BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEPHEN HARDWICK,

Claimant,

vs.

JBS USA, LLC,

Employer,

and

AMERICAN ZURICH INSURANCE, COMPANY,

Insurance Carrier,
Defendants.

File No. 5052156

ARBITRATION

DECISION

Head Note Nos.: 1108; 1402.40; 1803; 3001

STATEMENT OF THE CASE

Claimant, Stephen Hardwick, filed a petition in arbitration seeking workers' compensation benefits from JBS USA, LLC, employer, and American Zurich Insurance Company, insurance carrier, both as defendants, as a result of a stipulated injury sustained on July 15, 2014. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on December 15, 2015, in Iowa Falls, Iowa. The record in this case consists of claimant's exhibits 1 through 10, defendants' exhibits A through G, and the testimony of the claimant. The parties submitted post-hearing briefs, the matter being fully submitted on January 26, 2016.

ISSUES

The parties submitted the following issues for determination:

1. Whether claimant is entitled to temporary disability benefits from October 9, 2014 through October 19, 2014;
2. Whether claimant is entitled to temporary disability benefits from April 2, 2015 through April 6, 2015;
3. The extent of claimant's industrial disability;
4. The proper rate of compensation;
5. Whether defendants are responsible for claimed medical expenses;
6. Whether claimant is entitled to payment of medical mileage; and
7. Specific taxation of costs.

The stipulations of the parties in the hearing report are incorporated by reference in this decision.

By post-hearing brief, claimant raised an issue of claimant's entitlement to penalty benefits pursuant to Iowa Code section 86.13. This issue was not indicated on the signed hearing report, nor raised in discussion of the issues presented for determination at the time of evidentiary hearing. Therefore, the undersigned will not consider this claimed issue, as defendants were not provided the opportunity to defend against claimant's claim for such benefits.

FINDINGS OF FACT

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

Claimant's testimony was consistent as compared to the evidentiary record and his deposition testimony. His demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

Claimant was 50 years of age at the time of hearing. He resides in Marshalltown, Iowa with his wife. Claimant graduated high school in 1985; during high school, he earned C grades. He has no subsequent postsecondary or vocational education or training. Claimant denied any computer skills and denied currently, or ever, owning a computer. (Claimant's testimony; Exhibit 7, pages 5-6, 9; Ex. E, p. 11)

Claimant's work history consists of odd jobs such as yard work, detasseling, a short time in manufacturing, ringing a bell for the Salvation Army over the holidays, and his work for defendant-employer. (Claimant's testimony; Ex. 7, pp. 9-10; Ex. E, p. 12) Claimant began work at defendant-employer on January 3, 1989 and remained in the employ of defendant-employer on the date of evidentiary hearing. (Claimant's testimony; Ex. E, p. 12)

Over the course of his employment with defendant-employer, claimant held multiple job positions. Claimant initially held the position of pulling chitterlings. Using both hands, he would separate large intestines into one single strand. This work was performed at waist height and involved no overhead activities. Claimant indicated this position held roughly the same pay grade as the position he held at the time of evidentiary hearing. He performed the position for approximately two years. (Claimant's testimony; Ex. 7, pp. 10-12; Ex. E, p. 12)

Claimant then bid into a position in the trolley room. Hog carcasses hang from trolleys; once the hogs are removed, the trolleys enter the trolley room to be cleaned. Claimant monitored the room to ensure it functioned appropriately. He was required to lift trolleys which fell onto the ground and hang them on the rail to be cleaned. If there was a breakdown, claimant would remove all the trolleys from the rails and place them on the floor; he would then rehang the trolleys once the rails resumed functioning.

Claimant testified the trolleys resembled anchors and weighed 10 pounds. He indicated he did not perform repetitive overhead work in this position. Claimant indicated this position held roughly the same pay grade as the position he held at the time of evidentiary hearing. He performed these duties for roughly 2 years. (Claimant's testimony; Ex. 7, pp. 13-16; Ex. E, p. 12)

Next, claimant worked the hooking sides position, which required him to push hog sides onto metal hooks on the line in order to allow other employees to cut pieces of meat from the secured side. Duties were performed at waist height, without overhead tasks; however, the sides weighed 50 to 75 pounds each. Claimant performed this position for 5 years, at which time the position was eliminated due to automation. (Claimant's testimony; Ex. 7, pp. 11-13)

Claimant then took a position performing ham cutoff. Hogs came to claimant on a waist-height table; he then pulled hogs toward himself and lined the meat up under a laser light. Hams were then cut from these pieces of meat by an automated saw. Although no overhead work was required, claimant indicated the work was physical in nature, as each half-hog he handled weighed 50 to 75 pounds. In addition to maneuvering hog sides on the table, if a side fell onto the floor, claimant testified he was required to physically lift the side from the floor. Claimant performed this job for 13 years and eared $17.00 per hour. In February 2012, claimant was disqualified from the ham cutoff position following a disagreement with a supervisor. Although the ham cutoff position remains available at defendant-employer, claimant is never again allowed to perform this position. (Claimant's testimony; Ex. 7, pp. 16-20, 24-25; Ex. E, p. 12)

After his disqualification from ham cutoff, claimant worked for 3 years pushing hogs. Hog carcasses hang from trolleys in coolers; a pusher grabs several hogs and pushes or pulls the hogs onto the appropriate rail to transport the hogs to the cutting floor. Claimant indicated he generally pushed the hogs with his hands at approximately stomach or chest level and pulled the hogs with his arms at approximately waist level. He estimated each carcass weighs 125 pounds. Claimant testified he earned approximately $15.00 per hour in this position. (Claimant's testimony; Ex. 7, pp. 2-23; Ex. E, p. 12)

Claimant ultimately bid into a cooler condensation position. Claimant described this position as one of the least physically demanding jobs in the plant; he described the position as a high-seniority job which many employees desired. However, his hourly rate of pay decreased to $14.25 per hour. In this position, claimant utilizes a mop head on the end of a 6-foot pole to wipe condensation and grease off of overhead pipes, rails, and cooler surfaces. Claimant estimated the mop weighs approximately 5 pounds. He is also required to scoop fat trimmings from the floor with a plastic shovel. He places the fat in a barrel on wheels, which he then pushes to the kill floor to dump. Claimant estimated a full barrel of fat trimmings weighs 100 pounds. Additionally, claimant is tasked with replacing the rolls of plastic which are utilized to separate hogs. The plastic comes on a large roll weighing approximately 75 pounds; when the existing roll runs empty, claimant replaces it with a new roll. On occasion, claimant also washes the

floors of the cooler. Shortly prior to his stipulated work injury, claimant received a raise to $14.50 per hour. (Claimant's testimony; Ex. 7, pp. 23-24; Ex. E, p. 12)

By union contract, claimant is guaranteed pay for a minimum of 32 hours per week. The number of actual hours he works varies based upon production demands. However, he indicated if an employee misses work for a personal reason such as a sick day, that time is deducted from the 32-hour guarantee. Therefore, on weeks claimant worked less than the 32-hour threshold, claimant indicated it was possible he called in sick. Claimant testified in the 13 weeks prior to his work injury, his absentee calendar revealed no personal absences. Claimant testified he typically worked all hours offered to him by defendant-employer. (Claimant's testimony; Ex. 5, p. 8; Ex. 7, pp. 27-28, 48-49)

The evidentiary record reveals claimant worked the following hours and earned the following wages in the weeks preceding the stipulated July 15, 2014 work injury:

Check date	Number of Regular Hours/Gross Pay	Number of Overtime Hours/Gross Pay	Number of Holiday Hours/Gross Pay
July 11, 2014	28.01/$406.16	1.00/$21.75	8.00/$116.00
July 3, 2014	34.45/$499.53	-	-
June 27, 2014	35.24/$502.22	-	-
June 20, 2014	25.45/$362.66	1.00/$21.28	-
June 13, 2014	35.20/$501.64	-	-
June 6, 2014	32.00/$456.00	-	8.00/$114.00
May 30, 2014	-	-	-
May 23, 3014	29.72/$423.51	-	-
May 16, 2014	31.12/$443.49	-	-
May 9, 2014	38.53/$551.07	0.1/$2.14	-
May 2, 2014	39.18/$638.34	0.3/$7.97	-
April 25, 2014	38.77/$552.50	-	-
April 18, 2014	38.55/$549.38	-	-
April 11, 2014	40.00/$570.09	-	-
April 4, 2014	39.20/$558.65	-	-

Check date	Number of Regular Hours/Gross Pay	Number of Overtime Hours/Gross Pay	Number of Holiday Hours/Gross Pay
March 28, 2014	31.98/$455.72	-	-
March 21, 2014	39.52/$699.50	0.78/$20.71	-
March 14, 2014	40.00/$570.02	1.75/$37.42	-
March 7, 2014	37.75/$537.94	-	-
February 28, 2014	31.00/$441.77	1.55/$33.14	-
February 21, 2014	40.00/$570.05	3.75/$80.18	-
February 14, 2014	40.00/$570.00	0.98/$20.96	-

(Ex. 5, p. 6)

On July 15, 2014, claimant presented to defendant-employer to perform his cooler condensation duties. Due to a coworkers' absence, claimant was reassigned to pushing hogs. While performing his pushing hogs duties, claimant tripped over a coworker's foot and fell onto his right shoulder and face. He developed immediate pain of his right shoulder. (Claimant's testimony; Ex. 7, p. 31) Claimant proceeded to the nurses' station at defendant-employer, where he was provided Tylenol and Flexall topical cream; he was then returned to work. Claimant completed his work shift and then returned to the nurses' station. At that time, a nurse advised claimant to proceed to the hospital for x-ray. (Claimant's testimony; Ex. 7, pp. 33-34)

Claimant's wife transported claimant to Marshalltown Medical and Surgical Center (Marshalltown Medical), where he was evaluated in the Emergency Department by Charles Knudson, PA-C. An x-ray revealed an anterior humeral dislocation; the dislocation was reduced by emergency department staff. A post-reduction x-ray revealed a Hill-Sachs deformity, but normal alignment. (Ex. 2, pp. 1-2) Claimant was placed in a shoulder immobilizer, received a prescription for hydrocodone, and was referred for orthopedic evaluation. Claimant was advised not to work with the right arm. (Ex. 2, pp. 3-4)

On July 17, 2014, claimant presented to Marshalltown Orthopaedics and was evaluated by Margaret Fehrle, M.D. Following examination, Dr. Fehrle recommended use of a sling, as opposed to the shoulder immobilizer. She also recommended a course of conservative care, beginning with exercises and maintenance of the work restriction against use of the right upper extremity. (Ex. 3, p. 1) Thereafter, claimant continued to follow up with Dr. Fehrle. Dr. Fehrle continued to recommend use of a sling while working, no use of the right upper extremity at work, and continued physical therapy. (Ex. 3, pp. 2-3)

At follow up on September 4, 2014, Dr. Fehrle noted a lack of improvement and ordered a right shoulder MRI. In the interim, she recommended continuation of claimant's work restrictions and participation in physical therapy. Dr. Fehrle also issued prescriptions for Vicodin and Naproxen. (Ex. 3, p. 4) Claimant underwent the recommended MRI on September 16, 2014, which the radiologist read as revealing a Hill-Sachs deformity of the humeral head and tears of the supraspinatus and subscapularis. (Ex. 3, p. 25)

On September 23, 2014, claimant returned to Dr. Fehrle for MRI review. Dr. Fehrle opined the MRI revealed a Hill-Sachs deformity of the humeral head, as well as tears of the supraspinatus and subscapularis. Dr. Fehrle assessed a full thickness right rotator cuff tear and recommended surgical repair. (Ex. 3, p. 5)

Claimant consented to surgical repair, performed by Dr. Fehrle on October 10, 2014. Post-operatively, Dr. Fehrle described claimant's condition as a massive rotator cuff tear. (Ex. 3, pp. 10-11) Post-surgery, claimant was initially removed from work. (Ex. 3, p. 7) He was released to return to work on October 20, 2014, under restrictions of no use of the right upper extremity and placement in a clean environment. Claimant returned to work on light duty. (Ex. 3, pp. 12-13; Ex. D, p. 5)

On October 23, 2014, claimant returned to Dr. Fehrle for evaluation. Dr. Fehrle removed claimant's staples and indicated claimant was doing well post-surgery. She recommended continued use of a sling and no use of the right upper extremity at work. She also implemented a course of physical therapy. (Ex. 3, p. 14) Claimant thereafter continued to follow up periodically with Dr. Fehrle or her colleague, Daniel McGuire, M.D. During this period, continued light-duty work and physical therapy were recommended. (Ex. 3, pp. 15-16)

On December 21, 2014, Dr. Fehrle recommended continued physical therapy and began to gradually lessen claimant's work restrictions. On this date, she released claimant to work under restrictions allowing use of the right arm, but prohibiting lifting with the right arm. (Ex. 3, p. 17) On January 8, 2015, Dr. Fehrle recommended continued physical therapy and again lessened claimant's work restrictions to discontinue the required use of a sling and allow for lifting of 5 to 10 pounds up to shoulder level. (Ex. 3, p. 18)

Claimant returned to Dr. Fehrle on January 27, 2015. At that time, Dr. Fehrle described claimant as generally better, with improved pain levels. She noted claimant was no longer taking narcotics, but continued to utilize "routine" anti-inflammatories. Dr. Fehrle imposed restrictions of no lifting, pushing or pulling over 10 pounds and no lifting above shoulder height. She also recommended additional physical therapy. (Ex. 3, p. 19) At follow-up appointments in February and March 2015, Dr. Fehrle continued to impose work restrictions and recommended physical therapy. (Ex. 3, pp. 20-21)

Claimant testified while he was under temporary work restrictions, he initially performed light duty sorting, stacking and bagging cotton gloves used by employees. In April 2015, he returned to his preinjury cooler condensation position, as no heavy lifting was required. (Claimant's testimony; Ex. 7, pp. 46-47)

Claimant testified he suffered with varicose veins throughout his life, including requiring two stripping procedures in each leg. He described these procedures as providing temporary relief, following which the varicose veins return and continue to protrude even closer to the skin. While showering on April 2, 2015, a vein on his right ankle ruptured and began to bleed. Claimant indicated he had suffered with such bleeds in this general location on three or four past occasions, but was able to stop the bleeding without medical attention. On April 2, 2015, claimant testified he attempted to stop the bleeding, but was unable to do so. Claimant testified he lost consciousness and his wife ultimately called 911. Claimant was transferred via ambulance to the hospital. (Claimant's testimony; Ex. 7, pp. 43-45)

The Iowa EMS report of April 2, 2015 notes a chief complaint of a ruptured varicose vein of the right leg. (Ex. G) The record notes a history of varicose vein problems in the past, including undergoing stripping procedures. The record indicates claimant's right leg began to bleed and proceeded to bleed more than on past occasions. (Ex. 2, p. 5) It also noted that use of medications was denied. (Ex. G)

The ambulance transported claimant to Marshalltown Medical, where he was evaluated by Phillip Alscher, M.D. Dr. Alscher noted claimant's history of varicose veins and two stripping procedures. He also noted claimant has experienced rupture of veins and bleeding events before, but not to this degree. Dr. Alscher noted claimant reported utilizing Aleve twice daily for arthritic discomfort of his shoulder. (Ex. 2, p. 6) Claimant was admitted to the hospital and received a blood transfusion. (Ex. 2, p. 7) The following day, claimant was discharged from the hospital by Benjamin Howe, D.O. Dr. Howe noted claimant had been utilizing naproxen for pain relief. He recommended discontinuation of this medication due to its bleeding and antiplatelet effects; he recommended utilization of Tylenol for pain. (Ex. 2, p. 9)

On April 6, 2015, claimant presented to personal physician, Darrell Jebsen, M.D., in follow up of his hospitalization. Dr. Jebsen noted claimant had a long history of venous insufficiency with bilateral lower extremity varicosities, as well as two stripping procedures in each leg. However, he indicated claimant suffered from "no prior bleeding events until that occurring" the prior week. (Ex. 4, p. 1) Dr. Jebsen assessed acute blood loss anemia and lower extremity varicose veins. He recommended use of compression wraps or stockings and released claimant to return to work under the restrictions in place pre-hospitalization. (Ex. 4, pp. 1-2)

Dr. Fehrle prescribed Naproxen as part of claimant's treatment of the work injury. At evidentiary hearing, claimant testified contradictorily regarding whether he was not utilizing prescription medication at the time of the April 2, 2015 vein rupture. Claimant

initially testified he continued to take prescribed Naproxen at the time of the event and had done so for several months. Claimant later testified he was not taking prescriptions at the time of the event and further, had not taken such medications for months prior to the event. He explained his prescription for Naproxen lapsed months prior to the bleeding event. Claimant then testified he utilized Aleve to assist with aches and pains. He testified he had utilized over-the-counter Aleve or Tylenol for years in order to treat such complaints throughout his body. He indicated he generally used Tylenol to treat his pain complaints, but occasionally used Aleve. Claimant ultimately admitted that he views Aleve and prescription Naproxen as essentially the same medication and therefore, uses the names interchangeably. (Claimant's testimony)

On April 15, 2015, claimant returned to Dr. Fehrle. Following evaluation, Dr. Fehrle recommended continued physical therapy and lessened claimant's work restrictions to allow for lifting up to 20 to 30 pounds with the right upper extremity. (Ex. 3, p. 22)

Claimant followed up with Dr. Fehrle on May 14, 2015. Despite claimant's continued complaints, Dr. Fehrle opined claimant had likely achieved maximum medical improvement (MMI). She recommended claimant complete the remaining two weeks of the prescribed course of physical therapy. Dr. Fehrle opined claimant should abide by permanent restrictions of no lifting over 30 pounds and no repetitive overhead motion with the right upper extremity. (Ex. 3, p. 23)

Following completion of the course of physical therapy, claimant returned to Dr. Fehrle on June 23, 2015. On this date, Dr. Fehrle opined claimant had achieved MMI. Dr. Fehrle restated the previously opined permanent restrictions of no lifting over 30 pounds and no repetitive overhead motion with the right upper extremity, but also noted claimant might be capable of lifting up to 50 pounds occasionally, provided the item was located near claimant's body and was not lifted above waist height. Dr. Fehrle opined claimant sustained a combined permanent impairment of 18 percent right upper extremity, based upon decreased range of motion (9 percent) and decreased strength (9 percent). (Ex. 3, p. 24)

On August 10, 2015, defendants' counsel authored a letter to Dr. Fehrle; she issued her responses to counsel's inquiries on August 18, 2015. Dr. Fehrle opined claimant achieved MMI on June 23, 2015 and had sustained a permanent impairment of 18 percent right upper extremity, the equivalent of 11 percent whole person. Dr. Fehrle also imposed permanent restrictions limiting repetitive overhead use of the right upper extremity and lifting up to 30 pounds with the right arm. While no immediate medical treatment was recommended, Dr. Fehrle noted claimant may suffer with long-term problems with arthritis secondary to the dislocation. (Ex. 3, pp. 27-28)

At the arranging of claimant's attorney, on September 9, 2015, claimant presented for an independent medical examination (IME) with physiatrist, Farid Manshadi, M.D. As an element of the IME, Dr. Manshadi performed a medical records review, including records pertaining to right shoulder treatment from July 2014 through

August 2015 and records pertaining to the vein incident with dates of April 2, April 3, and April 6, 2015. (Ex. 1, p. 1) He also performed a physical examination which included measurement of range of motion and manual muscle testing of the shoulders. (Ex. 1, p. 3)

Following records review, interview of claimant, and examination, Dr. Manshadi issued a report of his opinions dated October 19, 2015. Dr. Manshadi assessed a massive rotator cuff tear which required surgical intervention and resulted in continued significant deficits in range of motion and weakness involving the right rotator cuff muscles. (Ex. 1, p. 3) He opined claimant achieved MMI as of June 23, 2015 and indicated he did not recommend further treatment. Dr. Manshadi opined claimant sustained a combined permanent impairment of 19 percent right upper extremity, based upon deficits in range of motion (7 percent) and weakness (13 percent). Dr. Manshadi expressed agreement with the permanent restrictions imposed by Dr. Fehrle: lifting up to 30 pounds with the right arm, no repetitive overhead motion with the right arm, and the potential to lift up to 50 pounds occasionally with the item close to claimant's body and below waist height. (Ex. 1, p. 4) With respect to causation of claimant's vein event on April 2, 2015, Dr. Manshadi opined:

> In regard to whether naproxen can cause or contribute to cause the need for the blood transfusion on 04/02/15, my opinion is that obviously nonsteroidal anti-inflammatories can cause thinning of the blood and can subsequently contribute to bleeding tendency. As such, the use of naproxen probably could have contributed to or accelerated the blood loss resulting in anemia.

(Ex. 1, p. 4)

Claimant testified he did not discuss the vein condition with Dr. Manshadi at the time of the IME interview. (Claimant's testimony)

Claimant denied suffering with any right shoulder problems prior to the work injury of July 15, 2014. At the time of hearing, claimant expressed complaints of occasional and intermittent dull pain, decreased range of motion, weakness and stiffness of the right shoulder. Claimant testified he is ambidextrous; he utilizes his left hand to write, but generally performs all other activities with his right hand. He indicated that post-injury, he performs more tasks with his left arm than he had pre-injury. Claimant testified that following surgery and physical therapy, he regained some movement and strength; however, his right shoulder remains weaker than his left. In comparison of the condition of his bilateral arms, claimant indicated if his left arm is considered at 100 percent, he considers his right arm strength and range of motion to be 80 percent. He utilizes Tylenol at the conclusion of each work day to treat pain complaints. Additionally, since undergoing surgical repair, claimant sleeps in a recliner as opposed to his bed for fear of rolling onto and reinjuring his shoulder. (Claimant's testimony; Ex. 7, pp. 38-39, 52-53)

Claimant continues to work in his preinjury, cooler condensation, job for defendant-employer. Claimant testified he is capable of performing the physical duties of his work; however, he indicated he now performs certain job duties in a different manner. Specifically, claimant testified he has modified the manner in which he dumps barrels of fat trimmings. Pre-injury, claimant would move a 100-pound barrel of product to the kill floor, lift, and dump the bucket into a chute. Post-injury, claimant moves the barrel to the kill floor and scoops out ½ to ¾ of the product by hand. He then will dump the remainder of the product from the barrel. Claimant testified he does so in order to reduce the weight of the barrel to 30 to 40 pounds. Additionally, claimant testified he continues to hold his mop in both hands; however, if he is required to reach overhead, he only does so with his left arm. Finally, claimant testified pre-injury he lifted and carried the rolls of plastic he is required to refill; post-injury, he places a roll onto a wheeled barrel, pushes the barrel to the location, and then exchanges the roll. (Claimant's testimony; Ex. 7, pp. 25-27)

Claimant testified he earns $14.50 per hour. He enjoys his work and intends to remain employed at defendant-employer until he retires. He indicated he has not submitted bids for new positions at defendant-employer, nor applied for work with any other employer. Claimant is number 17 in seniority amongst defendant-employer's approximately 2,000 employees. (Claimant's testimony; Ex. 7, pp. 25-27, 40)

Claimant testified, if necessary, he would likely be able to perform his pre-injury positions of pulling chitterlings and pushing hogs. Although his pre-injury position of hooking sides has been eliminated, claimant testified he would likely be able to perform those duties. He expressed reservation regarding his ability to perform the trolley room position, as he feared re-injury if required to lift and potentially reach to rehang trolleys. Claimant testified he would not be capable of performing the ham cutoff position, as sides weighed greater than 30 pounds and he might be required to lift those from the floor. However, claimant was ineligible to return to the ham cutoff position prior to the alleged work injury. (Claimant's testimony)

As a result of the stipulated work injury of July 15, 2014, defendants paid 55 weeks of permanent partial disability benefits at the weekly rate of $359.69. (Hearing Report; Ex. 6, pp. 1, 3)

CONCLUSIONS OF LAW

The first issue for determination is whether claimant is entitled to temporary disability benefits from October 9, 2014 through October 19, 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).

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar

employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

At the time of evidentiary hearing, the parties agreed defendants had made payment of healing period/temporary total disability benefits for the period in question, with the exception of the first three claimed days. Defendants initially did not pay the three-day "waiting period" allowed by Iowa Code section 85.32. Through oversight, when claimant was found to have sustained permanent disability, defendants did not pay claimant for the three days in question as required by section 85.34(1). At the time of hearing, defendants stipulated payment would be made for the three days in question, plus interest. Therefore, no independent consideration of this issue is necessary.

The next issue for determination is whether claimant is entitled to temporary disability benefits from April 2, 2015 through April 6, 2015.

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).

The claimed period of April 2, 2015 through April 6, 2015 corresponds to claimant's varicose vein rupture and the resulting hospitalization and restriction from working. Therefore, to determine claimant's entitlement to temporary total disability benefits, the undersigned must determine if claimant's hospitalization for the vein event is causally related to the stipulated work injury. Claimant does not argue his varicose

vein condition and the bleed itself are causally related to the work injury of July 15, 2014, but rather that claimant was unable to stop the bleed and thus required medical treatment due to his use of a medication containing naproxen.

On September 4, 2014, Dr. Fehrle issued a prescription for Naproxen. The evidentiary record is void of any documentary evidence this prescription was filled or renewed. Dr. Fehrle's medical note of January 27, 2015 indicates claimant was no longer utilizing narcotic medication, but continued to use "routine" anti-inflammatories. Claimant's testimony lacks clarity regarding his use of prescription Naproxen versus over-the-counter Aleve; in fact, he testified to viewing the medications as synonymous. Given these facts, I am unable to conclude that claimant continued to utilize Naproxen as prescribed by authorized physician, Dr. Fehrle.

Claimant argues his use of an anti-inflammatory medication, whether prescription or over-the-counter, to treat his right shoulder discomfort resulted in blood thinning effects. Accordingly, when the rupture and bleed began, he was unable to stop the bleeding and consequently, required medical care. Only one physician has specifically opined as to a potential causal relationship between the impact of use of an anti-inflammatory and the severity of the bleeding event. Dr. Manshadi opined use of non-steroidal anti-inflammatories "can" cause thinning of the blood and contribute to bleeding tendency. He further stated naproxen use "probably could have contributed to or accelerated the blood loss" suffered by claimant. On discharge from the hospital, Dr. Howe similarly recommended discontinuation of the use of medication containing naproxen due to bleeding and antiplatelet effects.

Although defendants have not offered any medical opinions indicating claimant's use of an anti-inflammatory had no bearing on the severity of the bleeding event, the undersigned finds claimant has not met his burden of proof with respect to this issue. It is claimant who bears the burden of proving, by a preponderance of the evidence, that the work injury is a proximate cause of the disability in question. This standard is met when the causal connection is probable, as opposed to merely possible.

In this matter, no physician opined, based upon the specific facts of claimant's claim, that his use of anti-inflammatories definitively played a role in the severity of the bleeding event. Dr. Howe recommended discontinuation of use of anti-inflammatories due to bleeding effects, but did not opine claimant's use of anti-inflammatories played a role in claimant's specific event. His statement could have simply reflected prudent medical advice for a patient with a significant history of venous insufficiency. Furthermore, the evidentiary record contains no physician opinion specifically directing claimant to utilize an anti-inflammatory containing naproxen or any other non-steroidal anti-inflammatory as a result of the stipulated work injury.

Dr. Manshadi's opinion is also unpersuasive due to its equivocal nature. While Dr. Manshadi's IME report indicates he reviewed medical records regarding the April 2015 bleeding event, he did not include any summary of claimant's related care in his report. Dr. Manshadi did not discuss claimant's history of varicose veins or venous

insufficiency with claimant. Therefore, the extent of Dr. Manshadi's understanding of claimant's pre-event venous condition is unclear. Even putting aside this concern momentarily, Dr. Manshadi's opinions appear to more accurately reflect the fact that non-steroidal anti-inflammatories generally may have the side effect of thinning blood. He does not specifically describe whether claimant took one of these offending anti-inflammatories in a sufficient dosage or for a requisite amount of time to achieve a scenario where thinned blood played a role in claimant's particular instance. Rather, he simply opined claimant's use of naproxen, without indicating if he is referring to prescription or over-the-counter medication, "probably could have" played a role. Dr. Manshadi's opinions are simply too generalized and ambiguous to allow claimant to meet his burden of proof.

It is therefore determined claimant has failed to prove a causal relationship between the bleeding event of April 2015 and his use of medication containing naproxen. As a result, claimant is not entitled to temporary disability benefits for the claimed period.

The next issue for determination is the extent of claimant's industrial disability.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The parties have stipulated claimant's disability shall be evaluated industrially.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Claimant was 50 years of age on the date of evidentiary hearing. He graduated high school in 1985, during which he earned average grades. Claimant has no other formal postsecondary or vocational education or training. He entirely lacks computer skills. Given claimant's limited educational background and lack of computer literacy, his prospects for employment consist largely of physical labor. Claimant's work history consists of such physical labor positions, including his work for defendant-employer. Claimant began work at defendant-employer on January 3, 1989 and has remained consistently employed with defendant-employer in some position since that date.

As a result of the stipulated work injury of July 15, 2014, claimant sustained a massive right shoulder rotator cuff tear. Following a course of conservative treatment, claimant ultimately underwent surgical repair with Dr. Fehrle in October 2014. Post-surgery, claimant underwent a course of rehabilitation and Dr. Fehrle opined claimant achieved MMI as of June 23, 2015. No physician has recommended immediate or ongoing medical treatment and claimant has not sought active treatment of his right shoulder since June 23, 2015.

Dr. Fehrle opined claimant sustained a permanent impairment of 18 percent right upper extremity or 11 percent whole person as a result of decreased range of motion and strength. Dr. Manshadi, claimant's IME physician, reached a similar impairment rating of 19 percent right upper extremity, the equivalent of 11 percent whole person, based upon a similar methodology. It is therefore determined claimant sustained a functional loss of 11 percent whole person as a result of the work injury.

Dr. Fehrle imposed permanent restrictions of no lifting over 30 pounds with the right arm and no repetitive overhead use of the right upper extremity. Dr. Fehrle commented claimant was potentially capable of lifting up to 50 pounds occasionally, provided the item was located near claimant's body and was not lifted above waist-height. Dr. Manshadi expressed agreement with the restrictions expressed by Dr. Fehrle. Accordingly, the undersigned adopts these restrictions in evaluation of the extent of claimant's industrial disability.

Claimant has demonstrated motivation to continued employment, having continued to work throughout his course of treatment. As of the date of evidentiary hearing, claimant had worked just shy of 27 years for defendant-employer. Claimant has shown no inclination to seek work outside of defendant-employer and testified he hopes to remain employed with defendant-employer until his retirement. Claimant has returned to his preinjury position without formal job accommodations; however, claimant credibly testified he has altered the manner in which he performs certain tasks. Generally, he has made these alterations in order to remain under imposed permanent restrictions on lifting and reaching. Therefore, claimant's work injury does have bearing on the manner in which claimant performs his duties.

Upon consideration of the above and all other relevant factors of industrial disability, it is determined claimant sustained a 25 percent industrial disability as a result of the stipulated work-related injury of July 15, 2014. Such an award entitles claimant to 125 weeks of permanent partial disability benefits (25 percent x 500 weeks = 125 weeks), commencing on the stipulated date of October 20, 2014.

The next issue for determination is the proper rate of compensation.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Any week that does not fairly reflect the employee's customary earnings that fairly represent the employee's customary earnings, however. Section 85.36(6).

Both parties submitted proposed rate calculations based upon the 13 weeks preceding the work injury which the offering party deemed representative. Following review of the entirety of the evidentiary record and the arguments of the parties, the undersigned has determined any week in which claimant was paid for fewer than 32 hours is unrepresentative, due to the 32-hour guarantee provided in the union contract. Given this exclusion, the undersigned bases her rate computation upon the 13 weeks immediately preceding the work injury of July 15, 2014. Specifically, I have utilized the weeks with check dates of July 11, July 3, June 27, June 13, June 6, May 9, May 2, April 25, April 18, April 11, April 4, March 21, and March 14, 2014. The statue provides a clear directive for use of the 13 weeks immediately preceding the work injury unless those weeks are unrepresentative. Neither party has proven any of the utilized weeks are unrepresentative.

Claimant received the following gross pay for straight time hours worked in the representative weeks: $522.16 (July 11, 2014); $499.53 (July 3, 2014); $502.22 (June 27, 2014); $501.64 (June 13, 2014); $570.00 (June 6, 2014); $551.07 (May 9, 2014); $638.34 (May 2, 2014); $552.50 (April 25, 2014); $549.38 (April 18, 2014); $570.09 (April 11, 2014); $558.65 (April 4, 2014); $699.50 (March 21, 2014); and $570.02 (March 14, 2014). Claimant's gross earnings for these 13 weeks of regular hours total $7,285.10.

During the 13-week period, claimant also worked overtime in 5 weeks: 1.00 hours (July 11, 2014); 0.1 hours (May 9, 2014); 0.3 hours (May 2, 2014); 0.78 hours (March 21, 2014); and 1.75 hours (March 14, 2014). Iowa Code section 85.36(7) requires overtime hours to be included in the computation of gross earnings at claimant's hourly rate of pay, not at a premium rate. Claimant testified during the period in question, he earned $14.25 or $14.50 per hour. However, review of claimant's pay records reveal he was paid at a higher hourly rate during certain weeks.

Therefore, to determine claimant's correct hourly rate of pay for consideration of overtime hours, the undersigned was forced to compute claimant's hourly rate for each pay week. For the week of July 11, 2014, claimant's hourly rate of pay was $14.50 ($406.16 gross / 28.01 regular hours). For the week of May 9, 2014, claimant's hourly rate of pay was $14.30 ($551.07 / 38.53). For the week of May 2, 2014, claimant's hourly rate of pay was $16.29 ($638.34 / 39.18). For the week of March 21, 2014, claimant's hourly rate of pay was $17.70 ($699.50 / 39.52). Finally, for the week of March 14, 2014, claimant's hourly rate of pay was $14.25 ($570.02 / 40.00).

Having computed claimant's base hourly rate of pay for the 5 weeks claimant worked overtime hours, I can now compute what amount of the payment for overtime hours in each week is properly included in claimant's gross earnings. For the week of July 11, 2014, $14.50 is properly included as pay for overtime hours (1 hour x $14.50). For the week of May 9, 2014, $1.43 is properly included as pay for overtime hours (0.1 hours x $14.30). For the week of May 2, 2014, $4.89 is properly included as pay for overtime hours (0.3 hours x $16.29). For the week of March 21, 2014, $13.81 is properly included as pay for overtime hours (0.78 x $17.70). Finally, for the week of March 14, 2014, $24.94 is properly included as pay for overtime hours (1.75 hours x $14.25). Therefore, a total of $59.57 is properly included in the computation of claimant's gross earnings on the basis of overtime hours worked by claimant in the representative 13 weeks preceding the stipulated work injury.

Claimant's gross earnings during the representative 13 weeks totals $7,344.67 ($7,285.10 at straight time + $59.57 for overtime hours). When one divides $7,344.67 by 13 weeks, a gross average weekly wage of $564.97 is reached. Therefore, it is determined claimant's gross average weekly wage is $564.97. The parties stipulated at the time of the work injury, claimant was married with two exemptions. The proper rate of compensation is therefore, $382.95.

The next issue for determination is whether defendants are responsible for 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).

As stated *supra*, the undersigned determined claimant failed to prove a causal relationship between the April 2015 venous issue and the stipulated work injury of July 15, 2014. Therefore, defendants are not responsible for payment of medical expenses incurred in treatment of the non-compensable condition.

The next issue for determination is whether claimant is entitled to payment of medical mileage.

Claimant seeks payment for medical mileage incurred in procuring treatment of his stipulated right shoulder injury. Exhibit 9 details a request for payment of 243.1 miles incurred between July 15, 2014 and June 23, 2015; the providers seen on these occasions were authorized by defendants in treatment of the right shoulder condition. Defendants are therefore, responsible for attendant medical mileage expenses. Claimant detailed 243.1 miles travelled; at the applicable mileage rate of $0.56 per mile, claimant is owed $136.14.

Claimant also seeks payment for 117.6 miles travelled in connection with attendance of Dr. Manshadi's IME on September 9, 2015. Iowa Code section 85.39 places responsibility for reasonable transportation expenses to an IME upon defendants. Therefore, defendants shall pay claimant for 117.6 miles at the applicable mileage rate of $0.575 per mile, a total of $67.62.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Claimant requests taxation of the costs of: filing fee ($100.00); service costs ($12.96); medical record copying ($118.45); transcription costs for claimant's deposition ($123.55); and Dr. Manshadi's IME ($1,200.00). Defendants represented payment had been made for Dr. Manshadi's IME; therefore, taxation of this expense as a cost is unnecessary. Defendants did not dispute taxation of the remaining costs. These are allowable costs and are taxed to defendants.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant healing periods benefits at the weekly rate of three hundred eighty-two and 95/100 dollars ($382.95) for the period of October 9, 2014 through October 19, 2014.

Defendants shall pay unto claimant one hundred twenty-five (125) weeks of permanent partial disability benefits commencing October 20, 2014 at the weekly rate of three hundred eighty-two and 95/100 dollars ($382.95).

Defendants shall pay claimant medical mileage in the amount of two hundred three and 76/100 dollars ($203.76).

Defendants shall pay accrued weekly benefits in a lump sum.

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

Defendants shall receive credit for benefits paid.

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

Costs are taxed to defendants pursuant to 876 IAC 4.33 as set forth in the decision.

Signed and filed this 12th day of July, 2016.

ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Gary B. Nelson
Attorney at Law
PO Box 637
Cedar Rapids, IA 52406-0637
gary@rushnicholson.com

Patrick V. Waldron
Attorney at Law
505 5th Avenue, Ste. 729
Des Moines, IA 50309
pwaldron@pattersonfirm.com

EJF/kjw

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.