BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

EDWARD POLITO, Claimant, vs. WEITZ INDUSTRIAL, LLC, Employer, and ILLINOIS NATIONAL INSURANCE COMPANY, Insurance Carrier, Defendants.	:	File No. 5056875 ARBITRATION DECISION Head Note No.: 1108

FILED
JUN 05 2017
WORKERS' COMPENSATION

STATEMENT OF THE CASE

Edward Polito, the claimant, seeks workers' compensation benefits from defendants, Weitz Industrial, L.L.C., an Iowa employer, and its insurer, Illinois National Insurance Company, as a result of an alleged injury on November 10, 2014. Presiding in this matter is Larry P. Walshire, a Deputy Iowa Workers' Compensation Commissioner. An oral evidentiary hearing commenced on March 31, 2017, but the matter was not fully submitted until the receipt of all of the parties' briefs and argument on April 19, 2017. Oral testimony and written exhibits received into evidence at hearing are set forth in the hearing transcript.

Only joint exhibits were received at hearing and they were marked numerically. References in this decision to page numbers of an exhibit shall be made by citing the exhibit number or letter followed by a dash and then the page number(s). For example, a citation to joint exhibit 6, pages 88 through 89 will be cited as, "JE 6-88:89." Citations to the hearing transcript of testimony such as "Tr-4:5," or to a deposition transcript shall be to the actual page number(s) of the original transcript, not to page number of a copy the transcript containing multiple pages or to a page number of an exhibit package.

The parties agreed to the following matters in a written hearing report submitted at hearing:

1. On November 10, 2014, claimant received an injury arising out of and in the course of employment with defendant employer.

2. Claimant is not seeking temporary total or healing period benefits at this time.

3. At the time of the alleged injury, claimant's gross rate of weekly compensation was $1,439.14. Also, at that time, he was married and entitled to 5 exemptions for income tax purposes. Therefore, claimant's weekly rate of compensation is $907.24 according to the workers' compensation commissioner's published rate book for this injury on the agency website.

4. The requested medical expenses(JE-32 &33) are fair and reasonable and causally connected to the medical condition(s) upon which the claim herein is based but that the issue of their causal connection to the work injury remains an issue to be decided herein.

5. Defendants have not paid weekly benefits for this injury prior to hearing.

ISSUES

At hearing, the parties submitted the following issues for determination:

I. The extent of claimant's entitlement to permanent disability benefits; and,

II. The extent of claimant's entitlement to medical benefits, including alternate care; and,

III. The extent of claimant's entitlement to reimbursement for an independent medical examination pursuant to Iowa Code section 85.39.

FINDINGS OF FACT

In these findings, I will refer to the claimant by his first name, Edward, and to the defendant employer as Weitz.

From my observation of his demeanor at hearing including body movements, vocal characteristics, eye contact and facial mannerisms while testifying in addition to consideration of the other evidence, I found Edward credible.

Edward was 47 years old at the time of hearing. (JE 23-2; Tr-23) He graduated from high-school in 1988. (JE 23-3) After high school, Edward served in the U.S. Navy as a cook for three years. (JE 23-4) Following his discharge from the Navy, he worked for his family's construction company, doing general construction work, until approximately 1997. (Tr- 24) Edward then worked part-time for the US Postal Service until 1999. (JE 24-22) He then joined Carpenters Local 106 in Des Moines and worked for various employers as a journeyman carpenter in the Des Moines area until he moved in 2011 to the Iowa City area due to lack of work. He then joined Carpenters Local 1260 where he again worked for various employers in the Iowa City area. Between 2000 and 2010, Edward's sole employment has been journeyman carpentry through the union. Edward began working for Weitz in October 2013.

At the time of the stipulated work injury in this case, Edward had prior health problems including obesity, hypertension, Type II diabetes, and hyperlipidemia for which he was receiving various medications from his family doctor. (JE 3) He had a prior carpal tunnel surgery in 2008 which he states was successful in relieving his symptoms. (JE 4-1) He also suffered a left shoulder injury in 2006 after chipping ice at home which he states was a torn muscle for which he did home physical therapy. He had occasional flare-ups of left shoulder pain thereafter which he estimates occurred once every year or every other year. (JE 34-2, Tr-99:100) In his pre-employment physical before staring at Weitz, Edward was found by the evaluator to be capable of heavy work, exerting 50-100 pounds of force occasionally, 25-50 pounds frequently and 10-20 pounds constantly. (JE 34-1) However, the evaluator also provided various impairment ratings due to loss of pinch strength, elbow flexion, supination strength, lost range of motion of the back and moderately severe carpal tunnel syndrome. (JE 34-3) Edward testified that he had no physician imposed work restrictions when he started at Weitz (Tr-26) and there is nothing in the record to suggest otherwise. He also asserts he never had neck or left arm symptoms similar to those he had after the November 10, 2014 injury at Weitz before that injury. (Id.)

There is little dispute as to how the stipulated injury occurred on November 10, 2014. At the time of the injury, Edward and his co-workers were working at a fertilizer plant in Wever, Iowa, stripping (removing) wooded forms used to construct a concrete ceiling on an electrical substation. When a co-worker, located on a scaffold above Edward, attempted to hand him a heavy 4 foot by 8 foot sheet of treated plywood weighing about 90 pounds, the co-worker lost his grip and the plywood fell downward approximately 5-6 feet toward Edward. Edward then used his left hand and arm to shove the falling plywood away in order to protect himself from being struck by the plywood and nails and screws embedded in it. Edward had no immediate symptoms and did not report any injury that day. That evening, Edward said that he began to experience aching pain in the base of his neck. The next morning, his pain was more severe and extended from his neck, across his shoulder and down the left arm with numbness and tingling in his left hand. He took off work the next day. When the symptoms did not improve the next day, he returned to work and reported the work injury. He subsequently completed a report of injury. (See generally, Tr-40:45; JE 23-8:9; JE 25-1)

Defendants sent Edward to an occupational medicine clinic in Burlington for evaluation and treatment of the injury. Edward went to that clinic on November 12, 2014, but only saw a nurse. The nurse noted complaints at that time of pain in his forearm up into this shoulder and tingling down his into his left hand. (JE 1-1) He was told to continue taking OTC Ibuprofen and to see James Milani, D.O., an occupational medicine physician, the next day. (Id.)

Dr. Milani treated Edward between November 13, 2014 through January 29, 2015, at which time the doctor placed Edward at maximum medical improvement (MMI) and released him from his care with no permanent impairment and no work activity restrictions. (JE 1-4:20) The doctor's sole diagnosis throughout his treatment of Edward

was epicondylitis (tennis elbow) which he characterized as a sprain. (Id.) In Dr. Milani's last report, he states that Edward's primary complaint was left elbow pain which increased with activity and that his hand numbness complaints subsided. Edward testified that Dr. Milani would not listen to his complaints of pain in the base of the neck, left shoulder and continued numbness in his left hand and did not place these complaints into his reports, except for the one time in December 2014. (Tr-52:55)

On November 20, 2014, Dr. Milani began to report left shoulder complaints and the doctor ordered an EMG test of the upper extremity. (Ex. 1-10) However, that testing only indicated a carpal tunnel problem. (J-2) On December 9, 2014, Dr. Milani reports left shoulder complaints; pain with movement of the cervical spine; a positive Spurling's Maneuver; and, left shoulder muscle atrophy, which he did not relate to his injury because of the short time lapse since the injury. (Ex. 1-11:12)

Edward continued full duty work at Weitz after being released by Dr. Milani. However, Edward testified that his symptoms in his neck, arm and hand were mild, but they never went away. (Tr-63) Some days were worse than others and the symptoms would change day to day. (Tr-64) Edward testified that he had a loss of strength in the left arm and limited its use. (Id.) He had difficulty using his left hand to perform various tasks such as taking caps off of bottles, using a hammer, tying shoes, picking up his children, and lifting sheets of wood and dry wall. (Tr-64:68) However, he admits that he remained at Weitz performing full duty until May 1, 2015 when he took a voluntary layoff and then began working for another contractor, Portzen. (Tr-69, 100, JE 24-14) Thereafter, Edward worked full duty as a carpenter at Portzen until August 2015, and then began working for another contractor in August 2015, Williams Brothers. (Tr-68-69)

On January 29, 2015 and March 9, 2015, Edward had office visits with his family health providers, Eleanor Lavadie-Gomez, M.D. and Dianna Sprague, PA-C, for his personal health problems discussed above. (JE 3-1:8) There is no mention of hand, arm, shoulder or neck complaints in the records of those appointments. However, on April 29, 2015, these providers noted left shoulder pain that has been ongoing and suggested to Edward that a referral to an orthopedist would be beneficial. (JE 3-9:11) However, Edward declined at that time as it was difficult to get away from work. (Id.)

At the insistence and request of his family doctor, Edward was evaluated on June 19, 2015, by David Steinbronn, M.D., an orthopedic surgeon in the Steindler Orthopedic Clinic. (JE4-1) Dr. Steinbronn noted popping and grinding over his shoulder at times as well as pain while working and sleeping. (Id.) Also, the doctor reports numbness and tingling in the fingers and hands occasionally. (Id.) Dr. Steinbronn suggested conservative treatment for 3 to 4 weeks and a steroid injection along with MRI scanning, if Edward was still symptomatic in a month. (JE4-2) However, Edward did not return to Dr. Steibronn because his shoulder pain went away. (JE 24-30:31)

After June 2015, Edward did not seek treatment for upper extremity complaints again until March 2, 2016, about 8 months later. Edward testified that he attended a prescheduled appointment that morning with his family doctor. (Tr-72) He then went home, changed clothes and began driving to his job with Williams Brothers. (Id.) While driving, pain began radiating from the base of his neck and into the left shoulder and down his left arm which gradually worsened. After walking 10 minutes from his car to the job site, the pain became severe. (Tr-73:75) When his usual pain relieving maneuver of stretching the left arm outward and touching the top of his head did not help, he left the job site and went to the Mercy hospital emergency room in Iowa City. (Id.)

Jessica White, M.D. at Mercy hospital reports that Edward came in on March 2, 2016 with complaints of severe left shoulder pain radiating down to the arm. (JE5-1) Providers could not find much pathology in the shoulder and presumed this was a cervical radicular problem and an MRI was ordered. The MRI findings were as follows:

1. Moderate generalized cervical spine osteoarthritis.

2. Spinal stenosis is moderate at C5-C6, mild to moderate at C6-C7, and mild at C7-T1;

3. There is a disc extrusion at C7-T1, which is associated with effacement of the left lateral recess and moderate to severe left foraminal narrowing.

4. There is severe chronic left-sided foraminal narrowing at C6-C7.

5. There is moderate foraminal narrowings bilaterally at C5-C6 and on the right at C6-C7.

(JE. 5-5, 6-1)

Dr. White's assessment was cervical disc disorder with radiculopathy. Edward testified that he told Dr. White about the November 10, 2014 work injury and she told him that she thought that work injury was the cause of his cervical condition. (Tr-78) Dr. White explained to him that although she was not 100 percent certain, the cervical condition was not new and it had been there for a while. (Tr-78:79) There is nothing in the hospital records about causation, although Dr. White indicated she was aware of the November 10, 2014 work injury. (JE 5-3) Edward was then discharged with pain medications and a referral to Benjamin MacLennan, M.D., another orthopedist at the Steindler Orthopedic Clinic. Edward returned to the Mercy on March 7, 2016 stating that his symptoms remained unchanged and was awaiting approval from defendants to see Dr. MacLennan. Edward was told to continue to seek approval of this referral from defendants. (JE5-6) Eventually, the referral was denied by defendants. Edward then sought assistance from his family doctor and through that doctor's assistance he was able to obtain treatment from Dr. MacLennan. (Tr-83:85) How this was done is not

apparent in the record. Defendants did not authorize or pay for the care and Edward is seeking payment for Dr. MacLennan's treatment in this proceeding.

On March 11, 2016, Edward began treating with Dr. MacLennan. (JE4-4) This doctor reports that Edward complained of stabbing and aching pains over the left side of the neck with stabbing pains over the left forearm with numbness and tingling in the left hand. (Id.) He indicated that Edward also had pain, numbness and tingling off and on since his work injury in November 2014 and that Edward told him that it became severe and constant since waking up on March 2, 2016 and then he went to the ER. (Id.) Dr. MacLennan's impression was as follows:

> Cervical multilevel degenerative disc disease worse at C5-6, C6-7. Decreased lordosis. C7-T1 large left-sided disc extrusion, severe left sided stenosis.

(JE 4-6)

Dr. MacLennan provided Edward with treatment options, included surgery and told Edward that the surgery to remove the extruded disc fragment at C7-T1 would be difficult due its location. (Id.) Edward stated that he wanted time to consider the options. (Id.) Dr. MacLennan prescribed a muscle relaxer and OTC medication and use of Dilaudid only for more severe pain. (Id.) Edward was told to use common sense when working and to avoid heavy lifting. (Id.)

Apparently, after seeing Dr. MacLennan, Edward fell the same day on his left outstretch arm at work while working for Williams Brothers and sought treatment at the Mercy Occupational Health Clinic with complaints of pain in left elbow, left forearm, left wrist, left hand and fingers. (JE 8-5) He also had a "silver-shaped density" in the 5th finger. (Tr-61) His prior left sided injury in November 2014 was noted. (Id.) Ernest Perea, M.D., at that clinic reports that this injury was not related to the November 2014 injury as they are distinct mechanisms and etiologies. The doctor noted that Edward will continue to follow with Dr. MacLennan for the earlier injury. (Id.) Treatment of this recent injury by Dr. Perea was limited to OTC pain medications and Edward was directed to follow Dr. MacLennan's restrictions for the earlier injury. (Id.) In a follow-up visit with Dr. Perea on March 21, 2016, the doctor noted significant improvement and placed Edward at MMI for the March 11, 2016 injury in about two weeks. (JE 8-9) Edward was then discharged form his care. (Id.) No further reports from this doctor are contained in evidence. At hearing, Edward denied any complaints involving the neck, or shoulder from this injury and said he only had some scrapes on his knuckles and the symptoms from the November 2014 injury returned to base line. (Tr-62:63)

Upon referral by Edward's family doctor, Edward was evaluated on March 28, 2016 by Cassim Igram, M.D., and Brian Clark, PA-C, an orthopedist and his assistant, at the University of Iowa Hospital and Clinics, for a second opinion regarding his cervical radiculopathy/myelopathy. (JE.10-1) Dr. Igram reported to Dr. Hanna a differential diagnosis of cervical radiculopathy versus cubital tunnel syndrome and

recommended another EMG to further assess the condition. (JE 10-6) There are no further reports in evidence from Dr. Igram.

Edward returned to Dr. MacLennan on April 27, 2016 and June 8, 2016. (JE.4-7, 4-10) The doctor reports a positive Spurlings test and he did not change his initial impression/ diagnosis. (JE 4:8, 11) Dr. MacLennan continued to provide a surgical option for the extruded disc at C7-T1 stating that surgery at that level was the best chance of regaining left hand strength if done sooner rather than later. (JE 4-11) However, Edward told the doctor that he must hold off on surgery because defendants were denying his workers' compensation claim and he financially cannot afford to be off work without pay for a surgery. (Id.) Dr. MacLennan instructed Edward that he should use common sense with the neck, not lift anything greater than 5-10 pounds, and watch his symptoms carefully for worsening. (JE 4-6, 8, 11) Edward said he is doing only lighter finish work at the time. (Id.)

During 2017, counsels for the claimant and the defendants solicited and exchanged several medical opinions as to the cause of Edward's cervical spine condition.

Edward's attorney began with an opinion from Robert Milas, M.D., a board certified neurosurgeon. In his report dated February 17, 2017, Dr. Milas's assessment of Edward's condition was cervical myelopathy secondary to cervical stenosis at C5-C6, C6-C7 and C7-T1 levels secondary to soft tissue hypertrophy as well as bulging of the discs at those levels with extrusion of a disc fragment at the C7-T1 level. (JE 12-2) The doctor opined that this condition was either directly caused or exacerbated by the November 10, 2014 injury, but that the extruded disc at C7-T1 was directly caused by the injury. (Id.) Dr. Milas further opined that the spine condition constitutes a 30 percent permanent partial impairment to the whole person and that Edward is currently limited to a sedentary occupation. (JE 12-2:3) He emphasized that Edward requires immediate surgery to avoid irreparable damage to the cervical spinal cord. (Id.)

Edward's attorney then obtained an opinion from Richard Kreiter, M.D., a board certified orthopedic surgeon. In his report dated February 23, 2017, Dr. Kreiter diagnosed moderate stenosis at C5-6, C6-7, and C7-T1, with herniated disc at C7-T1 causing severe left foraminal narrowing, radiculopathy, with weakness and numbness of the left upper extremity. (JE 14-1) Dr. Kreiter opined that this condition was substantially caused by the work injury of November 10, 2014 and explained that the injury aggravated the degenerative changes to the cervical spine and was forceful enough to cause herniation or extrusion of the disc material and the fragment compromised the nerve root with severe radiculopathy or left arm numbness and weakness. (Id.) The doctor also states that the longer the pressure on the nerve remains the more likely permanent damage will be done. (Id.) He recommended that Edward avoid heavy construction work and follow Dr. MacLennan's restriction of no lifting of more than 5-10 pounds.

The defense obtained and produced an opinion from Dr. MacLennan. In a letter to the doctor from defense counsel, the doctor was asked to confirm by his signature certain opinions set out in the letter that were the result of a prior conference between the two. Those opinions were that the MRI of the cervical spine showed long-standing degenerative changes that would not be related to any specific work injury and, due to the fact Edward did not have any cervical spine complaints following the alleged work injury of November 10, 2014 until early 2016, the neck condition is not related to the alleged work injury in November 2014. The doctor signed the letter on March 15, 2017. (JE 15-1:2)

Defense counsel also obtained an opinion from William Boulden, M.D., another board certified orthopedic surgeon. In his IME report dated March 10, 2017, Dr. Boulden reports that Edward has neurological deficits in the left arm, but of unknown etiology. (JE 16-3) He states that although the stenosis in the cervical spine was pre-existing, it may have been aggravated. (JE 16-4) Based on history he received, the doctor did not think that the herniated disc occurred at the time of the November 2014 injury, but came on March 2, 2016 because this was the first time he had significant pain. Dr. Boulden stated that further work up or testing such as another EMG should be done before any surgery to rule out other possible causes such as cubital tunnel syndrome as suggested by Dr. Igram. (JE 16-4)

Claimant's attorney then obtained responsive opinions from Drs. Milas and Kreiter. In a letter report dated March 21, 2017, Dr. Milas re-affirmed his causation opinion based on the history of the onset of shoulder pain within 8 hours after the injury and the description of his pain 26 days after the injury to Dr. Milani. (Je 17-1:2) In a second letter dated March 27, 2017 Dr. Milas states that based on his findings on physical examination, there is no doubt that Edward has a myelopathy. (JE-19) He added that surgery is needed to halt the progression of the myelopathy and could possibly reverse some of the symptoms. (Id.) Dr. Milas states that the herniation was caused by the November 10, 2014 injury with resultant changes in the cervical spine producing a cervical stenosis. (Id.)

Dr. Kreiter responded on March 22, 2017 that Dr. Milani's assessment of lateral epicondylitis was not accurate because tennis elbow only causes pain or numbness in the elbow and forearm, not in the shoulder or hand. He added that a cervical nerve entrapment may cause pain or numbness in the left arm and neck. Many of his patients with such a herniation can relieve the pain by placing the hand of the symptomatic arm on their head which Edward stated he did to relieve his pain. Dr. Kreiter also questions whether Dr. MacLennan reviewed the records of Dr. Milani in that Dr. Milani had noted a positive Spurlings test in December 2014 and that claimant found comfort from placing his left hand on his head. On March 29, 2017, Dr. Kreiter continued to stand by his causation opinions after reviewing the reports of Drs. Milas, and Dr. Boulden. (JE-20)

As previously stated, Edward's last employer was Williams Brothers and he only left that employment when he was laid off due to the expiration of the 2016 construction season. Edward currently is receiving unemployment compensation due to his

seasonal layoff and remains on the union's list to be recalled when spring construction begins. He has not suffered much of a loss of income in that he earned over $76,000 in 2014 and over $61,000 in 2015. (JE 31) He was making $1,600 a week at Williams Brothers. (JE 23-1, 5-7)

The construction superintendent for Williams Brothers testified by telephone at hearing. He stated that they made accommodations for Edward's physical limitations by limiting the heavy work he was assigned to and giving him supervisory type of duty when that need arose. The supervisor added that Edward was an excellent employee due to his knowledge of carpentry and work ethic. (Tr-9:21)

Ultimate Findings:

I find the work injury of November 10, 2014 is a cause of Edward's current cervical spine condition as diagnosed by Drs. MacLennan, Milas, and Kreiter. I found the causation views of Drs. Milas and Kreiter more convincing than those of Drs. MacLennan and Boulden. The relative lull in treatment between January 29, 2014 and April 29, 2015 is minimal and largely due to the fact that defendants refused to treat claimant after January 29, 2014. Claimant's credible testimony indicated there was no intervening injury between January 29, 2014 and March 2, 2016 and although the symptoms varied in intensity and location over the period, they have been relatively constant since the injury on November 10, 2014. I did not find Dr. MacLennan's causation opinion solicited by defense counsel convincing because as pointed out by Dr. Kreiter, he apparently was unfamiliar with Dr. Milani's records concerning complaints of neck and shoulder pain with a positive Spurlings test a month after the injury. I should note that an internet search shows that a Spurlings test maneuver is a test to determine whether a patient has cervical radiculitis. Also, Dr. MacLennan failed to explain why left hand/finger numbness which Edward has complained of since November 2014 is not a symptom of cervical radiculopathy. Also, I do not find Dr. Boulden's views all that helpful to the defense. He admits to possible aggravation of the degenerative condition and only questions proceeding with surgery without further workup such as an additional EMG to rule out other causes of the symptoms than the herniation at the C7-T1 level. Dr. Boulden's opinion that the herniation did not occur in November 2014 because he did not experience severe pain until March 2016 is simply factually incorrect.

I further find that delay in providing treatment is worsening Edward's spine condition and he requires immediate surgery to halt further damage to the cervical spinal cord.

I am unable to find that Ed has achieved maximum medical improvement of his cervical spine condition. I find that he is currently medically unable to fully return to his job as a journeyman carpenter without accommodation for his work injury. However, so far he has been able to find accommodated work, although doing so may worsen his injury.

Given the fact that further medical treatment is anticipated to improve his condition, it is premature to assess permanent disability at this time.

I find that the requested medical expenses set forth in Joint Exhibits 32 & 33 constitute reasonable and necessary treatment. Although they were not authorized by defendants, they were incurred when defendants were denying medical care.

When Dr. Milas was retained by claimant to provide a disability evaluation, there was a prior disability assessment by Dr. Milani, a doctor retained by defendants to treat this work injury.

CONCLUSIONS OF LAW

I. 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 treating physician's opinions are not to be given more weight than a physician who examines the claimant in anticipation of litigation as a matter of law. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404, 408 (Iowa 1994); Rockwell Graphic Systems, Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

As claimant has not achieved MMI, I am unable to assess the extent of permanent disability caused by the work injury. That assessment will have to await further proceedings upon a timely filing of a review-reopening petition.

I am in a quandary concerning claimant's entitlement to temporary total disability/healing period benefits because, although I found that he is unable to fully

return to his job as a journeyman carpenter, claimant in the hearing report did not seek such benefits. Admittedly, he has obtained work that provides him with some accommodation, but according to the medical experts, this work is likely worsening his condition. Therefore, I must order defendants to pay weekly benefits beginning immediately if he remains unemployed.

II. Pursuant to Iowa Code section 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Claimant is entitled to an order of reimbursement if he has paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

In the case at bar, I found that the requested expenses to constitute reasonable and necessary treatment and which were incurred when defendants were denying medical care. They will be awarded.

III. Iowa Code 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. In this case, claimant seeks reimbursement for the examination and report of Dr. Milas in the amount of $260.63. This will be awarded.

ORDER

1. If claimant is currently unemployed, defendants shall immediately commence temporary total disability/healing period benefits at the stipulated rate of nine hundred seven and 24/100 dollars ($907.24).

2. Defendants shall immediately authorize a board certified orthopedic surgeon or neurosurgeon of claimant's choice to evaluate and perform any surgery or other treatment modality to address the claimant's current cervical condition.

3. Defendants shall pay the medical expenses listed in Joint Exhibits 32 and 33. Defendants shall reimburse claimant for his out-of-pocket medical expenses and shall hold claimant harmless from the remainder of those expenses.

4. Defendants shall reimburse claimant the sum of two hundred sixty and 63/100 dollars ($260.63) for the cost of Dr. Milas's IME evaluation.

5. Defendants shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33, including reimbursement to claimant for the one hundred and no/100 dollars ($100.00) filing fee paid in this matter.

6. Defendants shall file subsequent reports of injury (SROI) as required by our administrative rule 876 IAC 3.1(2).

Signed and filed this 5th day of June, 2017.

LARRY WALSHIRE
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.