BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HOWARD GREY,

Claimant,

vs.

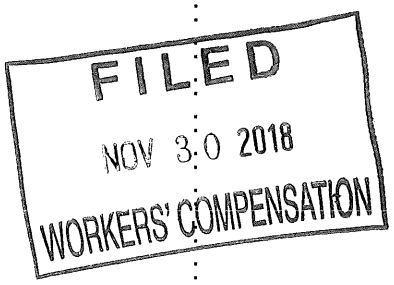
AMN HEALTHCARE, INC.,

Employer,

and

SENTINEL INSURANCE COMPANY,

Insurance Carrier,
Defendants.



File No. 5063050

ARBITRATION

DECISION

Head Notes: 1108, 1402, 1700, 1802, 1803, 3000, 3002, 3800, 4000

STATEMENT OF THE CASE

This is a proceeding in arbitration. The contested case was initiated when claimant, Howard Grey, filed his original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on January 11, 2017. Claimant alleged he sustained a work-related injury on March 30, 2016. (Original notice and petition)

For purposes of workers' compensation, AMN Healthcare, INC., is insured by Sentinel Insurance Company. Defendants filed their answer on January 20, 2017. The defendants did not admit or deny the occurrence of the work injury on March 30, 2016. A First Report of Injury was filed on April 26, 2016.

The hearing administrator scheduled the case for hearing on February 7, 2018. The hearing took place at 150 Des Moines Street in Des Moines, Iowa. The undersigned appointed Ms. Keriann Hansen, as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified on his own behalf. Defendants did not call any witnesses to testify at the hearing. Joint Exhibits 1 through 7 were offered. Claimant offered exhibits 8 through 12. All proffered exhibits were admitted as evidence. The parties also submitted post-hearing briefs on March 7, 2018. The case was deemed fully submitted on that date.

STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged injury;
2. Claimant sustained an injury to his groin on March 30, 2016, which arose out of and in the course of his employment;
3. The alleged injury is a cause of both temporary and permanent disability;
4. While healing period benefits are in dispute, the parties admit claimant was off work from April 12, 2016 through the present;
5. The permanent disability is an industrial disability;
6. The commencement date for any permanent partial disability benefits is April 21, 2016;
7. The weekly benefit rate is $980.62;
8. Defendants waive any affirmative defenses they may have had available to them;
9. Prior to the hearing, defendants paid claimant 38 weeks of compensation at the rate of $980.62 per week; and
10. The parties agree claimant has paid the costs listed.

ISSUES

The issues presented are:

1. Whether claimant sustained an injury to his back on March 30, 2016 which arose out of and in the course of his employment;
2. Whether the alleged back condition is a cause of temporary and/or permanent disability;
3. Whether claimant is entitled to healing period benefits;
4. The nature and extent of claimant's permanent partial disability;
5. Whether claimant is entitled to a running award;

6. Claimant seeks medical care including surgery for his back; and

7. Claimant is seeking penalty benefits for the alleged unreasonable delay or denial of temporary benefits pursuant to Iowa Code section 86.13.

8. Whether defendants are liable for the payment of medical expenses pursuant to Iowa Code section 85.27.

9. Whether claimant is entitled to alternate medical care; and

10. Whether defendants are liable for the cost of the functional capacity evaluation performed by Daryl Short, DPT, of Short Physical Therapy, PLLC, in the amount of $900.00.

FINDINGS OF FACT

This deputy, after listening to the testimony of claimant and after judging the credibility of claimant, plus after reading the evidence, and the post-hearing briefs, makes the following findings of fact and conclusions of law:

The party who would suffer loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

Claimant is 54 years old and single. He resides in Georgia. He has adult children. They do not reside with their father. Claimant grew up in Brooklyn, New York. Claimant was in the military from 1981 through 1987. In 1998, claimant became licensed in diagnostic radiology after attending Memorial-Hermann School of Technology. Claimant is trained in operating room radiology technology equipment and on the use of portable CT scan equipment. (Claimant's exhibit 11)

At the time of his work injury, claimant was an employee of AMN Healthcare, Inc. The company had a 13-week contract with the University of Iowa Hospitals and Clinics. Claimant was sent to the hospital to work as a radiology technician. Claimant believed he commenced his assignment around January 20, 2016. His duties included operating a portable x-ray machine, and portable CT scans. He would travel around the hospital to surgical suites and to individual rooms.

Claimant testified how his injury occurred on March 30, 2016. He answered:

A. On a routine portable X-ray that we went to the rooms in ICU, we assessed what we're about to do so we bring the proper equipment with us. Upon doing that, I noticed that the patient was slightly obese and I enlisted help, so I brought another technician along with me.

And once we entered the room and positioned ourself, [sic] we then have to place the plate that captured the image under the patient. So with

doing that, you assess the bed because some beds actually are harder to work on than others. If the mattress doesn't allow easy slide, so then we would bring equipment that would help us with that as well.

And once my helper was rolling - - log rolling that patient away from me, I - - because of the size of the patient, I also have to assist that because he can't handle the weight by himself. And with lifting the patient and inserting the plate underneath the patient to capture the image, I felt a pop. Oh I don't know if I heard or felt, but it seemed like both.

And I asked my coworker if he heard it because it sounded like it was out of my body. And he didn't really understand if he did or not, but I felt it and heard it, and - - but it didn't hurt at the time. So I - - we finished the procedure and went back to doing our normal duties for the day.

Q. Okay. And I - - if I missed this, I apologize. Can you tell us where you felt the pop in your body?

A. It was along the front groin area, and that's where I initially felt it.

Q. At that time did you report to a supervisor that you had an injury?

A. No, because I didn't feel any damage or harm was done at that time.

Q. Did that change?

A. Oh, yes. Rapidly.

Q. Describe that for us.

A. As we continued to work and doing the same type of procedures, which was day in and day out, it began to hurt and - - from the front of my groin to the back. And each day that I worked, it persisted and got worse to where one of my coworkers noticed that I was slowing down my work method that I always - - had the same feelings every day and attitude towards working and she reported it to a supervisor.

Q. And did you have a conversation with a supervisor about the injury?

A. Yes. The supervisor told me that she would have to fill out an incident report for the accident,

(Transcript pages 21-23)

RELEVANT TREATMENT RECORDS

The employer sent claimant to Mercy Occupational Health in Coralville, Iowa. The initial appointment occurred on April 7, 2016. James W. Milani, D.O., treated claimant for right testicle pain, radiating to the right hip and into his lower right back. (Joint Exhibit 1, pages 1, 4) Claimant reported the following symptoms to Dr. Milani:

> Pain is constant (100% of the time) sharp, blunt. Inguinal pain. Lower back pain. Hip joint pain.

(Jt. Ex. 1, p. 4)

Dr. Milani conducted a full physical examination of the body parts where claimant had symptoms. Dr. Milani found:

> **Groin:** Normal male genitalia. Testicles descended bilaterally. Normal scrotum. No warmth, erythema, or edema seen. Penis is normal and is circumcised. No skin lesions. Palpation of the testicles showed no lumps or masses and are not tender. Has had some general tenderness in the right epididymis but no swelling or masses are felt. The right groin is palpated. There is tenderness but I do not appreciate a discrete hernia. With Valsalva maneuver, no discrete hernia. He is quite tender in the inguinal canal around the external ring and up along to the internal ring. Also tender along the right lateral aspect of the pubic symphysis. Also palpation of the groin shows tenderness in the inner musculature of the abductors at their insertion. No masses or defects are felt.
>
> **Musculoskeletal:** Right hip area exam has full range of motion. He has pain in the greater trochanteric region to crossing the leg over midline and to palpation of greater trochanteric region. He also has some tenderness in the piriformis region.
>
> Straight leg raise is negative.
>
> Lumbar spine is palpated. He has some mild tenderness along right iliac crest.
>
> Lumbar spine has full range of motion.
>
> **Assessment:** Right groin pain, came on with forceful mechanism.
>
> **Plan:**
>
> 1. Discussed with patient. Differential diagnosis would be acute inguinal hernia versus groin muscle sprain/strain. The testicle being tender in the epididymis, he could have some epididymitis but clinically does not appear that way and will be odd for to come on as above.

2. We will have him take routine low-dose Ibuprofen 400 mg 3 times a day with meals.

3. Discussed heat and stretching, showed him how to do these stretches.

4. Put him on restrictions.

5. CT of the pelvis with oral contrast to investigate more of the hernia aspect.

6. He will be given a prescription for night time hydrocodone, to use as needed.

7. Follow up after testing in between time, as needed.

(Jt. Ex. 1, p. 6)

Dr. Milani released claimant to work so long as claimant did not lift more than 10 pounds. (Jt. Ex. 1, p. 7) The employer had no light duty work available.

Claimant underwent a CT scan of the right pelvis. (Jt. Ex. 2, p. 18) Alex McNaughton, M.D., interpreted the CT as:

> IMPRESSION:
>
> No CT correlate for right groin pain following a recent injury. There are no acute osseous findings. There is mild chronic degenerative osteoarthritis in both hips. 2. Incidentally, there is mild nonspecific colonic wall thickening in the sigmoid colon, near the junction with the left hemicolon (images 54-67). Correlation with any recent screening colonoscopy should be considered to exclude neoplasia.

(Jt. Ex. 2, pp. 18, 19)

Claimant returned to Dr. Milani on April 12, 2016. Claimant reported his condition was better since he had taken his medication and performed his exercises. (Jt. Ex. 1, p. 9) Claimant rated his pain at 6 out of 10 on an analog scale with 10 being the most excruciating pain imaginable.

Dr. Milani found some right groin tenderness in the groin itself. (Jt. Ex. 1, p. 11) Palpation in the upper anterior thigh showed some tenderness, but no abnormalities. Flexion and extension of the thigh caused minimal discomfort. There was full motion to the right hip. There was full abduction and full internal rotation of the hip without causing any increased groin pain. Claimant had some pulling in the quadriceps. (Jt. Ex. 1, p.11)

The CT scan did not show any hernia. The CT did not correlate any right groin pain. There was some chronic degenerative osteoarthritis in both hips. (Jt. Ex. 1, p. 11)

Dr. Milani diagnosed claimant with "Right groin pain most consistent with muscle strain." (Jt. Ex. 1, p. 11) Dr. Milani advised claimant to continue to take Ibuprofen, to use heat and to perform stretching exercises. The physician also advised claimant not to lift, push, and pull more than 50 pounds. (Jt. Ex. 1, pp. 11, 13)

Claimant returned for a follow-up appointment on April 21, 2016. (Jt. Ex. 1, p. 14) He reported to Dr. Milani that his right groin area was still bothering him. As a consequence, claimant said he was walking differently and his left leg was bothering him. Dr. Milani observed claimant walking with a slight limp and favoring his right leg. (Jt. Ex. 1, p. 15) Dr. Milani conducted a physical examination. He found:

> **Musculoskeletal:** Right hip and groin areas are palpated. He is tender in the greater trochanteric region and with flexion of the hip and crossing the leg over the body, he has increased pain in the greater trochanteric region, pressure on this area with stretching. When taking the hip in flexion and then external rotation, he has pain in the groin. Palpation of groin shows him tender up and by the pubic symphysis in the inguinal region, no deformities or abnormalities felt in this area. Has some mild tenderness along the fascia lata. The quadriceps and hamstring are normal in palpation. No atrophy. Has full flexion-extension, internal-external rotation of the hip actively. Do not appreciate any clicking or catching in the hip itself to range of motion or pressure into the hip with rotation. Left knee has full range of motion, active and passive. No erythema, edema or warmth is felt. He is tender along the medial joint line. Stressing the knee is stable. He also is tender along the inferior lateral aspect of the left calf to palpation. When dorsiflexing the foot and palpating the calf, it causes more tenderness in this area.

(Jt. Ex. 1, p.15)

Dr. Milani assessed claimant's condition as:

> **Assessment:**
>
> 1. Continued right groin pain, hernia ruled out. Presumed groin strain. Also has component of greater trochanteric bursitis.
> 2. Left knee pain without history of trauma or event.
> 3. Underlying diabetes, hypertension, seizure, hypercholesterolemia.

(Jt. Ex. 1, p. 15)

Dr. Milani prescribed Relafen 750 mg to be taken with food. He advised claimant to continue with his stretching exercises and to apply heat to the groin area. Dr. Milani

provided claimant with a neoprene knee sleeve. However, the physician opined there was no damage to the knee. The work restrictions were kept in place. (Jt. Ex. 1, pp. 15, 17)

Claimant returned to his home state of Georgia. He commenced treating at Swift Health in Atlanta, Georgia. Felix Amoa-Bonsu, M.D., began treating claimant on May 10, 2016. Claimant provided the following medical history to his new provider:

> 52 y.o. male presents with pain to his back and right hip. Patient states that he has not been able to work due to pain in his right hip and right leg. He also has headaches and high blood pressure. He states that he takes his blood pressure medication consistently daily. Patient would also like to have refills of his seizure medication.

(Jt. Ex. 3, p. 21) MRI testing of the hip and lower back was ordered. (Jt. Ex. 3, p. 21)

Claimant returned to the clinic on May 17, 2016. He reported the following complaints:

> 52 y.o. male presents with continued right testicle pain that radiates to his right hip. This complaint has been persistent for over 6 weeks. Patient states that the pain radiates down his right leg. This pain has caused him to compensate by putting all his weight onto his left leg which is causing him left knee pain currently. He also complains of high blood pressure and headache due to his pain in his groin and legs.

(Jt. Ex. 3, p. 20)

On June 2, 2016, claimant returned to see Dr. Bonsu. Claimant informed the physician that he had been experiencing right-sided hip pain for four days. He had been staying at a Ramada Inn hotel. He was taking a bath and he slipped in the tub due to a water pocket in the tub. (Jt. Ex. 3, p. 23)

Claimant indicated he had right hip pain with limited range of motion. He did not have paresthesias or numbness. Claimant was able to bear weight and walk on his right leg but he had pain with activity. Claimant also complained of pain in the left scapula from the fall. He had an abrasion on his head and his left elbow. (Jt. Ex. 3, p. 23)

During his arbitration hearing, claimant testified he did not fall in a bath tub; he just slipped. He testified:

> Q. From the time Dr. Bonsu ordered the MRI and the time it was done, the records show there was some sort of incident that happened down at a hotel in Florida?

A. Yes. I was staying at a hotel, and there was a - - the room that they gave me was not up to standard and I reported it to them and they claimed that they required the sink and the bathtub. But upon taking a shower in the bathtub - - not in the tub. I didn't take a bath. I was taking a shower in the tub. And the floor was still unsteady, so I kind of slipped a little bit and braced myself against the shower wall.

Q. And some of the records reference this as being a Ramada Inn?

A. That is correct. That was a Ramada.

Q. And just to clear the record of a date. I think it was May 13th?

A. That's about correct.

Q. So this incident in this shower, tell us, you know, did you fall to the ground?

A. No. It was - - I braced against the wall.

Q. Were you - - did you suffer any injuries?

A. I had a scrape on my forehead. And I believe my left side elbow where I tried to brace myself to the wall, I don't remember if I had a scrape there, but I remember I hit that side, the left side.

Q. Did you seek any medical treatment because of that?

A. No. But when I got back to Atlanta, I mentioned it to Dr. Bonsu and he examined me and didn't find anything except for the abrasion, which was basically ointment and a Band-Aid basically.

Q. During this incident in the shower?

A. Yes.

Q. In any way did you injury [sic] your groin, your right groin?

A. No.

Q. What about your back, did you injure your back?

A. No.

Q. Did this incident in the shower change your pain that you had been having in these areas, your groin and your back, in any way?

A. No.

Q. Did Dr. Bonsu think you needed any additional medical treatment because of the incident that happened in the shower?

A. No.

(Tr., pp. 30-32)

On June 7, 2016, claimant underwent MRI testing of the lumbar spine. Robert Price, M.D., found at L5-S1 there was a large right internal disc herniation protrusion. There was contact and it markedly displaced the right tool sleeve. (Jt. Ex. 4, p. 31)

Claimant returned to see Dr. Bonsu on June 24, 2016. Dr. Bonsu diagnosed claimant with "L5 bulging herniation of his disc." (Jt. Ex. 3, p. 24) In a separate note, Dr. Bonsu wrote:

To whom it may concern:

Mr. Howard Grey has been seen multiple times in our clinic. Since April 25th 2016 which was our initial consultation, Mr. Grey had been complaining of intense pain in his lower back and right leg with compensatory pain to his left knee. Based on his MRI findings and in my medical professional opinion, Mr. Grey is unable to perform his duties which involves [sic] pushing, pulling and lifting patients and to operate heavy xray equipment.

(Jt. Ex. 3, p. 30)

Defendants referred claimant to Shahram Rezaiamiri M.D., a neurosurgeon. Dr. Rezaiamiri recommended a lumbar epidural steroid injection and indicated claimant would need an L5-S1 microdiscectomy in the future. (Jt. Ex. 5, pp. 33-34) However, claimant was only injected with Lidocaine. (Jt. Ex. 5, p.36) Claimant was restricted from returning to work or from lifting more than 10 pounds until his treatment had been completed. (Jt. Ex. 5, p. 38)

Effective September 9, 2016, Dr. Rezaiamiri opined the following with respect to treatment for claimant:

Mr. Grey is a pleasant yet unfortunate 52-year-old African-American male with symptomatic right L5-S1 disc herniation secondary to work related event. I do not believe since these symptoms have been ongoing for more than six months that he would get any sustainable relief with the injection, especially in right [sic] of his diabetes history. For a more longer-term relief and higher chance to return back to work capabilities, I think it is prudent to consider a right L5-S1 microdiscectomy. I discussed the risks, benefits, opinions, expected and potential outcomes regarding procedure in detail with him and he voiced understanding. He would like to consider this as a more sustainable long-term option rather than considering multiple injections. I explained to him and reviewed the MRI in details [sic] as well as showed him on an anatomical model

how the disc rupture is affecting his S1 nerve root and how a microsurgery is meant to remove a disc fragment of the nerve root. He voiced understanding and wished to proceed....

(Jt. Ex. 5, pp. 39-40)

Dr. Rezaiamiri continued to wait for authorization from defendants to perform the microdiscectomy. (Jt. Ex. 5, p.42) The doctor examined claimant on December 6, 2016. During the examination, claimant voiced significant leg pain complaints. (Jt. Ex. 5, p.43) Defendants informed claimant, there would be an independent medical examination in January of 2017.

On January 10, 2017 John D. Kuhnlein, D.O., examined claimant for the purpose of rendering an independent medical examination. (Jt. Ex. 6) Claimant reported the symptoms he experienced at the time of the evaluation. He explained to Dr. Kuhnlein:

Current Symptoms – Mr. Grey relates that the groin pain has subsided to intermittent pain. He describes lumbar pain radiating across the iliac crest to the anterior and medial groin and the thigh to the posterior calf. He relates that this occasionally radiates to the lateral calf and ankle. He describes numbness and tingling in the right medial foot and occasionally across the anterior thigh to the posterior calf. He says that this pain was 6/10 at the time of this evaluation. He says that coughing, sneezing, and a Valsalva maneuver increases pain. He says that he is able to control his bladder function, and says that he is sometimes constipated. It ranges between 5-8/10 and is usually 7/10.

He describes constant anterior and posterior pain in the left knee and the femorotibial area. He says that he gets a sensation as if the left knee wants to separate. He describes occasional left knee numbness. He says that the left knee pain as 8/10 at the time of this evaluation. He says that it ranges between 6-10/10 and is usually 8/10.

....

Changes in the Symptom Pattern over Time – Mr. Grey says that his back pain has worsened over the last year. He relates that he now uses a cane to take weight off of the back and knee. He has done this on his own and relates that no physician has told him to use a cane.

(JT Ex. 6, p.49)

Dr. Kuhnlein diagnosed claimant with:

1. Complaints of right groin and right testicular pain

2. Disc herniation L5-S1

3. Complaints of right knee pain

4. Complaints of left knee pain

(Jt. Ex. 6, p. 52)

With respect to causation, Dr. Kuhnlein had a difficult time trying to ferret out what conditions were related to the March 30, 2016 work injury and what conditions were outside the parameters of the work injury. Dr. Kuhnlein opined multiple nonphysiologic aspects of the examination did not match claimant's behavior during the history and certain aspects did not match the known pathology. (Jt. Ex. 6, p. 52) For example: Dr. Kuhnlein opined the sensory examination showed deficits across multiple levels of the spine. However, the MRI scan was normal at every level except L5-S1. (Jt. Ex. 6, pp. 52-53) Dr. Kuhnlein determined he would place more weight on the actual medical records than on claimant's verbal statements or Dr. Kuhnleins's physical examination of claimant. (Jt. Ex. 6, p. 53)

Dr. Kuhnlein did not attribute claimant's right knee, left knee, or disc herniation to the work injury on March 30, 2016. The evaluating physician did causally relate the right groin injury to the work injury in question. (Jt. Ex. 6, p. 53) Dr. Kuhnlein opined the lumbar and right hip issues resulted after the shower incident at the Ramada Inn on May 13, 2016. The bases for Dr. Kuhnlein's opinions were found in Joint Exhibit Ex. 6, page 54 Dr. Kuhnlein wrote:

> The right groin strain complaints were noted proximate to the time of the injury, and so it is more likely than not that the right groin strain occurred directly and casually related to the March 30, 2016, injury. I would agree with Dr. Milani's April 21, 2016 note. It is unlikely that Mr. Grey sustained an injury to his left knee with no significant history or trauma simply because of gait changes related to what was noted to be a slight limp by Dr. Milani on April 21, 2016. There would be no knee injury from a gait change that would develop that quickly, given the records documentation of only a very slight limp at that time. There is no evidence of any injury to the right knee for similar reasons.
>
> There is no significant documentation of physical findings by physician examinations that would be consistent with the disc herniation until after the Ramada Inn incident, only Mr. Grey's complaints. The MRI scans were taken after the Ramada Inn incident. Given the description of the incident, and the lack of documentation consistent with a radiculopathy before the Ramada Inn incident and the documentation of the disc herniation and radicular findings on examination only after the Ramada Inn incident, it is not likely that the disc herniation occurred as a result of the March 30, 2016, injury, and would more likely than not be related to the May 13, 2016, Ramada Inn incident.

(Jt. Ex. 6, p. 54)

For the injury to the groin, Dr. Kuhnlein opined claimant had a 3 percent permanent impairment to the body as a whole as a result of the work injury on March 30, 2016. With respect to the groin injury only, Dr. Kuhnlein opined, claimant should be able to lift 30 pounds occasionally from floor to waist, 40 pounds occasionally from waist to shoulder, and 30 pounds occasionally over the shoulder.

> When considering the groin strain only, and with respect to nonmaterial handling restrictions, Mr. Grey can sit, stand, or walk on an unrestricted basis; there should be no need to use a cane for a groin strain, and the record doesn't suggest that Mr. Grey used a cane until after the May 13, 2016, incident, based on a computer search of the digital record. Mr. Grey can stoop or squat frequently, bend or crawl frequently, kneel frequently, work on ladders or at height without limitation, and climb stairs without limitation. Mr. Grey can work at or above shoulder height without restriction. Mr. Grey can grip or grasp without restrictions. There are no lower extremity restrictions.
>
> There are no vision, hearing, or communication restrictions. He can travel for work – after this injury, he was apparently able to travel from Atlanta to Tamarac Florida, so he should be able to travel for work. He can use tools on an unrestricted basis. There are no environmental restrictions. If working on uneven surfaces, good footgear would be appropriate. There are no personal protective equipment restrictions. He can work on production lines without restriction. There are no shiftwork issues.

(Jt. Ex. 6, p. 55)

Dr. Rezaiamiri reviewed the independent medical report authored by Dr. Kuhnlein. Dr. Rezaiamiri disagreed with the opinions held by Dr. Kuhnlein with respect to causation of the right sided L5-S1 disc herniation with nerve root compression and radiculopathy. (Jt. Ex. 5, p. 44) Dr. Rezaiamiri agreed with the following statements:

> Causation: After having reviewed the medical records, including the February 2, 2017, report of Dr. Kuhnlein, and examined Howard Grey, you believe that the above described medical condition(s) were caused and/or materially and substantially aggravated by his traumatic work injury which occurred on March 30, 2016.
>
> Restrictions: You believe that because of the March 30, 2016, work injury, Howard Grey is restricted to light duty work and lifting no more than 10-15 pounds.
>
> Future Medical Care: Because of his work injury, you have recommended that Howard Grey undergo a microdiscectomy surgery.

> After treating the patient and reviewing the patient's medical records the above represents my opinions within a reasonable degree of medical certainty concerning my patient.

(Jt. Ex. 5, p. 44)

Once Dr. Kuhnlein issued his independent medical report, defendants notified claimant they were ceasing medical treatment. Claimant was unable to undergo microdiscectomy surgery because he did not have personal health insurance. AMN Healthcare, Inc. did not have any work available for claimant. He has not been working since the end of April of 2016.

RATIONALE AND 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 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.

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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

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, 908, 76 N.W.2d 756, 760-61 (1956). It 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, 135, 115 N.W.2d 812, 815 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 375, 112 N.W.2d 299, 302 (1961).

When an expert's opinion is based upon an incomplete history it is not necessarily binding on the commissioner or the court. It is then to be weighed, together with other facts and circumstances, the ultimate conclusion being for the finder of the fact. Musselman v. Central Telephone Company, 154 N.W.2d 128, 133 (Iowa 1967); Bodish v. Fischer, Inc., 257 Iowa 521, 522, 133 N.W.2d 867 (1965).

The weight to be given an expert opinion may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. St. Luke's Hospital v. Gray, 604 N.W.2d 646 (Iowa 2000).

The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence. Together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire and Casualty Co., 526 N.W.2d 845 (Iowa 1995).

Prior to the work injury on March 30, 2016, claimant had no history of low back pain. He was working under no restrictions and had fulfilled the requirements of his job as a contract radiology technician at the University of Iowa Hospitals and Clinics.

Subsequent to his work injury, the employer referred claimant to Dr. Milani at Mercy Occupational Health on April 7, 2016. Claimant reported inguinal pain, lower back pain, and hip joint pain. (Jt. Ex. 1, p. 4) From the onset of his medical treatment, claimant reported low back pain.

After claimant returned to his home in Atlanta, Georgia, he began treating with Dr. Bonsu. Claimant reported pain in his back and right hip at the initial appointment on May 1, 2016. Claimant reported he slipped in the tub at a Ramada Inn. He experienced pain in the left scapula, otherwise he just had abrasions on his head and left elbow.

Claimant credibly testified he did not fall in the tub. He merely slipped and hit the wall of the shower. Claimant testified he did not injure his groin or his back during the incident. He only needed ointment and bandages for his abrasions. No other medical treatment was necessary. The undersigned deputy found claimant's testimony to be credible.

Approximately, one month after claimant began treating with Dr. Bonsu, the physician ordered MRI testing of claimant's lumbar spine. The results demonstrated claimant had an L5-S1 disc herniation.

Defendants selected Dr. Rezaiamiri, a neurosurgeon, as an authorized treating physician. Dr. Rezaiamiri opined the L5-S1 disc herniation was secondary to the work-related event. The neurosurgeon recommended a right L5-S1 microdiscectomy as a sustainable long-term means to correcting claimant's condition. Defendants opted for an independent medical examination from Dr. Kuhnlein rather than to authorize the surgery.

Dr. Kuhnlein opined only the groin injury was work-related. This deputy does not accept the opinion of Dr. Kuhnlein because he neglected to consider that claimant consistently complained about low back pain from the date of his work injury. Claimant's complaints about back pain and right hip pain permeated his medical histories to the various medical providers. Some medical providers did not provide aggressive treatment for the low back. Nevertheless, claimant continued to complain about the pain in his low back.

It is the determination of the undersigned; claimant sustained an injury to his low back as a result of his work injury on March 30, 2016. This deputy is in agreement with the treatment protocol recommended by the authorized treating physician, Dr. Rezaiamiri. For long-term relief, the prudent approach would be for the neurosurgeon to perform a right L5-S1 microdiscectomy. The surgical procedure would be a more

sustainable long-term option. Defendants are hereby notified they are liable for the payment of the surgical procedure.

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).

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).

Because defendants denied causation for the low back pain and refused to provide medical care, claimant is entitled to a running award from April 12, 2016 until such time as claimant has reached maximum medical improvement. Defendants shall take credit in the amount of thirty-eight (38) weeks of compensation at the stipulated rate of $980.62 per week.

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 Gamble v. AG Leader Technology, File No. 5054686 (App. April 24, 2018).

Claimant is requesting penalty benefits pursuant to Iowa Code section 86.13.

In Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996), and Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996), the supreme court said:

> Based on the plain language of section 86.13, we hold an employee is entitled to penalty benefits if there has been a delay in payment unless the employer proves a reasonable cause or excuse. A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to

contest the employee's entitlement to benefits. A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable."

Christensen, 554 N.W.2d at 260.

The supreme court has stated:

(1) If the employer has a reason for the delay and conveys that reason to the employee contemporaneously with the beginning of the delay, no penalty will be imposed if the reason is of such character that a reasonable fact-finder could conclude that it is a "reasonable or probable cause or excuse" under Iowa Code section 86.13. In that case, we will defer to the decision of the commissioner. See Christensen, 554 N.W.2d at 260 (substantial evidence found to support commissioner's finding of legitimate reason for delay pending receipt of medical report); Robbennolt, 555 N.W.2d at 236.

(2) If no reason is given for the delay or if the "reason" is not one that a reasonable fact-finder could accept, we will hold that no such cause or excuse exists and remand to the commissioner for the sole purpose of assessing penalties under section 86.13. See Christensen, 554 N.W.2d at 261.

(3) Reasonable causes or excuses include (a) a delay for the employer to investigate the claim, Christensen, 554 N.W.2d at 260; Kiesecker v. Webster City Meats, Inc., 528 N.W.2d at 109, 111 (Iowa 1995); or (b) the employer had a reasonable basis to contest the claim—the "fairly debatable" basis for delay. See Christensen, 554 N.W.2d at 260 (holding two-month delay to obtain employer's own medical report reasonable under the circumstances).

(4) For the purpose of applying section 86.13, the benefits that are underpaid as well as late-paid benefits are subject to penalties, unless the employer establishes reasonable and probable cause or excuse. Robbennolt, 555 N.W.2d at 237 (underpayment resulting from application of wrong wage base; in absence of excuse, commissioner required to apply penalty).

> If we were to construe [section 86.13] to permit the avoidance of penalty if any amount of compensation benefits are paid, the purpose of the penalty statute would be frustrated. For these reasons, we conclude section 86.13 is applicable when payment of compensation is not timely . . . or when the full amount of compensation is not paid.

Id.

(5) For purposes of determining whether there has been a delay, payments are "made" when (a) the check addressed to a claimant is mailed (Robbennolt, 555 N.W.2d at 236; Kiesecker, 528 N.W.2d at 112), or (b) the check is delivered personally to the claimant by the employer or its workers' compensation insurer. Robbennolt, 555 N.W.2d at 235.

(6) In determining the amount of penalty, the commissioner is to consider factors such as the length of the delay, the number of delays, the information available to the employer regarding the employee's injury and wages, and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

(7) An employer's bare assertion that a claim is "fairly debatable" does not make it so. A fair reading of Christensen and Robbennolt, makes it clear that the employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." See Christensen, 554 N.W.2d at 260.

Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

Weekly compensation payments are due at the end of the compensation week. Robbennolt, 555 N.W.2d 229, 235.

Penalty is not imposed for delayed interest payments. Davidson v. Bruce, 593 N.W.2d 833, 840 (Iowa App. 1999). Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 338 (Iowa 2008).

When an employee's claim for benefits is fairly debatable based on a good faith dispute over the employee's factual or legal entitlement to benefits, an award of penalty benefits is not appropriate under the statute. Whether the issue was fairly debatable turns on whether there was a disputed factual dispute that, if resolved in favor of the employer, would have supported the employer's denial of compensability. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

Claimant is requesting penalty benefits. Counsel for claimant detailed the bases for the penalty benefit claim in the post-hearing brief that was filed on March 7, 2018. Claimant argues at pages 13 through 14 of his brief:

> Howard returned to his home in Georgia after his final visit with Dr. Milani on April 21, 2016, at which time Dr. Milani continued Howard's work restrictions. Defendants did not offer Howard any work within his restrictions after he returned to Georgia and did not pay him any TTD/Healing period benefits until November 22, 2016, at which time they sent a check for 11 weeks of benefits dating back to September 6, 2016, and continued payments through May 24, 2017. (Ex. 7) Defendants may contend Howard resigned from employment and no TTD/Healing period

benefits were owed. However, that is not the case as Howard considers himself to still be employed by Defendant AMN Healthcare and continues to maintain contact with them about potential jobs. (Hrg. Trans. p. 40, 43)

Claimant's attorney contacted defense counsel July 21, 2016, September 14, 2016, and December 5, 2016 concerning the non-payment of TTD benefits. (Ex. 8). While Defendants did pay benefits beginning September 6, 2016, no benefits have been paid for the period of April 21, 2016 through September 5, 2016, and Defendants have offered no explanation for the non-payment of TTD/Healing period benefits for that time period. There is no evidence that Howard refused offers of accommodated work between April 21, 2016 and September 5, 2016 and he was clearly under work restrictions from either Dr. Milani, Dr. Bonsu, or Dr. Rezaiamiri. The non-payment of benefits without reasonable excuse has caused Howard financial hardship and penalty benefits should be ordered in the full amount of 50%.

(Claimant's post-hearing brief, pages 13-14)

It is the determination of the undersigned; claimant is entitled to penalty benefits pursuant to Iowa Code section 86.13. Defendants shall pay unto claimant, penalty benefits in the amount of $6,000.00.

The final issue is the matter of costs.

Iowa Code section 86.40 states:

Costs. All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

Costs. Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the

> report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

Claimant is requesting certain costs as detailed on page two of the hearing report.

The following costs are taxed to defendants:

Filing fee: $100.00

Service Fee

South Atlanta Neurosurgery, P.C. $450.00

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant a running award from April 12, 2016 until such time as claimant has reached maximum medical improvement and said benefits shall be paid at the stipulated weekly benefit rate of nine hundred eighty and 62/100 dollars ($980.62) per week.

Defendants shall take credit in the amount of thirty-eight (38) weeks of compensation at the stipulated rate of nine hundred eighty and 62/100 dollars ($980.62) per week.

Defendants shall pay medical costs and medical mileage pursuant to Iowa Code section 85.27 and as detailed in the body of this decision.

All past due benefits shall be paid in a lump sum together with interest as allowed by law.

Defendants shall pay unto claimant six thousand and 00/100 dollars ($6,000.00) in penalty benefits pursuant to Iowa Code section 86.13.

Defendants shall pay costs as detailed in the body of the decision.

Defendants shall file all reports as required by law.

Signed and filed this 30th day of November, 2018.

Michelle A. McGovern

MICHELLE A. MCGOVERN
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.