BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TIMOTHY GEHRING, Claimant, vs. ANNETT HOLDINGS, INC., d/b/a TMC TRANSPORTATION, Employer, Self-Insured, Defendants.	:	File No. 5054909 A R B I T R A T I O N D E C I S I O N Head Note Nos.: 1402.20; 1801; 1803; 2501; 2502; 2701

STATEMENT OF THE CASE

Claimant, Timothy Gehring, filed a petition in arbitration seeking workers' compensation benefits from Annett Holdings, Inc., d/b/a TMC Transportation, Inc., (TMC), self-insured employer. This matter was heard in Des Moines, Iowa, on March 7, 2018 with a final submission date of April 16, 2018.

The record in this case consists of Joint Exhibits 1 through 13, Claimant's Exhibits 1 through 6, Defendants Exhibits A through L, and the testimony of claimant.

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

ISSUES

1. Whether claimant sustained a shoulder injury that arose out of and in the course of employment.

2. The extent of claimant's entitlement to temporary benefits.

3. Whether claimant's injury is the cause of a permanent disability; and if so,

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

5. Commencement date of benefits.

6. Whether there is a causal connection between the injury and the claimed medical expenses.

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

8. Whether claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant was 65 years old at the time of the hearing. Claimant graduated from high school. Claimant was employed as a steel worker for 17 years. Claimant worked as a machinist. He worked for his brother for three to four years erecting steel mill cranes.

Claimant began with TMC in 1999. Claimant testified he drove a dedicated route for Home Depot for TMC.

Claimant testified that, on June 30, 2014, he was strapping a load. Claimant said he noticed a loose strap. As claimant was tightening the strap, a ten-piece bundle of 3/4 inch water pipe fell approximately ten feet and struck claimant on the top of his head. Claimant testified in deposition the pipes struck him on the top of his head. (Exhibit A, page 5; Deposition page 17)

On June 30, 2014, claimant was treated at the Cleveland Clinic Hospital for a scalp laceration when pipe weighing approximately 10 pounds hit him in the head. Claimant had headaches and some light headedness. Claimant was assessed as having a closed head injury and discharged. (Joint Ex. 1, pp. 2-3)

On July 1, 2014, claimant was evaluated at MedExpress Hermitage in Hermitage, Pennsylvania for a stiff neck and pain between the shoulder blades. Claimant had right neck pain. Claimant was assessed as having a neck sprain/strain and released. (Jt. Ex. 3, pp. 1-9)

On July 8, 2014, claimant was seen by Jerome Bonier, D.O. Claimant was assessed as having thoracic vertebrae compression fracture at the T6 level. Claimant was recommended to have an MRI. Claimant was kept off work and told not to lift. (Jt. Ex. 4, pp. 1-7)

On July 18, 2014, claimant underwent an MRI for the thoracic spine. It showed degenerative disc disease with a disc bulge at the T6-7 levels. (Jt. Ex. 4, pp. 8-9) Claimant returned to Dr. Bonier on July 22, 2014. An MRI of the thoracic spine revealed no evidence of a compression fracture. Claimant was assessed as having headaches as a result of a concussion. He was also assessed as having upper thoracic strain and sprain. (Jt. Ex. 4, pp. 10, 15, and 18) Claimant was instructed to go to occupational medicine for directions in how to treat his concussion.

On July 28, 2014, claimant had a neurological consultation with Robert Salcedo, M.D. Claimant's examination and CT scan, taken June 15, 2014, were normal. Claimant was instructed to use ice and ibuprofen as needed. (Jt. Ex. 5)

On the same date, claimant began physical therapy. Claimant was assessed as having a sprain of the thoracic spine. Claimant underwent physical therapy until August 11, 2014. (Jt. Ex. 6)

On or about August 6, 2014, claimant returned to Dr. Bonier for evaluation of the thoracic sprain. Claimant had no tenderness in the upper thoracic spine and had normal range of motion. Claimant was told to consult with a neurologist regarding his concussive symptoms. (Jt. Ex. 4, pp. 19-20)

On August 13, 2014, claimant began another course of physical therapy for thoracic pain. Claimant, at this time, reported some right shoulder pain. Records indicate claimant had some popping in the right shoulder. Claimant was released from physical therapy on August 27, 2014. Claimant had limitations in the right shoulder mobility with elevation. (Jt. Ex. 7, p. 19)

Claimant returned to Dr. Bonier on September 3, 2014. Claimant had minimal complaints of the thoracic spine. Claimant was allowed to return to work regarding his thoracic spine condition. (Jt. Ex. 4, p. 23)

On September 9, 2014, claimant was evaluated by Richard Catterlin, D.O. Dr. Catterlin is claimant's family physician. Claimant indicated he hurt his right shoulder. Claimant had limitations in range of motion and in abduction. Claimant was assessed as having a rotator cuff strain. Claimant was given rotator cuff exercises to do at home. (Jt. Ex. 8, pp. 1-4)

Claimant testified on direct examination he tried to return to work at TMC, but after a week of his return, he found work was too physically demanding. Claimant said he quit TMC because the work was too physically difficult. On cross-examination, claimant indicated he had been talking with another trucking company before he left TMC. In October 2014, claimant began work with AIM Logistics (AIM) as a truck driver. (Jt. Ex. 9, p. 7)

On October 28, 2014, claimant was evaluated by Dr. Catterlin for his annual physical. Claimant had no complaints. Claimant was assessed as having hypertension. Diet and exercise were discussed. (Jt. Ex. 8, pp. 6-9)

In a December 28, 2015 report, Dr. Bonier indicated claimant had no permanent restrictions from his June 30, 2014 injury, and did not need additional medical treatment. Dr. Bonier found claimant at maximum medical improvement (MMI) as of September 4, 2014. He found claimant had no permanent impairment. (Jt. Ex. 4, p. 28)

On September 30, 2016, claimant was evaluated by Dr. Catterlin for an employment physical. Claimant was evaluated as having hypertension, hyperlipidemia,

and right shoulder pain. Claimant's right shoulder pain had started more than a year ago and had been gradually worsening. Claimant was assessed as having an adhesive capsulitis in the right shoulder. Claimant was given an injection in the right shoulder. (Jt. Ex. 8, pp. 10-15)

At hearing, claimant testified he did not recall specifically when he began experiencing right shoulder pain. He testified he did not get care for his right shoulder for approximately two years as he thought his right shoulder condition would improve. (Tr. pp. 39, 61)

In an October 24, 2016 report, Irving Wolfe, D.O., gave his opinions of claimant's condition following an IME. Claimant told Dr. Wolfe that while strapping a load, ten water pipes struck the top of his head and then struck his right shoulder. Claimant said he developed pain in the center of his back, neck, and right shoulder. (Ex. 9, pp. 1-5)

Claimant complained of daily headaches. Claimant had right shoulder pain with restrictive movement and loss of strength. Claimant indicated he was unable to do any overhead work. Dr. Wolfe opined claimant had a 3 percent permanent impairment for his headaches. He opined claimant had a 3 percent permanent impairment for his upper thoracic pain. He found claimant had an 8 percent permanent impairment to the body as a whole regarding his shoulder. Combining all values together resulted in a 15 percent permanent impairment to the body as a whole. Because claimant had no symptoms prior to June 30, 2014, regarding the head, spine, and shoulder, Dr. Wolfe found that claimant's injuries to the head, spine, and shoulder were caused by the June 30, 2014 incident. (Jt. Ex. 9, pp. 6-12)

In a November 1, 2016 report, Charles Mooney, M.D., gave his opinions of claimant's condition following an IME. Claimant complained of constant headaches and ongoing thoracic back pain. Claimant complained of neck pain. Claimant also indicated right shoulder pain with loss of strength and range of motion. (Jt. Ex. 10, pp. 1-3)

Dr. Mooney found claimant had adhesive capsulitis in the right shoulder pre-existing the date of injury. Dr. Mooney opined claimant's right shoulder pain was not related to the June 30, 2014 injury as there is no evidence of an exacerbation or aggravation of the shoulder due to the June 30, 2014 incident. He found claimant at MMI as of September 30, 2014. Dr. Mooney found claimant had no permanent impairment or permanent restrictions from the June 30, 2014 date of injury. (Jt. Ex. 10, pp. 4-6)

Claimant was evaluated by Thomas Joseph, M.D., at the Youngstown Orthopaedic Associates. Claimant indicated his right shoulder pain began after he had an object fall on him. Claimant was assessed as having advanced osteoarthritis of the right shoulder and recommended a right shoulder replacement. (Jt. Ex. 11, pp. 1-3)

In an undated letter, Dr. Joseph appears to indicate that claimant's injury did not cause claimant's shoulder condition. The letter appears to indicate that the right

shoulder condition may have been substantially aggravated by the June 30, 2014 incident. The copy of this opinion in the exhibits is of poor quality and is difficult to read. (Jt. Ex. 11, p. 7)

On February 23, 2017, claimant underwent a right shoulder surgery consisting of a total right shoulder replacement. Surgery was performed by Dr. Joseph. (Jt. Ex. 11, pp. 10-11)

Claimant underwent physical therapy for his right shoulder condition from February 2017 through May 3, 2017. (Jt. Ex. 12)

On December 8, 2017, claimant was seen by Dr. Joseph for follow up care. Claimant was given lifting restrictions of no repetitive lifting and no lifting with the outstretched arm. (Jt. Ex. 11, pp. 18-20)

In a January 30, 2018 report, Joseph Chen, M.D., gave his opinions of claimant's condition following a records review. Dr. Chen opined that claimant's advanced glenohumeral osteoarthritis was not related to his June 30, 2014 incident. He opined the accident, when claimant was hit on the head with some pipe and sustained a closed head injury and thoracic spine injury, was not a substantial or material factor in the need for a total shoulder replacement. He also opined claimant's adhesive capsulitis was not aggravated by the June 30, 2014 event. (Jt. Ex. 13, pp. 1-4)

Dr. Chen noted that the AMA Guides to the Evaluation of Disease and Injury, notes that adhesive capsulitis is an idiopathic disease. It is also noted that osteoarthritis in the right shoulder is also considered a multi-factorial disease. He opined that the closed head injury with the traumatic headaches did not constitute a material aggravation factor for the development of the osteoarthritis in the glenohumeral area. (Jt. Ex. 13, p. 4)

Dr. Chen opined claimant did not have any permanent impairment or permanent restrictions from his June 30, 2014 injury. (Jt. Ex. 13, pp. 4-5)

Claimant testified, at the time of hearing, he continued to work for AIM as a driver. Claimant said he drove a Conestoga truck with AIM. He said that the tarps on the Conestoga trucks open and close like an accordion file. As a result, claimant does not have to lift and strap tarps on loads.

Claimant said he could not return to work at TMC due to his inability to do tarping. Claimant said the tarps weigh approximately 75 pounds dry and 125 pounds wet. Claimant said he cannot lift, roll, or strap tarps given the limitations in his right shoulder.

Claimant testified he did not recall when he began having right shoulder problems. He testified he is limited in shoveling snow, using a hammer, or splitting wood due to his right shoulder condition. Claimant testified he no longer has headaches today.

Claimant said he sleeps in a recliner due to his shoulder. He said he continues to have back pain which interrupts his sleep.

In September 2014, September 2015, and September 2016 claimant underwent DOT physical examinations. Records from those examinations indicate claimant did not have a head injury or impairment of the arm or a spinal injury. (Jt. Ex. K, pp. 1-2, 4-5, 7-8)

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant sustained a right shoulder injury that arose out of and in the course of employment on June 30, 2014.

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

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).

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).

Claimant alleges his June 30, 2014 injury, when a bundle of water pipes fell striking his head, resulted in his right shoulder injury.

Records from the Cleveland Clinic, where claimant first received treatment, indicate claimant was struck on the head by pipes. (Jt. Ex. 1, pp. 2-3) Claimant testified in deposition that when the pipes fell, they struck him only on the head. (Ex. A, p. 5, Dep. p. 17)

The day after the accident, claimant received treatment from MedExpress. Records from this visit indicated a blow to the head. (Jt. Ex. 3, pp. 1-9)

Claimant treated with Dr. Bonier from July 8, 2014 through September 3, 2014. There is no indication in any records from Dr. Bonier that claimant had a traumatic injury to the right shoulder or had any right shoulder pain. (Jt. Ex. 4)

In July 2014, claimant underwent physical therapy at Banyan Tree Rehabilitation (Banyan). Records from Banyan indicate claimant had greater range of motion and abduction on the right when compared to the left shoulder. (Jt. Ex. 6, p. 2) On his release from treatment from Banyan, claimant had greater range of motion in the right shoulder than in the left with flexion and abduction. (Jt. Ex. 6, p. 25)

Claimant underwent examinations in September 2014 and September 2015 for his DOT license. There is no indication in these records that claimant had a loss of strength or range of motion in his right shoulder. (Ex. K, pp. 1-2, 4-5)

On November 9, 2014, claimant was evaluated by Dr. Catterlin. Claimant was assessed at that time as having a rotator cuff strain. There is no indication in the records from this period that his difficulty with the right shoulder was due to the June of 2014 injury. (Jt. Ex. 8, pp. 1-4)

In October 2015, claimant saw Dr. Catterlin for an annual physical. There is no indication in records from this evaluation that claimant had any shoulder problems or shoulder symptoms. (Jt. Ex. 8, pp. 6-9)

On September 30, 2016, over two years after the date of injury, claimant saw Dr. Catterlin for a physical examination. At that time, claimant indicated he had shoulder problems that happened over a year ago. There is no reference in the record from this period that claimant's symptoms were related to a June 2014 work accident. (Jt. Ex. 8, pp. 10-15)

Three experts have opined regarding causation of claimant's right shoulder problems and subsequent surgery.

Dr. Mooney evaluated claimant on one occasion for an IME. Dr. Mooney opined that claimant's right shoulder condition was not exacerbated or aggravated by the June 30, 2014 incident, as there is no evidence that the accident impacted the right shoulder. (Jt. Ex. 10)

Dr. Chen gave his opinion of claimant's condition following a records review. Dr. Chen opined that the June of 2014 accident, when claimant sustained a blow to his head, would not be a substantial causative factor in aggravation of claimant's osteoarthritis in the glenohumeral joint. He also opined that it would not be a material aggravation to claimant's adhesive capsulitis. (Jt. Ex. 13, pp. 1-4)

In an undated letter, Dr. Joseph, appears to opine that the June 30, 2014 incident "may" have caused a substantial aggravation to claimant's right shoulder. (Jt. Ex. 11, p. 7)

Dr. Wolfe is the only expert to find that claimant's June 30, 2014 injury substantially aggravated his osteoarthritis. There are two problems with Dr. Wolfe's opinion. First, claimant told Dr. Wolfe that the pipes in the accident struck his head and then struck his right shoulder. (Jt. Ex. 9, p. 5) As noted above, all evidence in the record indicates the pipes at issue only fell on claimant's head and did not strike his shoulder. (Jt. Ex. 1, pp. 2-3; Jt. Ex. 3, pp. 1-9; Jt. Ex. 4, pp. 1-7; Ex. A, p. 5)

Second, Dr. Wolfe offers no explanation or analysis as to why the June 30, 2014 blow aggravated claimant's osteoarthritis, yet claimant went for over two years between the alleged date of injury and subsequent treatment with Dr. Catterlin. Dr. Wolfe offers no rationale why claimant's June 30, 2014 incident aggravated claimant's shoulder osteoarthritis, yet numerous physicals and exams indicate no shoulder symptoms. (Jt. Ex. 8, pp. 6-8; Ex. K, pp. 1-2, 4-5)

Dr. Wolfe's opinion is based on a factual inaccuracy. Dr. Wolfe's opinion does not explain the two-year time gap between the alleged injury and claimant's initial treatment for a right shoulder injury. Given these discrepancies, Dr. Wolfe's opinions regarding causation for the right shoulder injury are found not convincing.

There is no evidence that claimant's June 30, 2014 injury resulted in a traumatic blow to his right shoulder. Claimant went over two years from the date of injury before he sought treatment for a work-related right shoulder injury. Claimant had at least three physicals between the date of injury and the September 2016 visit with Dr. Catterlin where there is no reference to a right shoulder condition. Dr. Chen and Dr. Mooney opined that claimant's shoulder condition is not related to the June 30, 2014 accident. Dr. Wolfe's opinion regarding causation of the right shoulder is found not convincing. Dr. Joseph indicates that claimant's shoulder condition "may" have been aggravated by the June 30, 2014 incident. Given this record, claimant has failed to carry his burden of proof his right shoulder condition arose out of and in the course of his employment.

As claimant has failed to carry his burden of proof his shoulder injury arose out of and in the course of employment, all issues regarding claimant's entitlement to temporary benefits, medical expenses related to the right shoulder condition, claimant's entitlement to permanent partial disability benefits regarding the right shoulder and entitlement to alternate medical care are moot.

The next issue to be determined is whether claimant's injury is the cause of a permanent disability.

In his 2016 report, Dr. Wolfe opined that claimant had a 3 percent permanent impairment due to headaches. At the time of hearing, claimant testified he no longer had headaches. (Tr. p. 85) Based on claimant's testimony at hearing, it is found claimant has no permanent impairment relating to headaches.

Two experts have opined regarding claimant's permanent impairment to his thoracic spine. Dr. Bonier treated claimant for an extended period of time. He opined that claimant had no permanent impairment or permanent restrictions regarding the thoracic spine. (Jt. Ex. 4, p. 28)

Dr. Wolfe evaluated claimant on one occasion for an IME. He opined that claimant had a 3 percent permanent impairment related to the thoracic spine. (Jt. Ex. 9, p. 9)

As noted, claimant had at least three physical examinations between September 2014 and September 2016. There is no reference in any of those examinations of thoracic spine symptoms. (Ex. K; Jt. Ex. 8, pp. 6-9) Claimant also saw Dr. Joseph for an extended period of time regarding his right shoulder condition. There is no indication in any of Dr. Joseph's reports claimant had thoracic spine symptoms. (Jt. Ex. 11)

Dr. Bonier's opinions, that claimant has no permanent impairment or permanent restrictions for the thoracic spine, are corroborated by the records found at Joint Exhibit 8, pages 6-9, 11. For this reason, the opinions of Dr. Bonier, that claimant has no permanent impairment or restrictions to the thoracic spine, are found more convincing than the opinions of Dr. Wolfe. Based on this record, it is found that claimant has failed

to carry his burden of proof that he sustained a permanent impairment regarding his thoracic spine injury.

Claimant failed to carry his burden of proof his shoulder injury arose out of and in the course of employment. It is found that claimant has failed to carry his burden of proof that he has a permanent impairment regarding his headaches or his thoracic spine. Based on this, it is found claimant has failed to carry his burden of proof he sustained a permanent disability caused by the June 30, 2014 work injury. As claimant has failed to carry his burden of proof he sustained a permanent disability caused by the June 30, 2014 work injury, the issue of claimant's entitlement to permanent partial disability benefits is moot.

The next issue to be determined is whether there is a causal connection between the injury and the claimed medical expenses.

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).

Claimant seeks medical expenses as detailed in Claimant's Exhibit 4. Exhibit 4 relates to claimant's requested expenses under Iowa Code section 85.27. According to Claimant's Exhibit 4, claimant seeks medical expenses totaling $7,153.75. (Ex. 4)

As claimant has failed to carry his burden of proof that his right shoulder injury arose out of and in the course of employment, defendants are not liable for medical charges related to claimant's shoulder injury. Defendants are only liable for medical charges, including medical mileage, related to claimant's head injury and thoracic spine injury.

Claimant also seeks $868.90 for a trip to Des Moines in 2016. It appears the $868.90 for the trip to Des Moines in 2016 relates to claimant being deposed and evaluated for an IME. (Claimant's Exhibit 2, pp. 5-21) It does not appear that this expense is a reimbursable expense under Iowa Code section 85.27. If the $868.90 is a cost claimant seeks for out of pocket expenses to be deposed and evaluated by defendants' physician, claimant should be reimbursed this cost.

Claimant also seeks $850.00 for reimbursement for meals when claimant was in Iowa for light duty. (Ex. 4) This is not a reimbursable expense under Iowa Code section 85.27.

To summarize defendants are only liable for medical costs and medical mileage related to claimant's closed head and thoracic injury. Defendants are not liable for any medical charges relating to claimant's right shoulder condition. If the $868.90 for the trip to Des Moines in 2016 relates to claimant's deposition and claimant being evaluated by defendants' expert, this amount should be reimbursed to claimant as a cost.

The next issue to be determined is whether claimant is entitled to reimbursement for Dr. Wolfe's IME.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

A rating of impairment was provided by Dr. Bonier in his December 28, 2015 letter. In an October 24, 2016 report, Dr. Wolfe gave his opinions of claimant's permanent impairment. Given this chronology, claimant has carried his burden of proof that he is due reimbursement for Dr. Wolfe's IME.

The last issue to be determined is whether claimant is due alternate medical care under Iowa Code section 85.27.

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

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 the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

Claimant has failed to indicate, either in the hearing or in exhibits, what alternate medical care he seeks. As claimant has failed to identify what alternate medical care is being sought, claimant has failed to carry his burden of proof he is entitled to alternate medical care.

ORDER

THEREFORE, IT IS ORDERED:

That claimant shall take nothing in the way of temporary benefits or permanent partial disability benefits from this proceeding.

That defendant shall reimburse claimant only for medical expenses, including medical mileage, as related to claimant's closed head injury and his thoracic spine injury.

That defendant shall reimburse claimant for expenses related to Dr. Wolfe's IME.

That defendant shall pay costs as detailed above.

That defendant shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this 17th day of May, 2018.

JAMES F. CHRISTENSON
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.