense back and neck. He was to continue working four hours with a 30-minute break. The goal is to increase to six hours of work in two weeks. (JE1, pp. 30-32)

On May 1, 2017, Michael began physical therapy for neck and back pain. He was referred to therapy by Dr. Butler. He reported that if he stands too long, he gets a sharp pain in the lower part of his back. He reported that his jobs changed at work and he was not back to full-time work due to his balance. (JE2, pp. 1-5)

Michael continued to follow-up at Clarke County Hospital with Dr. Butler. On May 15, 2017, Michael went to Clarke County Medical. He reported that he went to Iowa Falls to see his mother-in-law on Sunday. He went to a car show for a bit in Winterset Sunday night, and on the way home he got a mild headache and felt dizzy with a shaking head. He feels that physical therapy is helping with his neck and back pain. He has been doing some light sanding in his garage and has to remember not to push himself to the limit. He feels he needs more sleep now and he cannot stand as long as he could before his accident. Dr. Butler felt that Michael continued to make progress. She allowed him to go back to working on toppers for four hours per day versus him being in the office. He was not to use ladders or crawl up on trucks. Dr. Butler felt Michael should be able to sit as needed. He was to follow-up in two weeks. (JE1, pp. 33-35)

On May 26, 2017, Michael reported to Dr. Butler that overall he was doing better. However, he spent Saturday at graduation parties and had a bad headache on Sunday. He did not make it to church the next day due to fatigue and headache. Working in his garage makes him happy and he does not experience any increase in symptoms. He feels that working at Altec for four hours is going well. He is able to sit down as needed, but only needs to once in a while. He still gets dizzy if he turns too fast. He was allowed to increase his work to six hours per day. (JE1, pp. 36-38)

Michael returned to Dr. Butler on June 1, 2017. He reported that he felt great Friday through Tuesday and worked six hours without problems. He went to a country concert that night at Lakeside Casino and did not have any symptoms secondary to the

music. The heat bothered him yesterday at work. He wanted to get two toppers done even though that is the expectation for an eight-hour shift and he is only working six hours. He was rushing around and felt dizzy. Last night he went to three ball games for his grandkids. He got worn out and has a headache today. Dr. Butler felt he had been gradually improving but had a setback yesterday. Yesterday he went to work at 6:00 a.m. and then stayed out all evening at ball games. They discussed how these long days seemed to be too much for him. Dr. Butler mentioned that she saw the patient this past Friday night at an outdoor concert in town. She visited with Michael for about ten minutes and he looked great. (JE1, pp. 39-41)

On June 20, 2017, Michael returned to see Dr. Butler. He was stressed because workers' compensation was not paying him on time and his house payment was overdue. He experienced some double vision on Saturday for about an hour which resulted in a headache. He sees bright lights in his left eye. The top of his head hurts. He still feels forgetful. Friday he did not get the paycheck he was expecting to get and that increased his stress and symptoms. He does not feel like he can walk straight, feels as if he is walking to the left. His friends notice that he does not walk in a straight line. When he gets tired, stressed, or has not eaten, at times, the room feels like it is spinning. Dr. Butler's assessment included concussion with loss of consciousness, post-concussion syndrome, and vertigo. An MRI of the brain was ordered. The MRI was performed on June 23 and was normal. (JE1, pp. 42-47)

On July 13, 2017, Michael reported that he felt about the same. Overall, his headache and dizziness are his biggest problems. He feels less stress now that he knows the MRI is normal. His symptoms are worse first thing in the morning, in the heat, and also worse around distracting noise. He has dizziness when trying to make his bed; it is also worse if he gets up too fast. He does not feel like the current work he is doing at Altec makes him worse. He is happy to be sanding and buffing. He is still working in physical therapy and occasionally gets change in vision, but not as frequently. His last physical was a year and a half ago and he was told he was borderline diabetic at that time. Dr. Butler felt Michael could have a general medical condition that was complicating his recovery from his concussion. Dr. Butler recommended he undergo a general physical. (JE1, pp. 48-50)

Michael was discharged from physical therapy on May 1, 2017. Michael reported that he had been taking vitamin D since Saturday and since then he only had one headache and had less dizziness. He was still dizzy when he woke up in the mornings. The therapist noted that Michael was making slow, but steady progress regarding his post-concussion symptoms. He had little to no back or neck pain over the last couple of visits. The therapist noted that on days when he had increased headaches and dizziness his gait was quite unsteady. Michael attended 24 sessions of therapy. The discharge note states that Michael was making slow, but steady progress on his post-concussion symptoms. The note also states that he had little to no complaints of back or neck pain over his last couple of visits. He also noted decreased headaches and dizziness with activity. He was last seen on July 26, 2017 and had not contacted therapy since so he was discharged. (JE2)

Michael reported back to Dr. Butler on July 27, 2017. He went to see his primary care physician and was found to be vitamin D deficient. Since starting the vitamin D, he has been less tired and less dizzy. He did have a headache and dizziness after therapy yesterday, but his symptoms went away. Since starting the vitamin D, he was able to focus more and has fewer headaches. He is no longer experiencing dizziness during work. He would like to go from six-hour shifts to eight-hour shifts. He was released to eight hours per day. (JE1, pp. 51-53)

On August 10, 2017, Michael saw Dr. Butler again. He picked up a cold in the prior few days and was feeling tired. On Monday he fell asleep in his driveway after work. Working eight-hour shifts was going well, but he is tired when he gets home and takes a 20-30-minute nap. He only gets headaches when he is stressed. Dr. Butler felt that some of Michael's personal medical issues could be leading to prolonged recovery time. She recommended he talk to his primary care physician to discuss sleep apnea testing, but Michael was not interested. He continues to slowly improve from his concussion symptoms. He was allowed to continue eight-hour shifts, but Dr. Butler did not think he could handle overtime. (JE1, pp. 54-57)

On August 24, 2017, Dr. Butler reported that three days ago Michael was moved into the paint booth. He does not like this job and he finds it stressful. He could not understand the Spanish speaking lady who works in there and he did not get along with her. Michael told Dr. Butler that he had a bad temper that day. His headaches and dizziness had significantly flared in the last three days. Michael's safety manager indicated that he would work to move Michael to a different department. Dr. Butler assessed Michael as having a severe episode of recurrent major depressive disorder. Michael was also going to try the employee assistance program. (JE1, pp. 58-61)

Michael saw Dr. Butler again on September 7, 2017 and reported that his mood was much better. He was moved to a different area. He realizes now that Altec does not want to fire him. He is working on putting brace bars in, doing molds, and painting. His headaches and dizziness were better, but certain things still triggered the symptoms. He feels like his vision is not always right, especially in the mornings. At times he still has occasional word and name findings difficulties. Michael was referred to Vision Park, a place with extensive experience and interest in post-concussion vision problems and dizziness. Michael was limited to a maximum of eight hours of work in a 24-hour period. (JE1, pp. 62-64)

By late September, Michael continued feeling dizzy and light-headed. There was a day at work that he felt as if he was going to faint. He was having problems with balance, felt like he veers off to the right sometimes. His vision still did not feel right. Fatigue continued to be a big problem. By the time he gets home, he feels like he could just fall asleep in his driveway. He still has not had a sleep study. An appointment was scheduled with a concussion eye specialist in Des Moines in October. (JE1, pp. 65-67)

On October 19, 2017, Michael was seen by Beth Triebel, O.D., at Vision Park. He reported that he was injured on August 22, 2017 and sustained a concussion. He is having trouble with balance and thought that he recently saw a floater. He completed

physical therapy and feels that his balance and dizziness is getting worse. His walking pulls to the left and rotating his head causes headaches. Sometimes he sees black spots against white. The diagnoses were myopia, bilateral, presbyopia, vertical heterophoria, postconcussional syndrome, and cortical age-related cataract, right eye. She changed his glasses and arranged for vision therapy. Michael attended vision therapy from October 19, 2017 through July 24, 2018. (JE3)

Michael returned to Vision Park on December 21, 2017. He was still very dizzy and felt he was falling to the left. He reported that moving his head at all caused headaches. He was doing well with his new glasses, but he still needed to work on stabilization of his eye, head movements, and his endurance for sustaining binocular visions. He was to set up an appointment with a vision therapist to further assess his vision skills. (JE3, pp. 5-7)

On May 4, 2018, Michael saw Deema Fattal, M.D., the Director of Balance Disorders Clinic, Department of Neurology at University of Iowa Health Care. Michael was seen for a consultation for dizziness since traumatic brain injury in March of 2017. The notes state that he told the doctor one of his coworkers told him that his head hit a steel tank. He thought he hit a cement floor. He remembers falling, but the next thing he remembers is approximately 45 minutes later in the hospital. Since his accident, he has developed dizziness. Michael's dizziness lasts 30 seconds to 30 minutes. He also feels like he could fall anytime; he has not had a fall, but has had near falls. He veers left or right pretty much all of the time; usually it is to the left. He is more nervous and this increases his dizziness. When he drives at night, the bright lights bother him. Michael felt safe sitting. He also felt safe driving, he does not get dizzy while driving. Michael reported that his main issue is his sense of imbalance and he thinks his main issue is his glasses. His glasses were changed due to convergence insufficiency and since that time he feels better without those glasses. At times his vision was experiencing diplopia, one up and one down. If he covers one eye, then it seems to resolve. He was noted to have a very slow gait. The doctor felt his main issue was slow gait and ill-fitting glasses. She recommended gait physical therapy with emphasis on speed one to two times per week for four to six months. He was to limit his work to eight hours per day, but the goal was to get him up to ten hours per day. She also recommended a cervical MRI, nutrition consultation, evaluation with ophthalmology and vision therapy and new glasses. He was to return in November. (JE4, pp. 1-7)

Beginning on May 14, 2018, Michael was sent for a second round of physical therapy at Athletico. He reported that he had been experiencing diplopia and difficulty reading for an extended period. He attended approximately eight sessions of physical therapy from May 14, 2018 to June 6, 2018. He continued to perform body work and painting at home. The June 4, 2018 note indicates that Michael was able to stand on the flat side of a BOSU while talking and tossing weighted balls. He was also able to perform complex gait drills while talking and juggling balls. There was no path deviation or imbalance noted. On June 6, 2018, he was discharged due to completion of physical therapy goals. (JE5)

An MRI of the cervical spine was performed on May 22, 2018. The radiologist's impression was multilevel spondylosis greatest at C5-C6 and C6-C7. No focal disc herniation or significant spinal canal or neural foraminal stenosis was seen. (JE6, pp. 1-2)

On July 24, 2018, Michael saw Dr. Triebel for his vision and was discharged. The notes state:

> Feeling great with new work glasses - no more [headaches]. Did HVT for 1 week then went on vacation and never got back to it. No longer lid-sting to the left. 1 episode of vertical diplopia when reading. Sometimes still see spots against white background only when going from sitting to standing.

(JE3, p. 19)

Michael returned to see Dr. Fattal on November 9, 2018. The doctor felt that his main issue was medication overuse (Tylenol). Otherwise, he was much improved with negative exam, other than known pre-existing neuropathy. The notes state that Michael was 100 percent better subjectively and on exam. Dr. Fattal's encounter diagnosis was dizziness. She recommended limiting analgesics to two days per week. Michael was to stop taking Tylenol and only use as needed. Dr. Fattal recommended progressive muscle relaxation for his headaches because they were stress related. The doctor also recommended considering a sleep study and a nutrition consult, exercise, and weight loss. Dr. Fattal agreed with full-time work and did not see the need for any restrictions. Michael could follow-up as needed. (JE4, pp. 8-14) At hearing, Michael testified that he does not recall telling Dr. Fattal that he was 100 percent better.

On February 13, 2019, Michael presented to Shawn P. Spooner, M.D. at CIA Urbandale Sports Medicine for a second opinion. He was not sent to Dr. Spooner by the defendants; Dr. Spooner is not an authorized physician. Michael reported that he was not interested in significant litigation. He just wants to be able to tolerate playing with his grandkids and enjoying his hobbies with fewer symptoms. His most significant symptoms involve difficulty with balance and dizziness as well as difficulty with vision focusing and tolerating complex environments. He also has significant sensitivity to light and sound. These seem to trigger headaches which range from mild to moderate, but not persistent. He has difficulty with cognition because he feels foggy, slow, and has had difficulty concentrating and with functional memory. He has difficulty with sleep. Dr. Spooner felt that Michael's history and exam were consistent with concussion. He recommended treating Michael conservatively. He wanted to enlist him in their multidisciplinary treatment approach which included physical therapy, speech/cognitive therapy, as well as a referral to an alternative neuro-optometrist. He was also referred to neuropsychology for consultation regarding documentation of underlying cognitive dysfunction. Dr. Spooner did not see any gross objective evidence for malingering, secondary gain, or significant psychosomatic component. Michael was to return in four weeks. (JE7, pp. 1-6) Michael never saw a neuropsychologist.

On February 21, 2019, Michael began therapy with Kamela J. Kleppe Yeager, MS, Speech and Language Pathologist. Since his injury, he reports changes in his ability to remember, concentrate, and with word finding. Concentrating is difficult for him and leads to headaches. He is bothered by busy environments and noise as well as light sensitivity. Michael reported that today he is particularly bothered by unexpected crying and feeling depressed. He reported that since the injury, he is not able to tolerate playing with his grandchildren and maintaining conversations in large groups. (JE8, pp. 1-2)

Michael returned to therapy and underwent some testing on February 25, 2019. The testing suggested mild functional difficulty with both memory and reasoning. He is able to manage daily activities and work in quiet environments without interruptions. He has functional difficulty in busier environments and in groups of people. (JE8, pp. 3-5)

Dr. Spooner saw Michael again on March 13, 2019. The doctor noted that Michael had post-concussion syndrome symptoms. His primary symptoms were cognitive complaints and postural instability. He experiences mild headache which seems to be exacerbated by complex environments, focusing vision. Continued difficulty with balance and dizziness. He continued to be sensitive to light and sound. Michael had continued mild difficulty with cognition feeling slow with difficulty concentrating and remembering. He feels more emotionally labile with mildly depressed mood but denied frank depression or anxiety. Since his last appointment Michael has treated conservatively with rest and activity modification. He has also started speech/cognitive therapy. Specialty optometry and physical therapy are pending. Michael is now endorsing a little bit of right hand numbness in his first and second finger predominately. He also continues to report generalized cervicalgia predominantly right posterior lateral. Dr. Spooner noted that his balance was grossly intact, he did have instability with closed eye stance, and Romberg's was negative. Dr. Spooner felt that Michael's history and exam were consistent with persistent chronic post-concussion syndrome, neurocognitive impairment. Dr. Spooner felt that the pending optometry and specialty physical therapy could help Michael quite a bit. He was to return again in four weeks. (JE8, pp. 7-11)

On April 8, 2019, Joseph J. Chen, M.D., Board Certified in Physical Medicine and Rehabilitation doctor, issued a missive to defendants. (Def. Ex. A, pp. 1-10) Dr. Chen examined Michael and also reviewed documents provided to him. Michael reported to Dr. Chen that his symptoms included having headaches, feeling dizzy, having trouble with his balance, and trouble driving at night. When driving he tends to focus on the right sideline of the road so he does not have to view oncoming headlights. He feels that he walks to the left when he feels off balance. He also reported poor sleep, irritability, and that he startles easily with noise or loud sound and then he zones out. He also reported that he felt depressed, but did not want to take any medications. Michael told Dr. Chen that he had seen Dr. Spooner, a concussion specialist. Dr. Chen did not review any of those records because Michael went to Dr. Spooner through his health insurance. Dr. Chen felt that Michael's initial symptoms of photophobia, balance, dizziness, and headache symptoms would be consistent with post-concussion syndrome. Dr. Chen noted that according to Dr. Triebel and Dr. Fattal's notes of July

and November 2018, the symptoms had largely resolved. Dr. Chen believed that his more recent and distressing symptoms of irritability, confusion, crying, and frustration appear much more due to depression and were unrelated to his concussion because they were not problematic around the time of the injury. Dr. Chen recommended that Michael see his primary care provider for further treatment for anxiety, depression, and possible sleep apnea. Dr. Chen felt that he might also have undiagnosed obstructive sleep apnea. He noted that people with disturbed sleep also report similar mood, anxiety, and/or pain symptoms. Dr. Chen also noted that upon reviewing the records, he saw that several providers had recommended light physical activities or submaximal aerobic exercise. Dr. Chen stated that both of these activities can alleviate and reduce the duration of post-concussion syndrome symptoms. Defendants asked Dr. Chen to address the issue of permanent impairment. Dr. Chen stated:

> I am unable to conclude that any of Mr. Warren's depression symptoms were caused by or aggravated by his March 2017 work injury. Onset of depression and anxiety are thought to be multifactorial and arise from to a multitude of personal characteristics, genetic, environmental, and social factors unrelated to head trauma.
>
> Therefore, it is my medical opinion that Mr. Warren has not sustained any permanent partial impairment rating according to the **AMA Guides to the Evaluation of Permanent Impairment, 5th Edition** as a result his March 2017 work injury.

(Def. Ex. A, p. 5)

Michael continued his therapy with Kamela J. Kleppe Yeager, MS, until April 11, 2019. At that appointment, Michael felt he was doing better. The therapist noted that he demonstrated moderate improvement with organization and had minimal difficulty comprehending strategies to facilitate initiation. (JE8, p. 15)

On April 17, 2019, Michael presented to Heidi Bell, OD, FAAO for an extended prescription check for his glasses. He reported that he felt he could get his work done, but then has nothing left to enjoy his family with once he gets home. When he is with his grandkids the noise is so overwhelming that he "zones out" and does not realize what is happening. He reports that he sees things in his peripheral vision that are not actually there. He finds this very distracting and disturbing. Although he has been told his vision is fine, he experiences blurry vision. He also has a lot of pain and pressure around his eyes, especially in his left eye. He had daily headaches. Dr. Bell and Michael had a great discussion about how his symptoms aligned with common post-concussion vision syndrome symptoms. She recommended a change of lenses. (JE9, pp. 1-3)

At physical therapy on May 6, 2019, Michael reported significant pain to touch in the distribution of the greater occipital nerve on both sides. Work had been very stressful. He had a sharp headache the last two nights. He had been working on his

cars a lot. The therapist noted he demonstrated significant difficulty with multitasking. (JE8A 52-54)

On May 9, 2019, Michael reported to speech therapy. He reported feeling more confident in controlling his temper. He did have an incident over the weekend where he heard a drum set at church which triggered a "spell" and he was unable to continue to participate with the family or with conversation for the rest of the day. (JE8A 50-51)

Michael attended speech therapy on May 16, 2019 and was frustrated with concerns surrounding his father's estate. When he thinks about his family he gets significant headaches. Therapy focused on managing cognitive and communicative impairments related to the concussion. (JE8A 44-46)

On May 20, 2019, Michael attended physical therapy. He continued to demonstrate slow but steady improvements in his balance and postural stability. However, the therapist felt that because Michael did not have appropriate eyewear, his visual difficulties were limiting the progress in his postural stability and gaze stability. (JE8A 42-44)

Michael attended speech therapy on May 23, 2019. He continued to express distress over family problems, but otherwise he was doing well. Improved cognitive function during everyday tasks were noted. He also felt he had better control of his temper. (JE8A 40-41)

On May 27, 2019, after Dr. Chen reviewed Dr. Spooner's records, he sent another missive to defendants. Dr. Chen opined that Dr. Spooner's recommendation from February and March 2019 to have an optometric evaluation at this time was not related to his work injury from March 2017. Dr. Chen felt that Dr. Spooner's recommendation that Mr. Warren undergo specialty physical therapy at this time was not related to his work injury from March 2017. Dr. Chen noted, "[t]he discrepancy in Mr. Warren's reported symptoms to Dr. Triebel in July 2018 and Dr. Fattal in November 2018 can be puzzling to a physician who does not have the complete medical records. I am uncertain if Dr. Spooner is aware of that Mr. Warren had prior treatment for his past and current symptoms." (Def. Ex. A, p. 13) Dr. Chen agreed with Dr. Spooner's recommendation to engage in a light aerobic exercise regimen but that Michael would need to be cautious and listen to his symptoms. (Def. Ex. A, pp. 11-13)

In early June 2019, defendants denied Dr. Spooner's treatment recommendations. The denial was based on Dr. Chen's opinions. Defendants also noted Dr. Spooner was not an authorized provider. (CL. Ex. 7, p. 4)

Michael attended physical therapy on June 3, 2019. He felt like the bifocals in his new glasses were too high. When he is able to see through the main part of the glasses, the cloudiness was removed. However, he is struggling to find the sweet spot of the glasses. He was unable to complete any gaze stabilization or visual activities with his new glasses on. He was able to complete exercises with his work glasses on, which are the same lenses. The therapist advised Michael to contact Dr. Bell's office or

stop by to get his glasses adjusted. She reminded Michael that he had been wearing glasses that were not appropriate for him for several months now. The therapist also emailed Dr. Bell and explained her concerns about the new glasses. (JE8A 35-37)

Michael attended physical therapy on June 10, 2019. He had taken his glasses back to the optometrist because they were the wrong prescription. He has a set of work glasses with the correct prescription, but he does not want to wear them outside of work. He reported a mild headache. He was encouraged to wear glasses with the proper prescription, despite their style. (JE8A 30-32)

On June 13, 2019 Michael attended speech therapy. He reported some family difficulties. During therapy they worked on improving memory. (JE8A 28-29)

Michael went to physical therapy on June 17, 2019. He reported that his new glasses had helped him immensely; he was no longer seeing double. He reported no headaches or dizziness. He did report some mildly off-balance feelings with his new glasses. (JE8A 25-27)

At his June 20, 2019 speech therapy, Michael reported no new complaints and was able to give several examples of times when he felt that his problem-solving had been better in recent days. (JE8A 23-24)

On June 24, 2019, Michael attended speech therapy. He reported that his pain level increased during cognitive effort and reduced at rest. The plan was for the treatment to focus on awareness and development of strategies to manage cognitive and communicative impairments related to his concussion. (JE8A, pp. 21-22)

In the physical therapy notes from July 8, 2019 Michael reported that he was not having any limitations in anything he wanted to do at home. The therapist noted that for the last few weeks, he did not seem to be having many symptoms related to his post-concussive disorder, but did have some issues with balance and stability. However, the therapist felt that some of those issues had to do with unstable working surfaces and reaching overhead. She felt the issues he was having were within normal limits. Michael continued to complain of significant instability feeling but it was not reflected in his performance. She felt this could be a continued mismatch between his visual and vestibular systems. (JE8A, pp. 18-20)

Michael returned to physical therapy on July 15, 2019. He tried to get into the eye doctor but he could not get a last minute appointment. The therapist encouraged him to pester the eye doctor's office for an appointment. She encouraged him to communicate to the doctor's office that his glasses were no longer working. However, Michael did not seem to want to pursue this. During the therapy session he demonstrated good balance and gaze stability. (JE8A, pp. 15-17)

The physical therapy notes from July 22, 2019, indicate that Michael had met a guy over the weekend that had sustained a concussion and never improved and he was very focused on this other man's experience. The therapist provided extensive education that teaches that head injuries progress differently and that he may continue

to progress even after therapy. The therapist noted that Michael had not contacted Dr. Bell's office to see if he could move his appointment up. He reported that he did use a small ladder when he lost his balance and fell; he did not get hurt. Michael told the therapist that this never happened to him prior to his work injury. They had a discussion that sometimes balance losses happen due to circumstances, not due to his concussion. The therapist advised him that he does have some impairment due to his concussion or she would not have continued to treat him and see him make progress in his balance and postural stability, vestibular functioning, and visual/vestibular integration, but not all issues are related to the concussion. (JE8A, pp. 12-14)

Michael went to physical therapy again on July 29, 2019. He reported that he was seeing double with his eyeglasses. The therapist felt that this was due to his glasses needing to be adjusted. He had an eye appointment last month, but was not able to make it to the appointment. The eye doctor is busy so the next available appointment is not until August 29. This delay in correcting the prism glasses will affect his vestibular function, as the visual and vestibular mismatch will continue to make him feel little lightheaded and dizzy in complex balance tasks. She encouraged Michael to try to get in to the optometrist sooner. Otherwise, she felt he may need to decrease to one time every other week in order to progress to the home program. (JE 8A, pp. 9-11)

Michael returned to Dr. Bell on August 8, 2019. He reported that his headaches have been improving. He has been wearing the tinted glasses full time except while at work. For arm length activity at work his bifocals are not working great for him so he ends up taking them off and using safety glasses. He also reported seeing double vision at approximately four to five feet with his glasses on; this resolves when he removes his glasses. Dr. Bell recommended a modification in his lenses. (JE9, pp. 4-7)

The August 5, 2019 physical therapy note states that Michael did not have any headaches during the last week. He felt he was doing better. He did note some increased neck soreness, due to increased altered posture during work activities. He had been working on some mechanical issues with cars, which required him to be in funny positions. He demonstrated normal balance and gait stability. She noted that he did not see double without his glasses but he was unable to read close up or far away. This did change some of his visual perception, which would affect his balance. She wanted to see him again after he received his new glasses for retesting and progression of his home exercise program. (JE8A, pp. 6-8)

Michael attended physical therapy again on August 19, 2019. He received new glasses last Thursday; they removed the tint and changed the prism a bit. He still has "cloudiness" across his vision and bright lights at night still bother him. His new glasses are allowing him to see single objects. The notes state that he cannot order new work glasses so he needs the ones without a prescription. During his therapy Michael reported that he continued to have blurry vision with using his new glasses. He reported no dizziness during his therapy session. The physical therapist had a discussion with Michael about his glasses and reiterated to him that there is no way for the optometrist to know that the letters were still blurry unless he tells her. She noted that there was no way for Michael to work with his glasses on due to blurry vision and

that he had to take his glasses off to complete his car painting activities. The physical therapist noted that the good news was that even with the changes in his visual function and prescription, his balance and dizziness was not affected during that day's session. (JE8A, pp. 3-5)

On August 22, 2019, Michael returned to see Dr. Bell due to blurry vision with his new glasses. He is concerned that he has not always explained his symptoms well. He still has a "water" appearance to his vision that was his initial complaint during his first exam. He feels his vision is smudged or blurred. Although he can see 20/20 on the vision charts it still looks blurry. He continued to work on peripheral activities and this was improving, along with his balance. When he is driving he always seems to have a cloud that moves across his eyes right to left. Dr. Bell explained to Michael that his vision symptoms and concussion are related. Dr. Bell felt that his blurry vision was not a glasses issue, but rather a brain issue. (JE9, pp. 8-10)

Michael testified that he followed Dr. Spooner's treatment recommendations through August 2019. He stopped with those recommendations at that time because he had to use his health insurance and he was uncertain that he would continue to improve. He did continue treating with Dr. Bell.

Michael attended physical therapy at UnityPoint Clinic with Angela K. Bahr, PT on September 9, 2019. Ms. Bahr noted that Dr. Bell had adjusted Michael's glasses. He was continuing to do the peripheral vision exercises. He noticed that he does run into things occasionally, but this may have to do with poor visual peripheries. He still had difficultly sometimes with complicated visual and very busy environments. The physical therapist encouraged Michael to continue with his walking program daily. Although he demonstrates normal balance reactions, he may have more difficulty when stressed, and with lack of sleep and complex work environments. She felt this would improve with time. She felt that he had made significant improvements in his balance, postural stability, and vestibular function throughout functional activities. He did continue to have some visual disturbances which were being addressed by Dr. Bell. The physical therapist felt that he had met all of his physical therapy goals and should continue with a home exercise program. Michael was discharged. (JE8A, pp. 1-2)

At the request of his attorney, Michael saw John D. Kuhnlein, D.O. for an independent medical examination on October 1, 2019. In addition to examining Michael, Dr. Kuhnlein also reviewed the records that were provided to him. Dr. Kuhnlein listed the following diagnoses:

1. Closed head trauma with postconcussive syndrome
    a. Cognitive dysfunction
        i. Short-term memory dysfunction
        ii. Irritability and emotional lability
    b. Visual dysfunction

i. Convergence insufficiency

ii. Disorder of binocular vision

iii. Possible neuro-ophthalmic dysfunction (see Bell, August 22, 2019)

c. Posttraumatic headaches

d. Postconcussive vestibular dysfunction

2. Cervical strain

a. Chronic Cervicalgia

(Cl. Ex. 1, p. 10)

Dr. Kuhnlein opined that all of the above diagnoses, except the chronic cervicalgia, were directly and causally related to the March 22, 2017 injury. Dr. Kuhnlein noted at the time of the injury Michael fell backward while wearing a paint helmet. He stated that Michael apparently lost consciousness, was confused at the site, and gradually regained his sense before being brought to the emergency room. Subsequently he experienced cognitive and visual dysfunction related to this closed head trauma with post-concussive syndrome. Dr. Kuhnlein stated that Michael developed posttraumatic headaches and post-concussive vestibular dysfunction as a result of the injury.

Michael told Dr. Kuhnlein that he was uncertain when his neck pain started. It was sometime after the accident, but the initial records were negative for neck pain until around May 1, 2017. At that time, Dr. Butler noted neck and back pain. Dr. Kuhnlein noted that the initial records tended to focus on the closed head trauma and not the neck pain complaints. Dr. Kuhnlein stated:

> [w]ith the mechanism of injury, it is reasonable that Mr. Warren sustained a neck strain as a result of the March 22, 2017, injury. He denies any other intervening or previous neck injuries, and, given the severity of the injury significant enough to produce the closed head symptoms, it would be reasonable and more likely than not that the force of the injury would also produce a neck strain. He has now developed chronic neck pain. This chronic neck pain developed as a sequela to the March 22, 2017 injury.

(Cl. Ex. 1, p. 10)

Dr. Kuhnlein recommended that Michael continue to take Tylenol. He recommended that he pursue cognitive exercises. He also recommended that he continue to see Dr. Spooner and Dr. Bell. Dr. Kuhnlein felt that if the course of care outlined by Drs. Spooner and Bell were not undertaken then Michael would reach

maximum medical improvement on November 9, 2018. Regarding the closed head trauma and the cognitive issues, Dr. Kuhnlein utilized Table 13-5 and placed Michael with a CDR of 0.5. He used Table 13-6, on page 320. He assigned 7 percent impairment, in the middle range. This included impairment for posttraumatic headaches.

With regard to Michael's visual dysfunction, Dr. Kuhnlein stated:

> in Mr. Warren's case, the issue is not one of visual acuity or visual field deficit, he has problems with binocular convergence, which is not adequately covered in the visual system chapter, nor is it adequately covered in the central and peripheral nervous system chapter, so a value will be interpolated for the objective findings noted by optometrist's [sic] with respect to his visual dysfunction. I would assign 5% whole person impairment.

(Cl. Ex. 1, p. 11)

For Michael's vestibular disorder, Dr. Kuhnlein utilized Table 11-4, page 252 and assigned Michael to Class II and 2 percent whole person impairment. Dr. Kuhnlein placed Michael in between the DRE Cervical I and II and assigned 3 percent whole person impairment. Dr. Kuhnlein assigned a total of 17 percent whole person impairment. (Cl. Ex. 1, p. 11)

Dr. Kuhnlein did not assign any specific material handling restrictions. Due to cognitive issues, he felt Michael needed to make lists and follow them. Due to the irritability and emotional liability, Michael may have problems with interpersonal relationships in the workplace, but Dr. Kuhnlein felt that Michael was apparently being taught how to deal with those by therapists. Dr. Kuhnlein would not allow Michael to work off ground level on ladders or scaffolding. He also suggested that he not work on uneven surfaces or work around hazardous industrial machinery. Due to his cognitive issues, he suggested that Michael work on the day shift to avoid shiftwork disorders. (Cl. Ex. 1)

On June 2, 2019, Dr. Spooner issued a missive to Michael's attorney. He noted that Michael continued to suffer sequelae of work-related head injury on March 22, 2017. He opined that the symptoms he continued to suffer were attributable to a fall occurring at work on March 22, 2017. Dr. Spooner felt that the injuries include post-concussion syndrome, chronic posttraumatic headache, cognitive dysfunction, postural instability, hypersensitivity to environment to include light and sound sensitivity. Dr. Spooner also noted that he continued to suffer disordered sleep, functional vision problems, emotional lability, and chronic neck pain. Dr. Spooner opined that these injuries had impacted Michael's quality of life and quality of work. Dr. Spooner felt that Michael had not exhausted appropriate treatment options and per UnityPoint's multidisciplinary treatment team, Michael had not reached MMI, having not fully taken advantage of a multidisciplinary/interdisciplinary treatment protocol available to him. (Cl. Ex. 2, p. 2)

Michael saw Dr. Bell again on October 8, 2019. He had been working on his home therapy activities. He still noticed a fog that goes across his vision. It was thought this could be a dry eye issue, but drops and blinking have not improved this. His glasses are too bothersome with painting at work so he takes those off. His distance vision is good with his glasses but he has issues seeing intermediate. The notes list the diagnoses as convergence insufficiency, headache, and concussion without loss of consciousness. Optometric visual rehabilitative therapy was recommended. (JE9, pp. 11-13)

After the accident, it took approximately six months for Michael to return to work for eight hours per day. He returned to his job of jell coating, but his performance was criticized. Michael was not the only one performing the job of jell coating who was criticized during this time. (Tr. pp. 120-121) The increased scrutiny caused Michael's stress level to increase and he felt he could not do anything to satisfy his bosses. He felt he could not continue in that position. Michael also had an incident with a co-worker where he became agitated about a bucket of paint. After the incident, he was moved to a different area, mold prepping. He now has a job that is less stressful and he only has to work with one co-worker who is basically silent. Michael believes that, for the most part, he could physically return to his prior jobs, but would not be able to handle the interpersonal aspects of his prior jobs.

Dr. Kuhnlein stated that if the course of care outlined by Dr. Spooner and Dr. Bell was not undertaken, then Mr. Warren reached maximum medical improvement on November 9, 2018. The complete course of care was not undertaken and the medical evidence does not indicate that Michael's condition is likely to change substantially in the next year. I find that Michael reached maximum medical improvement on November 9, 2018. (Cl. Ex. 1, p. 11)

Despite, years of treatment, Michael continues to experience symptoms. Michael testified that his symptoms have improved, but he is still experiencing symptoms that affect his daily life. His symptoms include vision issues, neck stiffness, cognitive issues, and balance issues. Michael has also experienced issues with headaches. Even after cognitive therapy, he has some ongoing short-term memory and cognitive issues. Michael testified that he has had neck stiffness since approximately one month after the injury. His neck symptoms were treated conservatively with physical therapy. Dr. Fattal ordered an MRI of his neck. Dr. Spooner ordered additional physical therapy for his ongoing neck and back symptoms. Michael credibly testified that he experiences "coma" like symptoms when he is around loud noises. Since the injury, he is irritable and withdrawn from interactions with his grandchildren.

There are several physicians who have rendered their opinions regarding causation and permanency in this case. Dr. Spooner is the Director of the UnityPoint Clinic Multidisciplinary Concussion Management Program. Michael sought treatment with Dr. Spooner on his own. Dr. Spooner related all of Michael's symptoms to his March 22, 2017 work injury. These included post-concussion syndrome, chronic posttraumatic headache, cognitive dysfunction, postural instability, hypersensitivity to environment to include light and sound sensitivity. He also noted disordered sleep,

functional vision problems, emotional lability, and chronic neck pain. (Cl. Ex. Cl. Ex. 2, p. 2) As noted above, Dr. Kuhnlein, Board Certified in Occupational and Environmental Medicine, also related Michael's symptoms to the March 22, 2017 work injury. (Cl. Ex. 1) Dr. Chen, Board Certified in Physical Medicine and Rehabilitation, does not relate all of Michael's symptoms to his work injury. He was unable to conclude that Mr. Warren's depression symptoms were caused by or aggravated by his March 2017 work injury. The opinions of Dr. Spooner and Dr. Kuhnlein are consistent with one another and with the record as a whole. I find the opinions of Dr. Spooner and Dr. Kuhnlein carry greater weight than those of Dr. Chen.

With regard to permanent functional impairment, Dr. Chen opined that pursuant to the Fifth Edition of the AMA Guides, Michael did not sustain any permanent impairment as the result of the work injury. Dr. Chen does not appear to address permanent impairment with regard to vision issues, neck issues, postural instability, short term memory loss and cognitive issues. I do not find the opinions of Dr. Chen to be persuasive because his opinion regarding permanent functional impairment does not take all of Michael's conditions into account.

The only other physician to address permanent impairment in this case is Dr. Kuhnlein. As set forth above, he assigned a total of 17 percent whole person impairment. Dr. Kuhnlein's report appears to take all of Michael's conditions into account. Thus, I find Dr. Kuhnlein's opinions regarding permanent functional impairment to be more persuasive. I find that Michael has sustained permanent impairment to his body as a whole as the result of the work injury.

To the credit of both Michael and Altec, at the time of hearing, Michael continued to work full-time at Altec. He was working without any accommodation or restrictions. He was earning more money than he did at the time of the injury. He does not take any medications for his work injury. He continues to work on cars in his personal garage and earns approximately $3,500.00 per year. Jeff Greer, the production supervisor at Altec, testified that Michael is in good standing with the company and does a very good job.

Michael has a high school diploma and completed some auto body courses at a community college. Michael testified that for the most part he believes he is still physically capable of performing his past jobs. However, he does not think he could handle the interpersonal aspects of his prior jobs. His work history includes working as a salesman at O'Reilly Auto Parts and Barker Implement for approximately seven years. He estimated that approximately 70 percent of his time was spent helping customers. He worked as a janitor at an early childhood center. He also has experience driving a fork truck. Additionally, he worked at Rug Doctor as a warehouse worker. He spent about half of his time in the shop working on machines and the other half of his time was spent traveling to satellite offices. Dr. Kuhnlein felt that due to his cognitive issues, he could have instructions following novel task instructions. He also noted that due to Michael's irritability and emotional lability he may also have problems with interpersonal relationships in the workplace. Dr. Kuhnlein restricted Michael from working off ground level, on uneven surfaces, and on ladders. Due to Michael's vestibular issues, Dr.

Kuhnlein suggested that he not work around hazardous industrial machinery. Additionally, due to cognitive issues, he recommended that Michael work on the day shift to avoid shiftwork disorders.

Michael clearly is motivated to maintain his employment. However, he continues to experience a "coma" like state when he is around unexpected loud noises. He would not feel comfortable driving a fork truck now due to his vision issues. He continues to have vertigo, problems with vision, imbalance, headaches, pain and depression. He still experiences stiffness in his neck and some back pain. He also tires more easily. (Tr. pp. 43-56)

Considering Michael's age, educational background, employment history, ability to retrain, motivation to continue working, length of healing period, permanent impairment, and permanent restrictions, and the other industrial disability factors set forth by the Iowa Supreme Court, I find that he has sustained a 25 percent loss of future earning capacity as a result of his work injury with the defendant employer.

We now turn to the issue of Michael's weekly rate of workers' compensation. The parties have a dispute regarding which weeks should be included in the calculation of Michael's gross weekly wages. The parties have each submitted their rate calculations. It appears the only difference is claimant included the check dated March 24, 2017 and excluded the check dated December 23, 2016. Claimant argues that the check dated March 24 should be included in the calculation of claimant's gross weekly wages because the end of that pay period was March 19, 2017, prior to the date of injury. It is unclear to the undersigned why defendants believe this week should not be included. I find that claimant's calculation is correct. Claimant's gross weekly wages are $703.05. The parties have stipulated that Michael is married and entitled to two exemptions. Thus, his weekly workers' compensation rate is $465.32. (Cl. Ex. 5; Def. Ex. E)

Claimant is seeking payment for past medical expenses as set forth in claimant's exhibit 6. Claimant argues that after Michael's last appointment with Dr. Fattal on November 9, 2018, defendants denied additional treatment. Defendants do not dispute that additional treatment was denied. The medical expenses claimant is seeking payment for are for dates of service from February 13, 2019 through April 17, 2019. The bills are for treatment with Dr. Spooner, Dr. Bell, or for physical therapy recommended by Dr. Spooner. Both Dr. Spooner and Dr. Bell indicate that this treatment is related to the work injury. Michael testified that the treatment was somewhat beneficial. I find that this treatment was reasonable and necessary as the result of the work injury. (JE 7, 8, 9; Cl. Ex. 6; Def. Ex. F)

Michael is also requesting further treatment with Dr. Spooner and Dr. Bell, as well as any referrals from either of them. Prior to the hearing, defendants denied claimant's request for treatment based on Dr. Chen's opinions. However, defendants have now been found liable for Michael's ongoing symptoms. Under Iowa law, the employer has the right to control the medical treatment for work-related injuries. I find

defendants maintain this right. Defendants are responsible for the reasonable cost of any future treatment that is causally connected to the March 22, 2017, work injury.

CONCLUSIONS OF LAW

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

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

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

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

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

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

Based on the above findings of fact, I conclude that Michael sustained permanent disability to his body as a whole as the result of the March 22, 2017 work injury. As such, he is entitled to an award of industrial disability. Considering the industrial disability factors set forth by the Iowa Supreme Court, I conclude that he has sustained a 25 percent loss of future earning capacity as a result of his work injury with the defendant employer. Michael is entitled to 125 weeks of permanent partial disability commencing on November 9, 2018.

The parties have a dispute regarding Michael's weekly workers' compensation rate. Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Any week that does not fairly reflect the employee's customary earnings is excluded, however. Section 85.36(6). For the reasons set forth above, I conclude that claimant's gross weekly wages are seven hundred three and 05/100 dollars ($703.05). The parties have stipulated that he is married and entitled to two exemptions. Thus, claimant's weekly workers' compensation rate is four hundred sixty-five and 32/100 dollars ($465.32).

Claimant is seeking payment of past medical expenses as set forth in claimant's exhibit 6. The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975). Based on the above findings of fact, I conclude that the submitted charges were incurred as a result of the March 22, 2017 work injury and therefore are the responsibility of the defendants. Additionally, defendants are responsible for the reasonable cost of any future treatment that is causally connected to the March 22, 2017, work injury.

Claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the workers' compensation commissioner or the deputy hearing the case. 876 IAC 4.33. I find that claimant was generally successful in his claim; therefore, an

assessment of costs is appropriate. I find that the $100.00 filing fee is an appropriate cost under 4.33(7). I further find that the $120.00 report fee is appropriate under 4.33(5). Defendants are assessed costs totaling two hundred twenty and no/100 dollars ($220.00).

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the rate of four hundred sixty-five and 32/100 dollars ($465.32).

Defendants shall pay one hundred twenty-five (125) weeks of permanent partial disability benefits commencing on the stipulated commencement date of November 9, 2018.

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

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be 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. See Deciga Sanchez v. Tyson Fresh Meats, Inc., File No. 5052008 (App. Apr. 23, 2018) (Ruling on Defendants' Motion to Enlarge, Reconsider or Amend Appeal Decision re: Interest Rate Issue).

Defendants are responsible for the past medical expenses contained in claimant's exhibit 6.

Defendants shall reimburse claimant costs totaling two hundred twenty and no/100 dollars ($220.00).

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

Signed and filed this 20th day of April, 2020.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jane Lorentzen (via WCES)

Nick Platt (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.