BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LATIF IKELJIC, Claimant, vs. TITAN TIRE CORPORATION, Employer, and ZURICH NORTH AMERICAN INSURANCE COMPANY, Insurance Carrier, Defendants.	FILED APR 23 2015 WORKERS COMPENSATION	File No. 5048384 ARBITRATION DECISION Head Note Nos.: 1108.20; 1402; 1802

STATEMENT OF THE CASE

Latif Ikeljic, claimant, filed a petition in arbitration seeking workers' compensation benefits from Titan Tire Corporation, employer, and Zurich American Insurance Company, insurance carrier. Hearing was held on February 10, 2015.

Claimant was the only witness testifying live at trial. The evidentiary record also includes claimant's exhibits 1-33 and defendants' exhibits A-E. The parties submitted a hearing report at the commencement of the evidentiary hearing. On the hearing report, the parties entered into certain stipulations. Those stipulations are accepted and relied upon in this decision. No findings of fact or conclusions of law will be made with respect to the parties' stipulations.

The parties request the opportunity for post-hearing briefs, which were submitted on March 10, 2015.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury to his left hip as a result of the July 26, 2012, work injury.

2. Whether claimant sustained a mental injury as a result of the July 26, 2012, work injury.

3. What, if any, additional temporary benefits claimant is entitled to.

4. What, if any, additional permanent partial disability claimant is entitled to.

5. Whether claimant is entitled to reimbursement for medical expenses pursuant to Iowa Code section 85.27.

6. Whether claimant is entitled to alternate medical care under Iowa Code section 85.27.

7. Whether claimant is entitled to reimbursement for an independent medical evaluation (IME) under Iowa Code section 85.39.

8. Whether defendants are entitled to a credit.

9. Assessment of costs.

FINDINGS OF FACT

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

There is no dispute that Mr. Ikeljic sustained an injury to his lumbar spine on July 26, 2012, arising out of and in the course of his employment with Titan Tire Corporation ("Titan"). Defendants do dispute claimant's contention that his left hip and mental problems are related to the July 26, 2012 injury.

Mr. Ikeljic was hired by Titan in March of 2012. He worked as a production supervisor at Titan. On July 26, 2012, he was in the tractor area inspecting an inner liner that another employee was transporting from one area of the factory to another on a skid loader. As he inspected the liner, it rolled off the front of the skid loader and onto Mr. Ikeljic's feet. He tried to lift the 50 to 70 pound liner off his feet, but he felt an immediate pain in his lower back and right leg. Mr. Ikeljic reported his injury to Shane Ort. Mr. Ort had Mr. Ikeljic come to his office to fill out a disciplinary report and instructed Mr. Ikeljic that he was to lift with his feet, not his back. According to Mr. Ikeljic, Mr. Ort failed to file a report of injury. (Testimony)

Mr. Ikeljic continued to work at Titan for the next month. According to the claimant, before the injury he did not receive any complaints about his work. However, after the injury he was unable to continue lifting because of his back pain. Mr. Ikeljic told his manager, Keith Williams, about his injury. Mr. Ikeljic said that after his injury he began receiving complaints about his job performance. He was terminated from Titan on August 22, 2012. From July 25, 2012 until his termination on August 22, 2012, Mr. Ikeljic worked full duty without restrictions. Claimant testified during this time period

he would get help at work when possible. When he was done with work for the day he would go home and go to bed. (Testimony)

The first medical treatment that Mr. Ikeljic received was from Michael D. Jackson, M.D. Claimant testified he was sent to Dr. Jackson by Gail at Titan. Based on the records, it appears Mr. Ikeljic was seen by Dr. Jackson on August 27, 2012. Mr. Ikeljic was released to return to work with restrictions.

On September 17, 2012, claimant returned to see Dr. Jackson. His symptoms improved, but he was still experiencing low back pain and burning that radiated into his right lower extremity to his kneé area. Dr. Jackson's impression was lumbosacral strain/sprain. He returned him to work with restrictions. He also ordered an MRI of his lumbosacral spine to delineate pathology. (Exhibit 1, pages 1-2)

By July 1, 2012, Mr. Ikeljic reported increased hip pain. Dr. Jackson noted that his gait was antalgic and his lumbar range of motion was reduced in all planes. His impression was lumbar degenerative disc disease with facet arthopathy, rule out lumbar radiculopathy, and left hip subluxation. He referred Mr. Ikeljic to orthopedics for left hip evaluation. He also ordered EMG/nerve conduction studies to rule out radiculopathy. Mr. Ikeljic was to continue his current medications and restrictions. (Ex. 1, p. 6)

On September 18, 2012, a lumbar MRI was performed. The report notes a L4-L5 tiny, right greater than left, diffuse disc bulge which minimally touched the traversing right L5 nerve root. (Ex. 2, p. 7)

On October 5, 2012, Timothy W. Walsh, M.D. provided Mr. Ikeljic with a right L4 transforaminal epidural steroid injection. Dr. Walsh advised the patient could return to his office as needed. (Ex. 3, pp. 13-16)

On November 1, 2012, Mr. Ikeljic presented at Mercy Medical Center with back pain and numbness in his left leg and hip. (Ex. 4) He rated his pain as an 8/10 and reported that he occasionally has pain down the anterior aspect of his right leg and into his foot. He was also noted to have nondermatomal/nerve root pain pattern in his right lower extremity. (Ex. 5, p. 22)

Mr. Ikeljic began physical therapy at Advantage PT and Rehab, Inc., on November 8, 2012. Mr. Ikeljic continued to receive conservative treatment from Dr. Jackson. On November 12, 2012, Mr. Ikeljic reported to Dr. Jackson that he had significant low back pain after physical therapy. He also reported that physical therapy made his left hip painful. Dr. Jackson noted he was demonstrating left hip subluxation. Mr. Ikeljic was also concerned about the conversation that occurs while he is in therapy because he feels it is more of a political nature, which makes him uncomfortable. He requested a different therapy venue. Dr. Jackson agreed that a change of venue for his therapy might be beneficial. Dr. Jackson's impression was lumbar degenerative disc disease with facet arthropathy. Mr. Ikeljic remained on restrictions. (Ex. 1, pp. 4-5) I

note that at the time Mr. Ikeljic was discharged from therapy at Advantage there was mention of left hip joint instability. (Ex. 5, pp. 28-29)

On December 3, 2012, Mr. Ikeljic was evaluated by Daniel J. McGuire, M.D. He reported that he sustained an injury July 26, 2012, while working at Titan Tire. He was lifting a roll that weighed more than 100 pounds when he felt a pop in his back. Mr. Ikeljic told Dr. McGuire he had been miserable ever since. Mr. Ikeljic reported that he tried to work for about another month or so. Prior to Dr. McGuire's evaluation he had not worked for about 4 or 5 months and reported he was perhaps terminated from his job. He rated his pain at a level 9. The note indicates he can stand for maybe 30 minutes or so and walk for 15 minutes until his back and both legs hurt. He also has a difficult time sleeping and sitting. Mr. Ikeljic had a cane at this visit. Dr. McGuire noted that most of the Waddell's signs were negative. He also noted that the MRI was essentially normal. Dr. McGuire's impression was "[s]oft tissue back strain with some bursitis." (Ex. 6, p. 31) Dr. McGuire felt that the patient's aches and pains were real, but that there was no need for surgery. He noted that the one epidural he had only helped him for about one day so he did not recommend any more. He felt time and moderate activities were key components. (Ex. 6, pp. 31-32)

The December 11, 2012, Work Systems Rehab and Fitness notes indicate Mr. Ikeljic was reporting right leg pain with activity and left hip and leg numbness. At that time there was an audible left hip pop with movement in supine. (Ex. 7, p. 38) Mr. Ikeljic continued to go to therapy. On February 5, 2013, he reported his pain was 9 out of 10 and that his pain had not improved. The therapist recommended further assessment and no further physical therapy at that time. (Ex. 7, pp. 41-42)

On December 17, 2012, an MRI patient screening form indicates Mr. Ikeljic had left hip pain that radiated down his left leg. The form also indicates he was injured during therapy. (Ex. 2, p. 10)

On January 10, 2013, Mr. Ikeljic saw Timothy R. Vinyard, M.D., at Iowa Ortho regarding his left hip. He reported pain and snapping in his hip. Dr. Vinyard stated that the snapping in his hip comes from tight muscles/imbalance in muscle strength which he felt would improve with physical therapy. He placed Mr. Ikeljic on restrictions and asked him to follow-up in four weeks. (Ex. 8, pp. 64-65)

Mr. Ikeljic returned to Dr. Vinyard on February 7, 2013, reporting that his symptoms were unchanged. The note indicates that his symptoms persisted despite injections, medications, physical therapy, and activity modification. Dr. Vinyard's assessment was pain in the left hip with subjective snapping. He placed Mr. Ikeljic at maximum medical improvement (MMI). He recommended a functional capacity evaluation (FCE). (Ex. 8, pp. 67-68)

On February 12, 2013, claimant underwent an FCE at WorkWell Systems. At that time he reported his pain was 10/10. He demonstrated cooperative behavior but did not demonstrate consistent, maximal effort. The results of the FCE were deemed to

not be an accurate indication of the client's current safe maximum functional capacity due to his tendency to self-limit. (Ex. 11)

On February 14, 2013, Mr. Ikeljic was seen at Occupational Medicine Plus by Daniel C. Miller, D.O., for consultation/treatment. Mr. Ikeljic reported that he had constant left hip pain and numbness with occasional worsening of pain with activity. He reported that the pain began while he was in physical therapy for approximately three months. Dr. Miller's assessment was myofascial back pain. He felt Mr. Ikeljic was capable of performing full duty. Dr. Miller reviewed the medical records, and given the benign exam and non-valid FCE, he felt it appeared there was symptom magnification and pain behavior. He did not see any findings on exam or records that would prevent Mr. Ikeljic from working. He felt Mr. Ikeljic had a thorough work-up and proper treatment. He did not think there was anything more to offer. He placed him at MMI and discharged him from treatment. (Ex. 9, pp. 70-74)

Mr. Ikeljic saw Dr. Miller again on February 25, 2013. He reported that his left hip started popping last Friday (February 15, 2013). He also noted pain with extension of low back or with forward flexion. Mr. Ikeljic was prescribed medications for pain management. (Ex. 9, pp. 75-79) He continued to follow-up with Dr. Miller.

It appears that in the spring of 2013, Dr. Miller had a conference with claimant's counsel. As a result of that conference he wrote a letter to claimant's counsel dated May 6, 2013. Dr. Miller felt Mr. Ikeljic's biggest issue was left hip pain. He felt it would be prudent for the patient to see an orthopedic doctor for a second opinion. Since the time of Dr. Miller's conference with claimant's counsel, he had seen the patient again and reviewed additional records. He had also seen Mr. Ikeljic on April 15, 2013. At that point his back pain was better, but he continued to have hip pain at a 6/10. Based on this information he did not feel that a second orthopedic opinion was required. (Ex. 9, p. 85)

Mr. Ikeljic was seen at Mercy Clinic on June 3, 2013. He reported he had some hip pain in 2010 and that his left hip pain returned after some physical therapy for his back around November of 2012. He was referred to orthopaedics for a consultation. (Ex. 15, pp. 147-149)

On June 5, 2013, Mr. Ikeljic saw Dr. McGuire for his hip. Dr. McGuire called Mr. Ikeljic's attorney and explained that Mr. Ikeljic had inflammation over the greater trochanter and muscle rubbing in that area. It was Dr. McGuire's opinion that there may be a few select number of orthopedic surgeons in the country who have an interest in this type of problem. Dr. McGuire noted that he did not operate on hips, but thought there might be someone who would be interested in releasing the muscle as it rubs over the hip. However, Dr. McGuire generally felt orthopedics did not have a good solution. (Ex. 6, pp. 33-34)

On September 5, 2013, Dr. Miller opined that Mr. Ikeljic sustained a two percent whole person impairment of the whole person. He also stated that he believed the hip

pain was due to a chronic, pre-existing condition and that there was no permanent impairment for the hip pain. (Ex. C, p. 4)

On October 15, 2013, Dr. McGuire wrote a letter to claimant's counsel. (Ex. 6, p. 37) Dr. McGuire sets forth his understanding of the history. With regard to the hip he stated: "[g]iven the history I have, it seems like the work incident of July 26, 2012, was a substantial factor." However, a review of the records shows that Dr. McGuire did not have a complete history regarding the hip and the mechanism of injury and therefore his opinion with regard to the hip is not persuasive.

On November 4, 2013, Mr. Ikeljic was seen at Mercy Clinic with a sudden onset of moderate left lower back pain. An MRI was ordered. (Ex. 15, pp. 150-152)

On December 5, 2013, Mr. Ikeljic was seen at Mercy Physical Medicine and Rehabilitation at the request of Kathleen Fitzgerald, NP, ARNP, with hip and low back pain. He reported he had back and lateral hip pain since July 26, 2012. He felt his prior treatment did not help, but he had been placed at MMI by Iowa Ortho. He also reported he had undergone an FCE, but was unable to complete it due to hip pain. The assessment was joint pain, localized in the hip, low back pain, and lumbar disc degeneration. The note states Mr. Ikeljic appeared "very painful with palpation over multiple areas[;] some of his palpation is out of proportion to the amount of pressure being applied and he is distractible." (Ex. 10, p. 90) Mr. Ikeljic reported that pain prevented him from walking more than one-half mile or sitting for more than one hour. Jeffrey Pederson, D.O. did not feel that a repeat trochanteric bursa injection would be beneficial. There was also concern about continuing opioid pain medication given his inconsistent physical exam and lack of pathology on imaging. The note also indicates consideration should be considered for an antidepressant. (Ex. 10, pp. 87-90)

December 12, 2013, Mr. Ikeljic was seen at Mercy Clinic for a preoperative evaluation and medical consultation for a right shoulder scope following a car accident. He was found to be medically stable to undergo the surgery. (Ex. 15, pp. 153-155)

He returned to Mercy Physical Medicine and Rehabilitation on December 13, 2013. At this appointment he reported pain prevented him from walking more than 100 yards or sitting more than 30 minutes. The EMG results showed that there was no electrical evidence for radiculopathy contributing to his left hip or leg pain. Dr. Pederson stated: "Unfortunately [we] do not have many other options for him from a conservative standpoint for the hip popping and hip pain. At the current time I do not believe his hip symptoms are caused from his back. He may have back pain secondary to his hip pain no [*sic*] due to be [*sic*] altered mechanics of walking." He was told he could follow-up as needed. (Ex. 10, pp. 91-92)

On January 16, 2014, Mr. Ikeljic was seen at the University of Iowa Hospitals and Clinics (UIHC), Department of Orthopaedics and Rehabilitation, at the request of Dr. Pederson. He was seen for evaluation of left hip pain. The note indicates that Mr. Ikeljic reported the pain first began in July of 2012, when he was lifting a heavy

object at work. (Ex. 12, p. 106) The diagnosis was left hip pain, iliotibial (IT) band syndrome, left, snapping hip syndrome, left. The plan was to obtain images of the hip and back, refer him to physical therapy, and a diagnostic ultrasound. (Ex. 12, pp. 106-116) He saw Mederic M. Hall, M.D. on February 28, 2014 for a sonographically guided left proximal iliotibial band (ITB) corticosteroid injection. (Ex. 12, pp. 117-118)

On March 28, 2014, Mr. Ikeljic was seen for an initial evaluation at Work Systems, Inc., upon referral of Annunziato Amendola, M.D. The assessment at that time was impaired left hip joint mobility, muscle performance, and range of motion. (Ex. 7, pp. 45-46) He attended several sessions of therapy. By June 18, 2014, Mr. Ikeljic had attended 21 sessions of therapy. He still had left knee, left hip, left groin, and low back pain. The therapist recommended follow-up with Dr. Amendola. (Ex. 7, pp. 60-61)

On June 5, 2014, Mr. Ikeljic was seen by Sam L. Graham, Ph.D., upon referral by Craig Rypma, Ph.D. Mr. Ikeljic reported the history of a work injury. He reported persistent dysphoria, anxiety, crying spells, and increased anger. He also reported problems with sleeping, concentration, attention and memory. It was felt he would benefit from antidepressants and sleep medication. (Ex. 15, p. 156) He underwent psychotherapy with Dr. Graham. Mr. Ikeljic reported that since his removal from work he had mood problems. The notes indicate adjustment disorder with anxiety and depressed mood and sleep disorder. (Ex. 15)

On June 19, 2014, Mr. Ikeljic returned to the UIHC, for a follow-up of left IT band snapping syndrome. He had improved his strength and overall pain level with physical therapy. He was still unable to control the snapping that caused his hip pain. The injection he received from Dr. Hall improved his pain tremendously. He was assessed with IT band snapping syndrome. It was felt he likely would not improve from additional conservative treatment. He was referred to Dr. Amendola for surgical consultation. (Ex. 12, pp. 119-120)

He saw Dr. Amendola on July 6, 2014, for bilateral hip snapping. Mr. Ikeljic reported this began in July of 2012 when he was lifting a heavy object at work. At the time of the appointment he reported lateral hip pain, and significant popping, which is quite painful. Pain is made worse by walking, squatting, or standing for long periods of time. Dr. Amendola's impression was bilateral IT band snapping syndrome. The plan states: "Surgical, bilateral, IT band release/lengthening." (Ex. 12, pp. 121-124)

At the request of his attorney, Mr. Ikeljic was seen for an IME on October 17, 2014, with Sunil Bansal, M.D. (Ex. 18) Mr. Ikeljic reported "burning and stabbing low back pain with tingling, stabbing pain and tingling of his right hip, aching, burning, and stabbing pain in his left hip and thigh, tingling of the left groin area, aching pain in his left knee, tingling of his left lower leg, and aching pain in his left ankle." (Ex. 17, p. 190) Dr. Bansal reviewed numerous medical records and examined Mr. Ikeljic. Dr. Bansal opined that he had sustained 5 percent whole person impairment for his low back and 3 percent whole person impairment for his trochanteric bursitis with altered gait.

(Ex. 18, p. 194) Dr. Bansal causally related the impairment to the work injury. He restricted him to no lifting over 25 pounds occasionally, no lifting over 10 pounds frequently. No frequent bending, squatting, climbing, twisting. Avoid work on uneven ground or ladders. He should also sit and stand as tolerated. (Ex. 18)

On December 8, 2014, licensed psychologist, Craig B. Rypma, Ph.D., issued a report after he examined Mr. Ikeljic at the request of his attorney. (Ex. 17) Dr. Rypma's diagnostic impression was pain disorder with psychological factors and general medical conditions and adjustment disorder with anxiety and depressed mood. It was his opinion that Mr. Ikeljic "suffered psychological damages that were either caused directly, or at least aggravated by his injury of July 26, 2012." He felt Mr. Ikeljic would need psychological treatment to resolve his psychological injury. He further opined that Mr. Ikeljic was not able to return to employment. (Ex. 17, p. 180)

The medical records demonstrate that prior to the alleged injury, Mr. Ikeljic did receive conservative treatment treated for pain in his left hip and low back pain. (Ex. 13 and 14) However, the prior problems seemed to resolve at least to the point where Mr. Ikeljic was no longer seeking any type of medical care for his lower back or left hip.

The first issue to be addressed is whether Mr. Ikeljic's hip symptoms are related to the July 26, 2012, work injury. Mr. Ikeljic testified that during a physical therapy session in November of 2012 he was lying on his back while the therapist pushed his left foot and leg in toward claimant's stomach. During this process, Mr. Ikeljic heard a pop and felt a sliding sensation in his left hip. Defendants dispute claimant's contention that any such event occurred in therapy. A review of the Advantage PT notes reveals there is no mention of any such incident. (Ex. 5) I do note that when Mr. Ikeljic saw Dr. Jackson in November he reported that physical therapy made his left hip painful. Dr. Jackson noted left hip subluxation. Further, Mr. Ikeljic's contention that his hip was injured during therapy is also supported by the "objective" portion of the Advantage PT notes. On Mr. Ikeljic's last visit, November 15, 2012 under the "objective" portion of the note there is a "special test" section. In this section it states, "[l]eft hip joint instability noted with piriformis stretch as noted by palpable 'clunk' which can be reproduced – no c/o pain or fascial grimacing noted during this incidental finding." (Ex. 5, p. 28) In the initial therapy note on November 8, 2012, there is no mention of hip joint instability or a clunk. (Ex. 5, p. 22)

Defendants also dispute the validity of Mr. Ikeljic's symptoms. In support of this contention, defendants point out several providers' notes. Defendants note that Todd Schemper, PT, made several notes about inconsistencies and overt pain behaviors. (Ex. 7) Charles Goodhue, MS, MPT, noted over-reaction to light superficial touch with no muscle spasm noted. (Ex. 5, pp. 24-26) Tim Vander Wilt, PT, also noted self-limiting and exaggeration during the FCE. (Ex. B)

There are several expert opinions regarding whether the hip is causally connected to the work injury. Dr. Miller opined that Mr. Ikeljic's hip pain was a "chronic, pre-existing condition, ther [*sic*] is no PPI for his hip pain." (Ex. 9, p. 86) Unfortunately,

Dr. Miller did not address whether the work injury or subsequent therapy aggravated the preexisting condition. Because Dr. Miller does not address the issue of aggravation, I do not find Dr. Miller's opinion to be insightful or persuasive.

Dr. McGuire stated, "[g]iven the history I have, it seems like the work incident of July 26, 2012, was a substantial factor. I realize 3 or 4 years ago he had a brief episode of pain over the greater trochanter, but the history I have reviewed implies that it had resolved." (Ex. 6, p. 37) Based on the records in evidence from Dr. McGuire it is apparent that he was aware of Mr. Ikeljic's history of prior problems. However, it is not clear how Dr. McGuire believes Mr. Ikeljic's hip was injured. His notes make no mention of any incident occurring at physical therapy. Rather, his notes from December of 2012, seem to indicate that the hip pain began in July of 2012. Dr. McGuire's letter of October 15, 2013, seems to imply that his hip was injured during the incident of July 26, 2012. Based on the records, it is unclear if Dr. McGuire is even aware of Mr. Ikeljic's alleged mechanism of injury. Further, Dr. McGuire's opinion is vague and he does not provide any rationale for his opinion. For these reasons I do not find Dr. McGuire's opinion to be helpful or persuasive.

Dr. Bansal, who saw Mr. Ikeljic for an IME at his attorney's request, also addressed the issue of causation with regard to the hip. Based on Dr. Bansal's report, he appears to have a complete history, which includes claimant's prior medical conditions. He also has the history of the alleged mechanism of injury. Dr. Bansal opines that Mr. Ikeljic likely had "a degree of iliotibial band syndrome prior to his July 26, 2012 injury that was made clinically relevant or aggravated by this alleged November 2012 physical therapy visit. This alleged aggravation from a piriformis stretch is consistent with the biomechanics of snapping hip syndrome. (Ex. 18, p. 195)

It is troubling that many of the treating medical providers in this case were not aware of the alleged mechanism of injury to the hip. However, the clinical notes from Mercy Clinic from November of 2012 do have the history of the physical therapy hip incident. These records were generated close in time to the event. (Ex. 1, p. 4) Although Mr. Ikeljic had a prior history of hip problems, the record demonstrates that the hip problems had resolved to the point that he no longer sought any medical treatment. In this particular case, I find Dr. Bansal's opinion to be the most persuasive. Dr. Bansal had a complete history and provided his rationale for his opinions. Thus, I find the preponderance of the evidence shows that Mr. Ikeljic sustained an injury to his hip while undergoing physical therapy for his back in November of 2012. I further find that claimant's left hip condition, symptoms, and treatment are causally related to and a result from a material aggravation of claimant's IT band syndrome.

The next issue to address is whether Mr. Ikeljic sustained a mental injury as a result of the July 26, 2012 work injury. Claimant contends he sustained a mental injury from the work injury and the consequences that flowed from the injury. In support of his contention, claimant offered the opinion of Dr. Craig Rypma. Dr. Rypma diagnosed claimant with adjustment disorder with depressed mood and anxiety. He opined that Mr. Ikeljic's suffered psychological damages that were either caused directly, or at least

aggravated by his injury of July 26, 2012. (Ex. 17, p. 180) This is the only expert opinion in the record regarding Mr. Ikeljic's mental allegations. Based on the unrebutted report of Dr. Rypma, I find that Mr. Ikeljic sustained a mental injury as a result of the July 26, 2012 work injury. I further find that claimant's mental condition, symptoms, and treatment are causally related to and a result of the July 26, 2012, work injury.

Having found Mr. Ikeljic proved he sustained a work injury and that his current conditions are causally related to the work injury, the next issue to be addressed is permanent disability. I find the opinions of Dr. Amendola and Dr. Rypma to be the most credible on this issue. With regard to the hip, Dr. Amendola has recommended that Mr. Ikeljic have IT band release/lengthening surgery on his left hip. (Ex. 12, pp. 123-124) Mr. Ikeljic would like to undergo this procedure. Dr. Rypma has stated Mr. Ikeljic will require continued psychological treatment to resolve his psychological issues. Dr. Rypma has also stated that given Mr. Ikeljic's current psychological condition, he is not able to return to employment. (Ex. 17, p. 180) Therefore, I find that claimant's condition could be improved by additional treatment. I find reasonable treatment options exist that likely will improve Mr. Ikeljic's physical and mental state, and in turn his earning capacity.

Claimant is seeking temporary weekly benefits from May 13, 2013 through the present. On May 13, 2013, Dr. Miller placed Mr. Ikeljic at MMI for his injury. However, based on the opinion of Dr. Rypma that claimant will require additional treatment for his psychological issues to resolve, I find that Mr. Ikeljic had not yet reached MMI at the time of the arbitration hearing.

CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

In Iowa, when physical trauma causes or aggravates a mental condition (physical-mental) which increases or prolongs disability, all disability, including the effects of the nervous disorder, is compensable. Gosek v. Garmer and Stiles Company, 158 N.W.2d 731, 733 (Iowa 1968). No special legal causation test showing unusual

stress exists in such cases. Only medical causation need be shown as would be the case in other workers' compensation claims. See generally, Lawyer, Iowa Practice Workers' Compensation, section 4-6 (2014-2015).

When a work-related injury causes another injury to the worker, this new injury (sequela) may also be considered as a work-related injury under Iowa's workers' compensation laws. See Oldham v. Scofield & Welch, 266 N.W. 480, 482 (1936).

In this case, it was stipulated that Mr. Ikeljic sustained an injury to his back that arose out of and in the course of his employment on July 26, 2012. I found that he carried his burden of proof to establish that he sustained a compensable injury to his left hip while undergoing physical therapy for his back. I find that the left hip injury is a sequelae of the authorized care that claimant received for treatment of this back injury of July 26, 2012. I also found that he carried his burden of proof to establish that he sustained a mental injury as a result of the July 26, 2012, low back and subsequent left hip injury.

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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

I found the opinions of Dr. Rypma and Dr. Bansal were credible. Having accepted those medical opinions, I found claimant did prove by a preponderance of the evidence that his disability was the result of a substantial and material aggravation of his left hip condition and the cause of his current psychological damages. Therefore, claimant carried his burden of proof and is entitled to recover workers' compensation benefits.

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 16, 1975).

Claimant seeks an order for payment of past medical expenses. (Ex. 26) Claimant is seeking reimbursement for a cane in the amount of $22.00 and for a TENS Unit in the amount of $1,188.00 for treatment of his back injury. Claimant testified that he required the use of the cane due to his back injury. The cost of the cane is reasonable. I conclude defendants are liable for the cost of the cane. We now turn to the matter of the TENS unit. According to Mr. Ikeljic he was referred to Corr Medical Solutions, the supplier of the TENS unit, by authorized treating physician, Dr. Jackson. Thus, I find defendants are liable for the cost of the TENS Unit. I conclude defendants are liable for the cost of the TENS unit.

Claimant also seeks reimbursement for an outstanding medical bill from Mercy Hospital in the amount of $1,158.00 for an emergency room visit on October 14, 2012. Mr. Ikeljic received an epidural steroid injection on October 5, 2012, from Timothy W. Walsh, M.D. at Metro Anesthesia & Pain Medicine. Mr. Ikeljic had a negative reaction to the injection. He contacted Dr. Walsh's office and they instructed him to go to the emergency room. Mr. Ikeljic was referred to Dr. Walsh by an authorized treating physician. Dr. Walsh instructed claimant to go to the emergency room. Therefore, I conclude defendants are liable for the cost of the emergency room visit on October 14, 2012.

The remaining medical expenses contained in Exhibit 26 appear to be for treatment of the left hip and mental conditions; conditions which were denied by the defendants. When the employer abandons care through the denial of compensability of an injury the injured employee may select his own medical care. If the injury is deemed to be compensable then the claimant may recover the costs of the reasonable medical care. See Bell Bros. Heating and Air Conditioning v. Gwynn, 779 N.W.2d 193 (Iowa 2010). Based on the above findings, I concluded that claimant's left hip and mental injuries are related to the July 26, 2012, injury. Therefore, defendants are liable for payment of reasonable past medical expenses related to the left hip and mental injury.

I found that reasonable treatment options exist that could improve claimant's condition. Mr. Ikeljic has expressed a desire to receive the recommended treatment.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

According to the medical evidence, Mr. Ikeljic has not achieved maximum medical recovery. He would like to receive the additional care that has been recommended. Therefore, claimant has not yet reached MMI and remains in a healing period.

Claimant also seeks an order for alternate medical care, specifically treatment for his left hip and psychological conditions. An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat he injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Company, 528 N.W.2d 122 (Iowa 1995). Offering no care is the same as offering no care reasonably suited to treat the injury. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997).

In the present case, defendants are not offering any additional care. Defendants have taken the position that the left hip and mental symptoms are not related to the July 26, 2012, work injury. However, I found that the left hip and mental injuries are related. Furthermore, I found reasonable treatment options exist that will likely improve claimant's condition. Therefore, I conclude that defendants should be ordered to pay for treatment for the left hip and psychological condition.

We next turn to claimant's request for reimbursement of IME expenses. IMEs are governed by Iowa Code section 85.39 and generally speaking, claimant is entitled to reimbursement for a subsequent medical examination by a physician of the employee's choice when the employer-retained physician's evaluation is considered too low. Rating of no impairment is rating of impairment for purposes of section 85.39. Vaughn v. Iowa Power Inc., File No. 925283 (Arb. August 5, 1992). A section 85.39 evaluation is reimbursable irrespective of whether the claimant establishes that the claimed injury arose out of and in the course of employment. Dodd v. Fleetguard Inc., 759 N.W.2d 133 (Iowa App 2008).

The Iowa Supreme Court has ruled that the plain reading of section 85.39 limits the injured worker to one IME, regardless of the number of leading examinations obtained by the employer or its insurance carrier. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009).

In the present case claimant is seeking reimbursement for two IMEs. First claimant is seeking reimbursement for Dr. Bansal's IME. It appears the statutory requirements of Iowa Code section 85.39 have been met. Claimant would be entitled, per the Iowa Supreme Court, to one IME. Therefore, claimant is entitled to reimbursement for the IME of Dr. Bansal in the amount of $3,495.00. (Ex. 29). Because claimant is only entitled to reimbursement for one IME, the charge of Dr. Rypma's IME is not awarded to the claimant under Iowa Code section 85.39.

Claimant is also seeking reimbursement for costs under rule 876 IAC 4.33. Costs are assessed at the discretion of the agency. Claimant was successful in his claims. Therefore, exercising the agency's discretion, I conclude that it is appropriate to assess some of claimant's costs pursuant to rule 876 IAC 4.33.

Claimant is seeking his filing fee in the amount of $100.00. This is a permissible cost pursuant to rule 876 IAC 4.33(7). He is also seeking reimbursement for the cost of a deposition in the amount of $178.45. This is a permissible cost under rule 876 IAC 4.33(2). I conclude defendants are liable for these costs.

Claimant is seeking reimbursement in the amount of $250.00 for the cost of a March 6, 2013 conference with Dr. Miller and letter. (Ex. 30, p. 360) This cost can be and is assessed pursuant to rule 876 IAC 4.33(6).

Claimant is also seeking reimbursement in the amount of $125.00 for a January 28, 2015 conference with Dr. Graham. It does not appear any type of report would be obtained from this conference. Therefore, it is not appropriate to assess this as a cost pursuant to rule 876 IAC 4.33(6). (Ex. 31, p. 361)

Claimant suggests that Dr. Rypma's bill be reimbursed in total by rule 876 IAC 4.33(6). The Iowa Court of Appeals recently indicated that an IME is not a cost allowed by rule 4.33. See Des Moines Area Regional Transit Authority v. Young, No., 14-0231 (Iowa Ct. App., October 1, 2014). I acknowledge that this case is currently pending before the Iowa Supreme Court. Based on the current status of the Young case, I find it is not appropriate to award Dr. Rypma's IME bill as a cost.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay to claimant ongoing healing period benefits at the stipulated rate of six hundred fifty and 81/100 dollars ($650.81) per week commencing on May 13, 2013 and continuing until the earliest of the provisions of Iowa Code section 85.34(1) permit termination of healing period benefits.

Defendants shall pay any accrued weekly benefits in a lump sum, along with applicable interest pursuant to Iowa Code section 85.30.

Defendants shall provide claimant alternate medical care, including treatment for the left hip and psychological conditions.

Defendants shall reimburse the cost of the Dr. Bansal IME in the amount of three thousand four hundred ninety-five and 00/100 dollars ($3,495.00).

Defendants shall reimburse claimant's costs as set forth above.

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 23rd day of April, 2015.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

John T. Hemminger
Attorney at Law
2454 S.W. 9th St.
Des Moines, IA 50315-1904
johnhemminger@hemmingerlaw.com

Jason P. Wiltfang
Attorney at Law
PO Box 36
Cedar Rapids, IA 52406-0036
jwiltfang@scheldruplaw.com

EQP/srs

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876 4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.