

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERT BELL,

Claimant,

vs.

STOCK TRAILER CITY, INC., D/B/A
RICE TRAILER CO.,

Employer,

and

SFM MUTUAL INSURANCE,

Insurance Carrier,
Defendants.

FILED

MAY 02 2017

WORKERS COMPENSATION

File No. 5056023

ARBITRATION DECISION

Head Note Nos.: 1803, 2701

Claimant Robert Bell filed a petition in arbitration on January 11, 2016, alleging he sustained an injury to his back and body as a whole while working for the defendant, Stock Trailer City, Inc., d/b/a Rice Trailer Co. ("Rice Trailer"). Rice Trailer and its insurer, the defendant, SFM Mutual Insurance ("SFM"), filed an answer on January 19, 2016.

An arbitration hearing was held on February 14, 2017, at the Division of Workers' Compensation in Des Moines. Attorney Eric Bair represented Bell. Bell appeared and testified. Attorney Lee Hook represented Rice Trailer and SFM. Sandra Hansohn appeared and testified on behalf of Rice Trailer and SFM. Exhibits 1 through 14 and A through G were admitted into the record. The record was held open through March 14, 2017, for the receipt of post-hearing briefs. At that time the record was closed.

Before the hearing the parties prepared a hearing report listing stipulations and issues to be decided. Rice Trailer and SFM waived all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between Bell and Rice Trailer at the time of the alleged injury.
2. Bell sustained an injury on March 9, 2015, which arose out of and in the course of his employment with Rice Trailer.

3. The alleged injury is a cause of temporary disability during a period of recovery.
4. The alleged injury is a cause of permanent disability.
5. Temporary benefits are no longer in dispute.
6. The alleged injury is a cause of industrial disability.
7. The commencement date for permanent partial disability benefits, if any are awarded, is August 27, 2015.
8. At the time of the alleged injury, Bell's gross earnings were \$624.00 per week, he was single and entitled to one exemption, and the parties believe his weekly rate is \$387.14.
9. Prior to the hearing Bell was paid forty weeks of compensation at the rate of \$382.56 per week.
10. The costs listed in Exhibits 11 through 13 have been paid.

ISSUES

1. What is the extent of Bell's disability?
2. Is Bell entitled to alternate care under Iowa Code section 85.27?
3. Should costs be assessed against either party?¹

FINDINGS OF FACT

Bell is single and lives in Kiron, Iowa. (Transcript, pages 8-9) At the time of the hearing he was fifty-five. (Tr., p. 9) Bell graduated from high school in 1980. (Tr., pp. 9, 49) Bell received B and C grades in high school. (Tr., p. 9) In 1985 Bell attended ITT in Omaha and received training in air-conditioning and refrigeration. (Tr., p. 10) Bell completed the program and received a certificate. (Tr., pp. 10, 49) In 2000, Bell's employer, Evapco, sent him to Fort Dodge Community College for training in aluminum high-pressure TIG welding. (Tr., pp. 10, 49) Bell completed the training. (Tr., p. 10) Bell testified he cannot type and he is not good with computers. (Tr., p. 36)

Bell has experience in welding, making doors and countertops, and in meat processing. (Tr., p. 35; Exhibit 6, pp. 74-77) Bell has spent the majority of his career

¹ The issue of underpayment of temporary total and permanent partial disability benefits was originally listed as an issue on the hearing report. In his post-hearing brief Bell noted the parties have agreed to Bell's correct rate, and that an underpayment exists for temporary disability and permanent partial disability benefits. The parties did not request that the undersigned determine the underpayment amount.

working as a welder. (Ex. 7, pp. 74-77) Bell has experience in MIG, TIG, oxyacetylene, and stick welding. (Tr., pp. 49-50)

Rice Trailer builds fuel, flatbed, pole, reel, stock, and custom trailers, and services trailers. (Tr., pp. 11, 74) Rice Trailer employs between twelve and thirteen employees. (Tr., pp. 11, 74) In August 2011, Rice Trailer hired Bell to build trailers. (Tr., pp. 11, 39, 74) Bell never worked for the service side of the business. (Tr., p. 74) Bell's position involved three jobs, trailer assembler, welder, and electrical assembler. (Ex. 7) Starting in 2014, Bell primarily performed the duties of electrical assembler. (Tr., pp. 70-71; Ex. 7, p. 80) Bell reported he spent at least half of his time performing other duties. (Tr., p. 71) The electrical assembler job description requires lifting ten to twenty pounds, the welder job description requires frequent lifting over fifty pounds, and the trailer assembler job description requires lifting up to sixty pounds. (Ex. 7, pp. 78-80)

While working for Rice Trailer Bell welded trailer parts together, ran electrical wires through the trailers, and painted the trailers. (Tr., p. 12) Bell used an oxygen tank on a portable cart while welding for Rice Trailer. (Tr., p. 51) The tank was five feet tall and weighed more than fifty pounds. (Tr., p. 51) It took Bell approximately five to ten minutes to change the tank once a week. (Tr., pp. 51-52) Bell operated a forklift to lift heavy trailer component parts. (Tr., p. 54) Bell reported he used a forklift when cutting larger pieces of steel and tubing weighing more than fifty pounds approximately fifty percent of the time. (Tr., pp. 54-56) The other fifty percent of the time Bell worked with a coworker to lift items exceeding fifty pounds. (Tr., p. 56)

During the afternoon of March 9, 2015, Bell and his coworker, Nick Blunk, were outside putting an axle weighing 400 to 600 pounds on a pole trailer. (Tr., pp. 16-18) Bell and Blunk were struggling to get the axle underneath the trailer, and Bell felt "shooting pains in [his] back." (Tr., p. 17) Bell described the pain as feeling like someone was sticking a knife into his lower back. (Tr., p. 17) Bell testified he had experienced back pain before, but nothing like the pain he experienced that day. (Tr., p. 17) Bell testified he told Blunk something happened to his back, he finished his work that day, and he reported his injury to his employer the next day. (Tr., pp. 17-18)

The next day when Bell came into work Bell and Blunk had to remove the axle they worked on the day before and put it underneath the trailer again. (Tr., p. 18) Bell reported his back was hurting and he reported his injury to Hansohn, the office manager for Rice Trailer. (Tr., pp. 18, 73) Bell requested medical treatment, and he went to see his family physician in Denison, Dr. Mason. (Tr., p. 20)

Before his work injury Bell had received chiropractic treatment. (Tr., p. 19; Ex. A) Bell testified he sought chiropractic treatment because he felt "crooked" and the chiropractor realigned his spine. (Tr., p. 19) Bell testified his chiropractor did not impose any restrictions and that his problems did not interfere with his ability to perform his job. (Tr., pp. 19-20)

In August 2016, John Kuhnlein, D.O., performed an independent medical examination of Bell, and reviewed his medical records. (Ex. 4) Dr. Kuhnlein noted that Bell had a history of a concussion, a right shoulder injury with surgery in 1991 while working, a hernia repair, and low back and left leg pain. (Ex. 4, pp. 60-61)

On March 12, 2015, Bell sought medical care at Crawford County Hospital and he was examined by Rose Mason, M.D. (Ex. 1, p. 1) Bell reported he injured his back while he was pushing, pulling, and lifting an axle to place it under a trailer at work on March 9, 2015. (Ex. 1, p. 1) Bell complained of pain in his lower back at his waist through his tailbone area. (Ex. 1, p. 1) Bell reported left work at noon the day before because he could not work any longer. (Ex. 1, p. 1)

Dr. Mason ordered an x-ray of Bell's lumbar spine. (Ex. 1, p. 2) The reviewing radiologist listed an impression of moderate lumbar degenerative disc and facet changes with mild S-type curvature and left nephrolithiasis. (Ex. 1, p. 2) Dr. Mason assessed Bell with lower back pain with degenerative disc disease and osteoarthritis of the lower back, prescribed Flexeril and hydrocodone, and restricted Bell from working from March 11, 2015 through March 23, 2015. (Ex. 1, p. 1)

Bell returned to Dr. Mason on March 20, 2015, complaining of low back pain through his buttocks. (Ex. 1, p. 3) Dr. Mason ordered physical therapy, and restricted Bell from working through March 27, 2015. (Ex. 1, p. 3) During his appointment on March 27, 2015, Dr. Mason documented Bell relayed he was slightly better since he began physical therapy, and that he wanted to return to work. (Ex. 1, p. 4) Dr. Mason found Bell could return to work on March 30, 2015, and imposed a twenty-five pound lifting restriction. (Ex. 1, p. 4)

On April 6, 2015, Bell attended a follow-up appointment with Dr. Mason and reported he forgot to take his Flexeril on April 3, 2015. (Ex. 1, p. 5) Bell told Dr. Mason he experienced back spasms and he could not work. (Ex. 1, p. 5) Bell complained of pain in his left leg extending to just above his knee. (Ex. 1, p. 5) Dr. Mason continued his restrictions. (Ex. 1, p. 4)

Bell received lumbar spine magnetic resonance imaging on April 10, 2015. (Ex. 1, p. 6) The reviewing radiologist listed an impression of:

1. Multilevel disc bulges and protrusions, with multilevel spondylosis and facet arthropathy. There is moderate to moderately severe central canal stenosis L3-4, in part due to bilateral extruded fragments.
2. There is severe central canal stenosis L3-4 and L4-5 with lateral recess narrowing, greater on the right of both levels.
3. Left paracentral protrusion L5-S1 disc, producing left later recess stenosis.

4. Foraminal stenosis, greater on the right at L3 and L4 that are moderate severe.

(Ex. 1, p. 7)

Bell was referred to J. Brian Gill, M.D., an orthopedic surgeon. (Ex. 2, p. 8) On April 24, 2015, Dr. Gill examined Bell and reviewed his imaging. (Ex. 2, pp. 8-11) Dr. Gill diagnosed Bell with herniated discs at L2-L3 on the left, L4-L5 on the right, and L5-S1 on the left, lumbar spondylosis, and lumbar canal stenosis. (Ex. 2, p. 12) Dr. Gill prescribed Medrol, Mobic, and steroid injections, and opined Bell could return to work without restrictions. (Ex. 2, p. 12)

Bell underwent an epidural steroid injection on May 5, 2015. (Ex. 2, p. 14) During his follow-up visit with Dr. Gill on May 19, 2015, Bell reported he had been unable to return to work and he received very little relief from the injection. (Ex. 2, pp. 16, 19) Dr. Gill imposed a twenty pound lifting restriction, prescribed diclofenac, and recommended a transforaminal injection. (Ex. 2, p. 19) Bell received the injection on June 2, 2015. (Ex. 2, pp. 21-22) On June 16, 2015, Bell returned to Dr. Gill, complaining of low back and left leg pain. (Ex. 2, p. 23) Bell reported he had not returned to work and his condition had not improved. (Ex. 2, p. 23) Dr. Gill prescribed tramadol, and referred Bell to a psychiatrist. (Ex. 2, pp. 26-27)

On June 23, 2015, Bell attended an appointment with Jeremiah Ladd, M.D., a psychiatrist in Dr. Gill's group. (Ex. 2, p. 29) Dr. Ladd examined Bell, concurred with Dr. Gill's diagnoses, recommended physical therapy and a lumbar brace, continued his medications, and imposed restrictions of no lifting over ten pounds, no excessive or repetitive bending, twisting, or stooping, and noted Bell should be able to change positions as needed for comfort. (Ex. 2, p. 32) During Bell's appointment on August 27, 2015, Dr. Ladd recommended a functional capacity evaluation. (Ex. 2, p. 43) Bell complained of side effects from his medication, and Dr. Ladd prescribed gabapentin. (Ex. 2, pp. 45-46) Bell's functional capacity evaluation was cancelled on September 9, 2015, when he was diagnosed with lymphoma. (Ex. 2, p. 46)

Bell testified he continued to perform his normal duties "for the most part" until August or September 2015, when he was diagnosed with lymphoma. (Tr., p. 40) Bell received chemotherapy to treat his lymphoma. (Tr., pp. 25, 41) Hansohn testified around Labor Day Bell came in and spoke with Bob Rice, the owner of the business, and reported he had cancer and that he needed to put everything on hold to take care of his cancer. (Tr., p. 76) The last time Bell worked for Rice Trailer was in August 2015. (Tr., p. 28) Bell testified the chemotherapy he received was successful and he is in remission. (Tr., pp. 25-26)

Bell did not receive any additional medical treatment from Drs. Gill or Ladd after September 2015. On July 26, 2016, Bell underwent a functional capacity evaluation. (Ex. 3) The physical therapist found Bell could: (1) lift waist to floor twenty pounds frequently, thirty pounds occasionally, and forty pounds rarely; (2) lift waist to crown ten pounds frequently, twenty pounds occasionally, and thirty pounds rarely; (3) front carry

twenty pounds frequently, thirty pounds occasionally, and forty-five pounds rarely; (4) right and left carry ten pounds frequently, twenty pounds occasionally, and thirty pounds rarely; (5) push seventy-four static pounds; and (6) pull seventy-eight static pounds. (Ex. 3, p. 55) The physical therapist noted Bell had some limitations with forward bending while standing and with kneeling and half kneeling, and slight or no limitations with elevated work, sitting, standing, walking, crouching, and climbing stairs. (Ex. 3, p. 56)

Dr. Kuhnlein, an occupational medicine physician, performed an independent medical examination of Bell for Rice Trailer and SFM on August 23, 2016. (Ex. 4) Dr. Kuhnlein reviewed Bell's medical records and examined him. (Ex. 4) Dr. Kuhnlein diagnosed Bell with "[a]ggravation of pre-existing lumbar degenerative disc disease." (Ex. 4, p. 62) Dr. Kuhnlein recommended Bell be weaned from narcotic pain medication, work on his core strength, and discontinue using marijuana for pain management. (Ex. 4, p. 62)

Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Kuhnlein opined:

Turning to pages 379-380, the DRE Method would be indicated. I would place Mr. Bell into DRE Lumbar Category II. While he complains of leg symptoms, the examination does not support a true radiculopathy at this time. However, because of the nature of his symptoms, I would place him at the higher end of the scale and assign 8% whole person impairment.

(Ex. 4, p. 63) Dr. Kuhnlein noted that given the length of time Bell has been off work he has become deconditioned and a gradual return to work program would be appropriate. (Ex. 4, p. 63) Dr. Kuhnlein found:

Mr. Bell would be capable of lifting 30 pounds occasionally from floor to waist and over the shoulder, and 40 pounds occasionally from waist to shoulder.

With respect to nonmaterial handling, Mr. Bell would be capable of changing positions on an as needed basis. He could occasionally bend at the waist, twist or squat. He could occasionally work at or above shoulder level. If working on uneven surfaces, he should use good footwear.

There are no environmental restrictions. There are no vision, hearing or communication restrictions. He can work at height or on ladders if he is not taking narcotic pain medications.

(Ex. 4, p. 63)

Hansohn testified Bell contacted her between Thanksgiving and Christmas of 2016 to inquire whether he still had a job and she informed him she did not think so because Rice Trailer had had to hire additional workers, but he would have to check

with Bob Rice. (Tr., pp. 78-79) Bell testified he did not resign from or quit his employment with Rice Trailer. (Tr., p. 28) Bell did not contact Bob Rice. (Tr., p. 48; 79)

James Carroll, M.Ed., performed a vocational assessment of Bell for Rice Trailer and SFM on December 29, 2016. (Ex. C, p. 1) Carroll opined both the functional capacity evaluation and Dr. Kuhnlein place Bell in the medium physical demand level. (Ex. C, p. 5) Using the Iowa labor market as a whole, Carroll opined Bell has sustained between an eight and nineteen percent loss of employability in Iowa. (Ex. C, p. 6)

Phil Davis, M.S., performed a vocational assessment of Bell on January 5, 2017. (Ex. 9) Davis noted Bell had worked as a welder since 2000, and opined that considering the restrictions set forth in Dr. Kuhnlein's report, Bell is precluded from performing the essential functions necessary to work in the welding and trailer assembly position for Rice Trailer. (Ex. 9, p. 93) Davis noted Bell's physical capabilities according to Dr. Ladd fall within the sedentary physical demand level. (Ex. 9, p. 94) Davis noted Bell lacks the computer skills, education, training or specific knowledge required for skilled occupations falling within the sedentary physical demand level recommended by Dr. Ladd, and that "Bell's ability to obtain or maintain substantial, gainful employment in the competitive labor market has now been eliminated." (Ex. 9, pp. 94-95)

Carroll issued a supplemental vocational report on January 16, 2017, after receiving a copy of Davis's report. (Ex. C, p. 7) Carroll noted Davis's use of Dr. Ladd's work restrictions was inappropriate given the later functional capacity evaluation, which placed Bell in the medium physical demand level. (Ex. C, p. 7) He also challenged Davis's report noting it did not appear that Davis conducted any transferable skills analysis, sedentary, light, and medium physical demand levels encompass ninety percent of all occupations in the United States, and while Bell does not have the skills to perform all the occupations in these physical demand levels, "he is certainly capable of performing large numbers of these occupations," and he is not totally unemployable. (Ex. C, p. 8)

On January 31, 2017, Dr. Ladd responded to a form letter, agreeing to the statement, "[y]ou believe that because of the March 9, 2015, work injury, Robert Bell has permanent restrictions pursuant to the FCE-Functional Capacity Evaluation dated July 26, 2016, performed Short Physical Therapy PLLC." (Ex. 2, p. 47) Dr. Ladd signed the document and did not provide any written comments. (Ex. 2, p. 47)

After receiving additional records from Bell's attorney, Davis issued a second report on February 4, 2017, opining that Bell's "physical capacities now fall within the range from sedentary to low medium physical demand level." (Ex. 9, p. 100) Davis opined "Bell's ability to obtain or maintain substantial, gainful employment in the competitive labor market has now been reduced by approximately 60%." (Ex. 9, p. 100)

Davis issued a third report on February 10, 2017, noting there is "'low' Medium physical demand level," Bell is able to perform work within the medium physical demand level, and stood by his original opinions. (Ex. C, p. 10)

Bell testified that at the time of the hearing he was experiencing a constant ache in his back that is worse some days. (Tr., p. 37) Bell reported that he experiences muscle spasms in his lower back that are "sharp, shooting, like somebody sticks a knife in your back." (Tr., p. 37) At the time of the hearing Bell was taking muscle relaxers and pain pills for the pain. (Tr., p. 37)

Before his work injury Bell enjoyed hunting, fishing, riding a four-wheeler, kayaking, canoeing, and playing pool. (Tr., p. 38) Bell reported that after his work injury he cannot walk the distance he used to for hunting and he cannot bend over the pool table to shoot. (Tr., p. 38)

Bell relayed he did not believe he could perform his position with Rice Trailer because he cannot lift over thirty pounds. (Tr., p. 29) Bell reported he would be able to run wire into the trailers, but getting into the positions required would be difficult. (Tr., p. 30) Hansohn testified she believed Bell could perform the duties of the electrical assembler position within his restrictions. (Tr., p. 79)

Bell testified he has contacted a few people in Denison about employment, including a former boss at Joe's Welding. (Tr., p. 30) Bell reported that after discussing his restrictions with his former boss, his boss indicated he could not hire him. (Tr., p. 31) Bell attended an interview with Adam Reese with Reese Amusements, for a position collecting money from machines. (Tr., p. 31) Bell also contacted Zediker Construction, which is owned by his ex-brother-in-law. (Tr., p. 32) The position involves laying sidewalks to building horse barns, which Bell reported he could not do. (Tr., p. 32) Bell acknowledged that as of June 22, 2016, he had not looked for work. (Tr., p. 60)

Bell has not seen Dr. Ladd or Dr. Gill since August 2015. (Tr., p. 37) Bell would like to see another doctor and has requested Rice Trailer and SFM send him back to the doctor. (Tr., pp. 37-38) During the hearing Bell acknowledged that between August 2015 and January 18, 2017, he did not request medical care from Rice Trailer or SFM. (Tr., p. 58; Ex. 14)

CONCLUSIONS OF LAW

I. **Extent of Disability**

The parties have stipulated Bell sustained a permanent industrial injury arising out of and in the course of his employment with Rice Trailer. The parties dispute the extent of Bell's industrial disability. "Industrial disability is determined by an evaluation of the employee's earning capacity." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 852 (Iowa 2011). In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee's "ability to be gainfully employed." Id. at 138.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(u). When considering the extent of disability, the deputy commissioner considers all evidence, both medical and nonmedical. Evenson v. Winnebago Indus., Inc., 818 N.W.2d 360, 370 (Iowa 2016).

The commissioner, as the trier of fact, must “weigh the evidence and measure the credibility of witnesses.” Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert’s education, experience, training, and practice, and “all other factors which bear upon the weight and value” of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

Using the AMA Guides, Dr. Kuhnlein opined Bell has sustained an eight percent whole person impairment under DRE Lumbar Category II. (Ex. 4, p. 63) Given the length of time Bell has been off work, Dr. Kuhnlein recommended a gradual return to work. (Ex. 4, p. 63) Dr. Kuhnlein imposed restrictions of bending at the waist, twisting, squatting, and work above shoulder occasionally, and lifting restrictions of thirty pounds occasionally from floor to waist, and forty pounds occasionally from waist to shoulder, and to use good footwear when working on uneven surfaces. (Ex. 4, p. 63) Dr. Kuhnlein imposed no environmental restrictions, noting Bell can work at heights and on ladders if he is not taking narcotic medication. (Ex. 4, p. 63)

Carroll and Davis provided vocational opinions on Bell’s loss of employability. I do not find Davis’s opinion persuasive. Davis initially opined Bell has sustained a total loss of employability in Iowa using the restrictions imposed by Dr. Ladd more than a year before Bell’s valid functional capacity evaluation. It appears that the lifting restrictions imposed by Dr. Kuhnlein fall within the work Bell performed for the electrical assembly functions of his position, but not within the other two positions. Neither expert conducted a local labor market survey of available jobs in the greater Kiron area consistent with Bell’s functional limitations and residual capacities, the market most relevant to determining Bell’s loss of earning capacity. Carroll looked at statewide jobs and determined Bell sustained an eight and nineteen percent loss of employability in the Iowa labor market as a whole. (Ex. C, p. 6) It is unclear to me what employment information or data Davis used to reach his opinions that Bell is totally disabled and later that he has sustained a sixty percent loss of earning capacity. (Ex. 9, pp. 94-95, 100) I do not find his opinion persuasive.

Bell was fifty-five at the time of the hearing. (Tr., p. 9) He is a high school graduate who received B and C grades in school. (Tr., p. 9) After graduating from high school Bell earned a certificate in air-conditioning and refrigeration, and he received

training in welding. (Tr., pp. 10, 49) While Bell is not good with computers or typing, I believe he is capable of retraining.

After sustaining his work injury Bell was diagnosed with lymphoma in September 2015. (Tr., pp. 25, 41) Bell informed Rice Trailer he needed to focus on treating his cancer and did not return to work. Bell reported he received chemotherapy for six months and he is now cancer free. (Tr., pp. 25-26) As of June 22, 2016, Bell had not looked for work. (Tr., p. 60) He had not contacted Rice Trailer at that time to inquire whether his position was still available. Bell did not contact Rice Trailer, a small employer, to inquire whether his position was available until November or December 2016. (Tr., p. 78) Hansohn advised Bell to contact Bob Rice, the owner of the company. (Tr., p. 79) Bell did not contact Bob Rice. (Tr., pp. 48, 79)

Bell testified he has contacted a former boss regarding a welding position, his ex-brother-in-law regarding a construction position, and an amusement device company about employment. (Tr., pp. 30-32) Bell owns land and receives cash rent. (Tr., pp. 60-62) Since his work injury he inherited a sum of money from his mother after she died. (Tr., pp. 60-62) I do not find Bell is motivated to return to work. Considering the factors of industrial disability, I find Bell has sustained a twenty percent permanent partial impairment.

II. Alternate Medical Care

An employer is required to 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. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. *Id.* "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." *Id.* § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. *Id.* If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefore, allow and order other care." *Id.* The statute requires the employer to furnish reasonable medical care. *Id.* § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability").

The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). Bell did not request any medical care from Rice Trailer or SFM between August 2015 and January 18, 2017. (Tr., p. 58) Dr. Kuhnlein and Bell's treating physicians have not recommended any ongoing medical care at this time. I do not find Rice Trailer and SFM have abandoned Bell's medical care. I do not find Bell should receive alternate medical care. Rice Trailer and SFM remain responsible for all necessary future medical care related to Bell's work injury.

III. Costs

Bell seeks to recover the \$1,245.20 for Davis's interview, travel time, mileage, file review, vocational research, and report, \$350.00 for Bell's functional capacity evaluation, \$350.00 for Bell's functional capacity evaluation report, and \$400.00 for Dr. Ladd's report. (Exs. 11-13). Rule 876 IAC 4.33(6), provides

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.

In LeGrange v. Nash Finch Co., File No. 5043316, 2015 WL 4078549 (App. July 1, 2015), the commissioner found rule 876 IAC 4.33 allows for taxation of costs incurred in the hearing itself rather than reimbursement of fees and expenses incurred in an examination, and while this agency has previously held that functional capacity evaluations and vocational rehabilitation evaluations fall under rule 876 IAC 4.33, under Des Moines Area Reg'l Transit Auth. v. Young, 856 N.W.2d 383 (Iowa 2015), the allowable taxable costs are the reports themselves, and not the underlying examinations.

Rule 876 IAC 4.33(6) allows for the recovery of no more than two doctors' or practitioners' reports. LeGrange, allows for the taxation of costs for the report itself. Davis's bill contains some itemization, but lists a charge of \$1,062.00 for file review, vocational research, and a vocational addendum report, which is not itemized. The rule does not expressly allow for recovery of travel time and mileage charged by Davis. Bell is not entitled to recover the \$1,245.20 cost of Davis's services/reports. Rice Trailer and SFM are assessed the \$350.00 cost of the functional capacity evaluation report, and the \$400.00 cost of Dr. Ladd's report.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendants shall pay the claimant one hundred (100) weeks of permanent partial disability benefits at the rate of three hundred eighty-seven and 14/100 dollars (\$387.14), commencing on August 27, 2015.

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

Defendants are entitled to a credit for benefits previously paid.

Defendants shall reimburse the claimant three hundred fifty and 00/100 dollars (\$350.00) for the functional capacity evaluation report, and four hundred and 00/100 dollars (\$400.00) for Dr. Ladd's report.

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

Signed and filed this 2nd day of May, 2017.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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HLP/srs

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