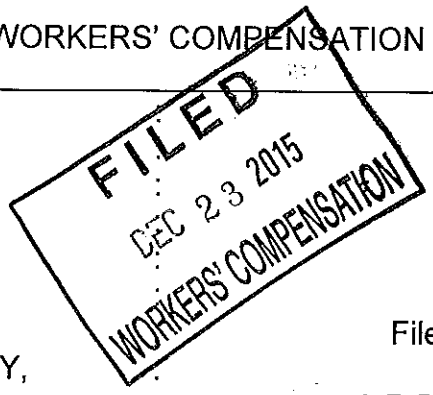
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



MICHAEL MCBURNEY,

Claimant,

vs.

AGRI STAR MEAT & POULTRY,

Employer,

and

INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,

Insurance Carrier,
Defendants.

File No. 5049533

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Michael McBurney, claimant, has filed a petition in arbitration and seeks workers' compensation from Agri Star Meat & Poultry, employer, and Insurance Company of the State of Pennsylvania, insurance carrier, defendants.

This matter came on for hearing before Deputy Workers' Compensation Commissioner, Jon E. Heitland, on November 4, 2015 in Cedar Rapids, Iowa. The record in the case consists of claimant's exhibits 1 through 15; defense exhibits A through X; as well as the testimony of the claimant and Amanda Mack.

ISSUES

The parties presented the following issues for determination:

1. Whether the claimant sustained an injury arising out of and in the course of employment on December 26, 2012.

2. Whether the alleged injury is a cause of temporary disability.

3. Whether the alleged injury is a cause of permanent disability.

4. Whether the claimant is entitled to temporary total disability or healing period benefits from May 16, 2013 to July 22, 2013 for temporary total

disability benefits, and from July 23, 2013 to September 11, 2013 for temporary partial disability benefits.

5. The extent of the claimant's entitlement to permanent partial disability benefits.

6. Whether the claimant is entitled to payment of medical expenses pursuant to Iowa Code section 85.27.

FINDINGS OF FACT

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

Claimant testified he is 42 years old. He has a high school diploma. After high school he served in the U.S. Marine Corps for four years in Japan. In 1995 he returned to the U.S. and worked as a general laborer in construction. He worked for Longview Fiber, where he was a machine operator. (Exhibit G, page 13) He suffered a low back injury while working there, which radiated pain into his legs. He received injections and underwent physical therapy, but did not undergo surgery. Since that injury he has had to be more careful how he does things.

He then went to work for Gencore. He underwent a pre-employment physical for that job on February 13, 2012. The physical involved testing his ability to bend, twist, stoop, etc. He passed the physical and began working for Gencore. Shortly after beginning that job, he had a flare-up of back pain where he woke up and had problems moving. Exhibit 4, page 1, is an emergency room record dated February 16, 2012, about three days after his pre-employment physical, and it notes recurrent back pain with spasm. The history set forth on the form notes claimant had a prior back injury while loading at work. This information came from claimant. It also notes claimant was not on any prescription medications at that time, but he uses Aleve or Tylenol on an as-needed basis. Claimant described the flare-up as a bad one. He was able to keep working at Gencore. Exhibit 4, page 2, shows the plan was to continue using Aleve, as it had been effective in the past, and for claimant to continue his back exercise program from his prior physical therapy, which claimant continued on his own for some time after the physical therapy ended. He does not do them today although he found them to be helpful.

He was also treated for a hand injury while working at Gencore. He ran a press there, where he would take iron or other materials and the press would shape it. It was a very physical job. He knew it was a physical job before he took it, and he would not have undertaken the job if he thought his back would prevent him from performing the physical duties. He was required to lift 50 to 100 pounds, which he was able to do by asking for help from co-workers or using a hoist.

He injured his hand when a piece of steel cut it. Exhibit H, page 4, shows claimant went to a medical clinic to have his finger evaluated. That document notes he was putting a piece of steel onto a platform for the welders to work on when he injured his finger. It caused him pain, so he went to the clinic, where the wound was cleaned.

Claimant did not enjoy his work at Gencore. He felt it was an unsafe work environment. He voluntarily left that job. He then went to work for Agri Star, defendant employer in this case. He filled out employment forms, and underwent two interviews. He did not undergo a pre-employment physical as far as he recalls. His job was to do maintenance at the facility, working on a crew. His shift hours varied. He loved this job. His job duties varied, and included groundskeeping, tearing down and building walls, moving equipment, fixing floors, etc. He used various tools. Part of his job was preventative maintenance. Before he took the job, the physical requirements of the job were explained to him. He was told he would not have to lift over 30 pounds, and he would be working with at least one other worker who could help with lifting.

He worked there about a month before he was injured. He understood from his supervisor his job performance was satisfactory up to then. The day after Christmas, he was injured. Exhibit 1 is an injury report. He was struck by a pallet jack while inspecting a door that was broken. He was in the area where trash was gathered for compaction and removal. A door malfunction was reported, so claimant and Dan Meyer went to take a look at it. While looking at the door, claimant was "blindsided" by a motorized pallet jack being operated by another worker. The pallet jack has forks on the front, a position for the operator in the middle, and a battery and counter-weights in the back. Claimant was struck by the back end. The jack was carrying a large bag of salt. The door was about eight feet tall and four feet wide. Dan Meyer was standing next to him while he was looking at the door.

Claimant was struck all along his left side. He was knocked down. He does not know if he hit his head. He was wearing a hard hat. He does not remember everything, but he remembers sitting up and coming to, and the driver of the pallet jack just left. The records are in conflict, as some say he was knocked unconscious; others do not. He fell onto a concrete surface. Dan Meyer came over to see how he was, and helped him to his feet. He said something about getting the pallet operator's name. Claimant thinks it was Mohammed something. The plant had many employees who did not speak English. There were few translators.

Exhibit 1, the injury report, shows a diagram of a human body. It was filled out by a "laundry lady" part of whose job was to take accident reports. There was no nurse on duty at the time. She would collect things like gloves, aprons, knives, etc. that needed to be washed daily by the laundry area. That was also the area to report any work injuries. The form notes he was hit on the left side, by an electric pallet jack, due to "person not watching where going". It happened at 7:06 p.m. The shift had begun at 1:00 or 3:00 that afternoon.

Exhibit 2, page 1, was filled out on December 26, 2012, and is signed by both claimant and Jessica, the "laundry lady". It notes claimant's left ankle was bothering him. It recommends he see the nurse the next morning when he began his shift.

The next day he reported to the nurse's office. Exhibit 3 shows when he reported to the nurse, it was noted he had low back pain with swelling noted over the lumbar area. The nurse applied a "Biofreeze" ice pack to his back, and he was given ice packs and Ibuprofen. He returned to work but was advised to limit lifting. When he went home he was still sore. He hoped the pain would resolve.

However, the pain got worse. Exhibit 4, page 4, is an emergency room record dated December 28, 2012, two days after the injury. He went there because he could not handle the pain anymore. The ice packs and Ibuprofen were not offering any relief. The form notes "left flank pain". It notes he lost consciousness momentarily. It also notes his prior back injury four years ago, with a good recovery and only occasional back pain now. Exhibit 4, page 5, notes a contusion left side, low back pain with lumbosacral radiculopathy.

Claimant continued to work. Three days after the December 28th emergency room visit, claimant visited the Winneshiek Medical Center. (Ex. 5, p. 1) He was sent there by the employer. That report notes vomiting. Exhibit 6, page 1 through 19, shows claimant underwent medical treatment by the Winneshiek Medical Center. That treatment included physical therapy. When this course of treatment did not produce relief, he was sent to La Crosse Clinic.

Claimant eventually saw Mark Stevens, M.D. He performed surgery, an anterior inter-body fusion, on claimant's back. After the surgery, he told claimant his condition was worse than originally thought. Exhibit 7, page 3, is a note from Dr. Stevens dated May 23, 2013. It states Dr. Stevens failed to note instability at the L5-S1 level, in addition to the increasing back pain and left side sciatica in his left leg, that made the fusion surgery necessary.

Exhibit 7, page 4, shows Benjamin Broukhim, M.D., an orthopedic surgeon who provided a peer review that questioned the surgery. Dr. Stevens' May 23, 2013, note was in response to this. Dr. Stevens called and spoke with Dr. Broukhim, and then issued his report stating the failure to note the instability.

After his surgery, claimant was eventually returned to work without restrictions. He then received a promotion, to maintenance foreman. His job changed quite a bit, as he now had to supervise co-workers and assign tasks. But on occasion he would be late for work. He would also forget his badge. He moved to another city 70 or 80 miles away from the plant after a fight with his live-in girlfriend. He was terminated on July 17, 2014. He has not worked since then. He lives with his parents. He does occasional side jobs for friends or relatives. He is looking for full-time employment by checking jobs online, in the newspaper, and applying directly to businesses.

He has not been paid any workers' compensation benefits, or medical mileage. The employer did not send him to any doctor to be evaluated. The employer has never told him why he was not being paid any benefits.

He was examined by Farid Manshadi, M.D., who assigned a rating of permanent partial impairment of 20 percent of the body as a whole. He also assigned permanent work restrictions.

On cross examination, claimant agreed he quit his job at Agri Star because of his breakup with his girlfriend and could no longer live with her, and had to move back to Center Point to live with his parents. He acknowledged he was terminated by the employer because of three "no-call no-shows". Claimant told the employer he had moved back to Center Point, and it was too far to drive. He loved his job there, and the job did not end because of his work injury or any write-ups for misconduct.

Exhibit T, page 103, shows Dr. Stevens felt the surgery for claimant's condition that he performed was not caused by claimant's work. Claimant's health insurance paid for the surgery, not the workers' compensation insurer.

Claimant's prior injury at U.S. Corrugated occurred on February 19, 2008. Claimant was fired from that job due to permanent restrictions from that injury. He was accommodated with light duty while the restrictions were temporary, but once they became permanent, he lost his job.

He does not recall if he told Agri Star about his permanent restrictions from the prior injury when he started working there. He had quite a bit of medical treatment for that prior injury. Chad Abernathey, M.D., noted claimant had been to the emergency room 22 times for his low back pain. He was diagnosed with a disc protrusion at L5-S1 for that injury. He is unaware the area involved in the prior injury is the same area operated on in this injury. His pain complaints for the prior injury were for the low back and left leg, as they are for this injury.

The 2008 injury involved being pinned between a 2000 pound roll of paper and a machine. In May 2010, claimant went to the emergency room with pain from that prior injury. Claimant reported his pain was as bad as it was then. (Ex. L, pp. 22-23) Exhibit L, page 24, shows claimant reported chronic back pain for years, at least since the injury in 2008.

His pre-employment physical for Gencore notes claimant denied any prior injuries, which is incorrect. Claimant does not remember being asked that. Claimant stated he always reports his prior back problems when asked. Exhibit 4, page 9, shows claimant was still having low back pain that radiated into his left leg. In May 2012, claimant went to the emergency room. Exhibit 9, page 1, indicates he had low back pain burning down his left leg, and he had been taking muscle relaxers at home. Exhibit 9, page 1, shows claimant was off work for five days for back pain on May 29, 2012.

Exhibit H is a statement from the driver of the pallet jack. He acknowledged bumping claimant but not knocking him down. Claimant disagrees. Exhibit 5, page 1, notes claimant reported no prior history of back pain. Claimant denies saying that and states the record is incorrect. Claimant went to Winneshiek Occupational Health for several visits after this injury. He saw ARNP Kristen Heffern, who noted he had pain between the shoulder blades in the past, and no history of radiation into the legs. Claimant states both statements are in error. (Ex. 6, p. 8)

Exhibit Q, page 87, is the February 11, 2013, visit with Bruce Wulfsberg, M.D. It notes claimant denied pre-existing problems with his back. Claimant again denies saying that, and states the record is incorrect. It also notes on page 88 disc degeneration and dehydration of the L5-S1, "suggesting a prolonged and/or pre-existing problem." (Ex. Q, p. 88)

Claimant was sent for an evaluation with Dr. Manshadi. Claimant does not recall if he was asked whether he had prior low back problems or treatment. Claimant does not recall if he voluntarily told Dr. Manshadi about his prior back problems. Claimant did not take along medical records of his prior history.

In December 2014, he pled guilty to an assault charge, and he is still on probation for that. He has twice been hospitalized for mental problems, in 2008 and in 2011, the latter for depression. Claimant states the 2011 hospitalization was due to his breakup with his girlfriend. (Ex. N; Ex. O, pp. 75-78) For the 2011 hospitalization, it is noted he no longer rides his motorcycle, hunts or fishes due to this back pain. Claimant denies saying that, and states he still hunts and fishes to this day.

His promotion included a pay raise to about $19.00 per hour. Exhibit G, page 13, shows he made $17.00 per hour for U.S. Corrugated. For Gencore, he made $13.00 per hour. These are based on claimant's recollection and not wage records. Agri Star was also around $16.00 or $17.00 per hour, and $19.00 per hour after the promotion.

On re-direct examination, claimant agreed Exhibit Q, page 87, shows Dr. Wulfsberg also stated, in the addendum section, "There were some pre-existing problems noted on his MRI with dehydration and disc degeneration. I feel these are pre-existing, but he did have the injury, which has aggravated this pre-existing problem."

He agreed in spite of the prior back pain problems he was always able to return to full-time employment. He does not know where Dan Meyer is currently, so he was unavailable for testimony.

Amanda Mack testified for defendants. She works in the health and safety department at Agri Star. She has worked there five years. She was sanitation foreman on the date of injury. She is involved in handling work injury claims now but did not then. She has never been claimant's supervisor.

Agri Star does not do pre-employment physicals or drug screening. The injury report, Exhibit 1, page 1, was filled out by Jessica Muchow, the "laundry lady", who is also trained in first aid and first response. Kathy Clark was the Agri Star nurse. The nurse's station is near the laundry area. The description of the incident on the report, although written by Ms. Muchow, would be claimant's version of what happened as told to her. Steve Bolt's name also appears on the report. He was claimant's supervisor.

On cross examination, the witness indicated Kathy Clark is no longer employed at Agri Star. Jessica Muchow is. The witness does not know why she was not called as a witness. She did not talk to her about this case in preparation for this hearing. She does not know why a statement was not taken from Dan Meyer. Abdi Kasseem, the driver of the forklift/pallet jack, is no longer working at Agri Star either. Exhibit H, his statement of what happened, does not show the date the statement was taken. She did not know him.

As the company representative, she agrees an incident happened, but she does not feel that necessarily constitutes an injury. She agrees the indication in Exhibit 3 that reports swelling is probably accurate. She agrees the records may indicate an injury, but she does not necessarily agree an injury has occurred. Exhibit Q, page 87, notes preexisting problems on claimant's MRI, but the doctor nevertheless feels the injury aggravated those conditions. She agrees with the doctor's opinion.

She supplied and signed the answers to interrogatories proposed to the employer by claimant. These are not in the exhibits. Interrogatory number one shows she supplied the information. She looked at the files. She talked to people who still worked in that department. She did not talk to Dan Meyer or Abdi Kasseem because neither is employed at Agri Star now. She tried to get contact information but was unsuccessful.

Interrogatory ten asks if the employer contends the injury did not arise out of and in the course of his employment, and the answer was the employer did not feel a work injury had occurred.

In response to questions from the undersigned, she clarified she draws a distinction between an incident and an injury, as the latter would require some evidence of harm to the claimant's body. She does not accept the indication of swelling she was asked about as constituting bodily harm and indicating an injury and not just an incident. She stated something could have happened between the date of the incident and the report of swelling to cause the swelling, even though they were only a day apart.

Exhibit Q, page 87, a note dated February 11, 2013, before claimant's surgery, is Dr. Wulfsberg's opinion that claimant's complaints were aggravated by the work incident, quoted above. Dr. Wulfsberg was a physician to whom claimant was sent by the employer.

Exhibit 3, page 1, does indicate swelling was observed by Nurse Clark based on an examination of claimant.

CONCLUSIONS OF LAW

The first issue is whether the claimant sustained an injury arising out of and in the course of employment on December 26, 2012.

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 Electric 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.

Although defendants cite examples of claimant not reporting prior injuries and conditions, claimant disputes those medical records and testified he did relate his prior conditions. The undersigned found claimant to be a credible witness.

Claimant was hit by a pallet jack while performing his work duties on the employer's premises. This was witnessed by a co-worker who was standing next to him. The driver of the pallet jack recalls bumping into claimant but not knocking him over. Claimant had swelling and a bruise immediately. It later developed that he has a rating of permanent impairment and work restrictions. Clearly a work injury occurred, in spite of Ms. Mack's personal definition of that term.

It is concluded claimant suffered an injury arising out of and in the course of his employment on December 26, 2012.

The next issue is whether the alleged injury is a cause of temporary or permanent disability.

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).

Dr. Wulfsberg concluded claimant's current low back condition was aggravated by the work injury. Even if claimant did not fully inform Dr. Wulfsberg of his prior injuries and prior back pain, that prior pain was intermittent and was not disabling. Claimant would have flare-ups only occasionally before the work injury, but after the injury his back pain has been chronic. Dr. Wulfsberg was clearly aware of the prior conditions, as he referenced them in the addendum to his report and elsewhere. Dr. Wulfsberg's report and conclusions are valid and based on accurate information.

It is concluded claimant has carried his burden of proof to show that his current low back condition is causally connected to his work injury, and any temporary or permanent disability and medical treatment is causally related to the work injury as well.

The next issue is whether the claimant is entitled to temporary total disability or healing period benefits from May 16, 2013 to July 22, 2013 for temporary total disability benefits, and from July 23, 2013 to September 11, 2013 for temporary partial disability benefits.

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, 312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

As claimant has shown a work injury and has also shown that his current conditions are causally related to that work injury, the time claimant was off work for treatment of those conditions entitles claimant to healing period benefits for those

periods of time, from May 16, 2013 to July 22, 2013. In addition, claimant has carried his burden of proof to show that his work injury caused a reduction in his earnings from July 23, 2013 to September 11, 2013, and he is entitled to temporary partial disability benefits as set forth in Exhibit 3.

The next issue is the extent of the claimant's entitlement to permanent partial disability benefits.

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.

Dr. Steven found claimant to have instability at the L5-S1 level. Claimant underwent a fusion surgery at that level.

He has a rating of 20 percent permanent partial impairment of the body as a whole, as well as permanent work restrictions from Dr. Manshadi. Dr. Manshadi recommended he avoid any work activity that required repetitious bending, crawling, stooping or twisting at the waist, and no lifting of more than 40 to 50 pounds. (Ex. 12, pp. 3-4; Ex. X) In his deposition, Dr. Manshadi acknowledged he was unaware of some aspects of claimant's prior medical history. However, those have not caused him to retract his opinions.

Claimant is 42 years old. He has worked as a general laborer, a machine operator, and doing general maintenance. He is not working now, and lost his job with defendant employer, but not for any reason related to his work injury. He has not been able to find substitute work. After his fusion surgery, when he returned to work he was able to do his work duties and in fact received a raise and a promotion.

Claimant did return to work after his surgery and was able to perform the duties of his job. However, his work restrictions limit the type of jobs for which he can reasonably be expected to compete. His work experience has always been in jobs that involved physical labor, and his restrictions affect his ability to perform physical labor.

Based on these and all other appropriate factors of industrial disability, it is found claimant has, as a result of his work injury, an industrial disability of 45 percent.

The next issue is whether defendants are entitled to apportionment. Defendants post-hearing brief refers to Iowa Code section 85.34(7)(a):

> 7. *Successive disabilities.*
>
> *a.* An employer is fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.

Defendants argue in their brief they are entitled to apportionment because their obligations are considered "partially satisfied" by the 2008 low back injury.

However, the "partially satisfied" language is in Iowa Code section 85.34(7)(b)(1) and (2), not 85.34()(a):

> VERBATIM 85.34(7)(b)
>
> *b.* (1) If an injured employee has a preexisting disability that was caused by a prior injury arising out of and in the course of employment with the same employer, and the preexisting disability was compensable under the same paragraph of subsection 2 as the employee's present injury, the employer is liable for the combined disability that is caused by the injuries, measured in relation to the employee's condition immediately prior to the first injury. In this instance, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer. (2) If, however, an employer is liable to an employee for a combined disability that is payable under subsection 2, paragraph *"u"*, and the employee has a preexisting disability that causes the employee's earnings to be less at the time of the present injury than if the prior injury had not occurred, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer minus the percentage that the

employee's earnings are less at the time of the present injury than if the prior injury had not occurred.

These sections refer to an employer's obligation in the present case being partially satisfied by prior payments by the same employer. It does not apply to prior payments by a different employer. Apportionment is not appropriate.

The next issue is whether the claimant is entitled to payment of medical expenses pursuant to Iowa Code section 85.27.

The next issue is whether the claimant is entitled to payment of medical expenses pursuant to Iowa Code section 85.27.

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).

Although medical treatment benefits were not sought, the hearing report indicates medical mileage is in dispute. As claimant has been found to have sustained a work injury, and the treatment he underwent was directly related to that injury, defendants will pay claimant's medical mileage expenses.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall pay unto the claimant healing period benefits from May 16, 2013 to July 22, 2013, at the rate of four hundred one and 02/100 dollars ($401.02) per week.

Defendants shall pay unto claimant temporary partial disability benefits as set forth in the decision and Exhibit C, page 3.

Defendants shall pay unto the claimant two hundred twenty-five (225) weeks of permanent partial disability benefits at the rate of four hundred one and 02/100 dollars ($401.02) per week from September 11, 2013.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall be given credit for benefits previously paid.

Defendants shall pay the claimant's prior medical expenses submitted by claimant at the hearing.

Defendants shall pay the future medical expenses of the claimant necessitated by the work injury.

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

Costs are taxed to defendants.

Signed and filed this 23rd day of December, 2015.

Jon E. Heitland

JON E. HEITLAND
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.