BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CODY LAUGHLIN,	FILED	
Claimant,	SEP 14 2018	File No. 5055049
vs.	WORKERS COMPENSATION	ARBITRATION
TYSON FOODS, INC.,		DECISION
Employer, Self-Insured, Defendant.		Head Note Nos.: 1402.20, 1402.40, 1402.60, 2802, 2907, 3001, 3002

Claimant Cody Laughlin filed a petition in arbitration on September 12, 2016, alleging he sustained injuries to his head, brain, and body as a whole while working for the defendant, Tyson Foods, Inc. ("Tyson"), on June 22, 2015. Tyson filed an answer on September 19, 2016, denying Laughlin sustained a work injury. The hearing was originally scheduled for August 24, 2017, in Waterloo, Iowa, and was continued to November 9, 2017, in Des Moines. The November 9, 2017 hearing was also continued on October 30, 2017, and rescheduled for April 23, 2018. In late March 2018, the hearing was assigned to a different deputy workers' compensation commissioner in Des Moines.

An arbitration hearing was held on April 23, 2018, at the Division of Workers' Compensation, in Des Moines. Attorney Joshua Moon represented Laughlin. Tammy Laughlin appeared and testified on Cody Laughlin's behalf. Laughlin was incarcerated and did not appear at the hearing. Attorney Jason Wiltfang represented Tyson. Joint Exhibits (JE) 1 through 10, Exhibits A through S, and 1 through 14 were admitted into the record. The individual pages of Exhibits R and S were not numbered, but contain sheet numbers in the bottom right and left corners. References to page numbers for Exhibits R and S in this decision are to the sheet numbers. The record was held open through June 13, 2018, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

Before the hearing the parties prepared a hearing report, listing stipulations and issues to be decided. Tyson waived all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between Laughlin and Tyson at the time of the alleged injury.

2. Although entitlement cannot be stipulated to, the parties agree Laughlin was off work from June 22, 2015 through June 22, 2016.

3. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.

4. At the time of the alleged injury Laughlin was single, and entitled to one exemption.

5. Costs have been paid.

ISSUES

1. Did Laughlin sustain an injury on June 22, 2015, which arose out of and in the course of his employment with Tyson?

2. Is the alleged injury a cause of temporary disability during a period of recovery?

3. Is Laughlin entitled to temporary benefits from June 22, 2015 through June 22, 2016?

4. Is the alleged injury a cause of permanent disability?

5. If the alleged injury is a cause of permanent disability, what is the extent of disability?

6. If the alleged injury is a cause of permanent disability, what is the commencement date for permanent partial disability benefits?

7. What is Laughlin's rate?

8. Is Laughlin entitled to payment of medical expenses set forth in Exhibit 13?

9. Is Laughlin entitled to recover the cost of an independent medical examination?

10. Is Tyson entitled to a credit for medical benefits paid under its group health plan?

11. Is Laughlin entitled to mileage reimbursement?

12. Should costs be assessed against either party?

13. Should interest be awarded?

FINDINGS OF FACT

Laughlin graduated from Waterloo East High School in 2011 and earned mostly B and C grades. (Exhibits Q, page 3; 9, pp. 1-2) At the time of the hearing Laughlin was twenty-six and he had been living at the Marengo County jail for the past nine months. (Transcript, p. 9; JE 4, p. 1; Tr., p. 8) Laughlin lived with his parents in Gilbertville, Iowa before his incarceration. (Ex. 9, p. 1)

After graduating from high school Sears hired Laughlin as a temporary employee. (Ex. 9, p. 2) Laughlin unloaded trucks in the warehouse, and assisted with installations of dryers and washing machines in customers' homes. (Ex. 9, p. 2) Laughlin operated a pallet jack and he was certified to operate a forklift. (Ex. 9, p. 2)

Laughlin left Sears and accepted a position in the warehouse for the United States Postal Service ("Postal Service"). (Ex. 9, p. 2) Laughlin loaded mail onto trucks and collected mail from the outside boxes near the building. (Ex. 9, p. 2) Laughlin relayed he worked thirteen hours per day, six days per week for the Postal Service and he earned $12.50 per hour. (Ex. 9, p. 2) Laughlin's employment with the Postal Service ended in September 2012. (Ex. 9, p. 2) After his employment ended, Laughlin worked for his father's construction business and assisted with roofing, siding, remodeling, and concrete work. (Ex. 9, pp. 2-3)

In the summer of 2013 the Isle of Capri Casino hired Laughlin to work in valet. (Ex. 9, pp. 2-3) After approximately three months, the Isle of Capri moved Laughlin to the hotel hospitality unit where he managed incoming shipments, and placed orders for linens, soap, and other supplies. (Ex. 9, p. 3) Laughlin also worked in maintenance, where he took apart old bed frames and installed new bed frames. (Ex. 9, p. 3) Laughlin worked for the Isle of Capri full-time and when he left he was earning $9.50 per hour. (Ex. 9, p. 3)

Target Distribution hired Laughlin in the fall of 2014 to load trucks. (Ex. 9, p. 3) Laughlin reported the job was fast-paced and required him to load boxes from conveyors. (Ex. 9, pp. 3-4) The job was seasonal and he earned $16.50 when he left Target Distribution. (Ex. 9, p. 4)

In January 2015, Tyson hired Laughlin and paid him $10.00 per hour. (JE 1, p. 1; Ex. 9, p. 4) After training, Laughlin's wage increased to $17.50 per hour. (Ex. 9, p. 4) Laughlin worked a variety of jobs at Tyson, but qualified on the pull ribs job a few months later. (Ex. 9, pp. 4-6)

Virginia Crane was Laughlin's supervisor at Tyson. (Ex. S, p. 2) Crane testified the pull ribs job is a physically demanding and competitive because it is one of the highest paying jobs at Tyson. (Ex. S, p. 2) Crane relayed it is not easy to qualify for the job because the job requires workers to hit a certain specification. (Ex. S, p. 2)

Crane testified Laughlin had a temper and became upset with himself at work several times because he was not meeting his own personal standards for the job, and she talked to him about his temper on more than one occasion, but she did not verbally reprimand or discipline him. (Ex. S, pp. 4-5) Crane agreed Laughlin was a conscientious worker who arrived at work on time and returned on time from breaks. (Ex. S, p. 7)

On June 22, 2015, Laughlin went to work. (Ex. 9, p. 6) Laughlin testified during his deposition he recalled:

> [w]ell, you know, as I'm working, I hit – you know, the spikes I told you about that hold the meat in place? Well, I get – I got to going, and I hit my knife on one of those, and I also – the very end of my blade, it jacked it all up. So then I'm having to muscle through those for a little while, while I'm trying to get my blade back up to par.
>
> Well, more meat is coming down, and – and I don't want to make them pull more because I'm falling behind, so I started grabbing my ceramic behind me, because that will take that out. It'll – it'll sharpen my blade back up. It'll smooth them bumps out. Well, I can't just have them in my belt the whole time. They'll start falling out. I'll just lose my stuff.
>
> So I put them on the table. It's like directly behind me, and I – I go to pull a couple in a row, so I could reach back and grab. Well, I forgot about the broken floorboard, because I'm rushing, and I – I didn't step over the top of it. I actually stepped like right in it and caught the heel of my – the heel of your boot sticks out further than, you know, your heel – well, the sole, I mean. And as I was going to pull back, I lost my balance, because I have no – my heel was stuck. And so I know I kept my blade away from me as I was falling, because the blade would have cut right into me if it hits me, because even if it's dull, it's sharp, very sharp.
>
> And I tried to break my fall, and I – the table is like this (indicating), and then it's got the – those sharp things that stick up (indicating) – or not sharp, but the plates so your tools don't fall off the edge of the table. Well, I fell back, and I got my helmet on, but it just got me in the very part that's not covered, and it hit me directly – directly there (indicating).

(Ex. 9, pp. 6-7) Laughlin relayed he hit the area behind his right ear, and recalled a coworker helped him up, he had a seizure before the ambulance arrived, and he had more seizures at the hospital. (Ex. 9, pp. 7-8) Laughlin denied he was feeling dizzy before he fell. (Ex. 9, p. 1)

Exhibits A and 14 are videos of the incident. The videos show Laughlin performing the pull ribs job. Laughlin turned around with a saw in his hands, and he fell

and hit the table with the right side of his body and head, and then he fell on the left side of his body on the ground. Immediately after the fall Laughlin sat up, the line stopped, Laughlin put on his helmet, and his coworker grabbed his right arm and shoulder while Laughlin rose up to a standing position.

Alfonzo Duran was working next to Laughlin when he fell. (Ex. 7, p. 2) Duran testified he recalled before the incident Laughlin was "leaning forward, and sometimes, when the piece was coming, he would just let it go. He wouldn't grab it." (Ex. 7, p. 5) Duran relayed it appeared Laughlin was not paying attention to his work, "like he's not there." (Ex. 7, p. 6) When asked whether Duran thought Laughlin was acting dizzy before he fell, Duran responded, "I – I don't think he was dizzy. I just – he was leaning forward, and he wasn't grabbing his pieces, and I was grabbing them for him and cutting them for him." (Ex. 7, p. 5)

Duran did not see Laughlin fall, but he heard a noise, saw Laughlin on the ground, and he stopped the line. (Ex. 7, p. 3) Duran helped Laughlin up. (Ex. 7, p. 3) When Duran helped Laughlin up Laughlin was dizzy. (Ex. 7, pp. 3-4) Duran testified Laughlin was a good worker and he never had any trouble working with him and had not observed Laughlin become angry on the job. (Ex. 7, p. 4)

During his deposition Duran and was asked, and responded:

> Q. Okay. In the area where you and Cody were standing, was there an area on the floor that, if you stood on it, there would be an indentation in the floor?
>
> A. Yeah, there was. Like between the – so it's like a metal floor, and they're – one of the planks is sitting a little higher than the other one, so even when you walk, you could trip. So when one steps with their foot between the two, you kind of balance – lose your balance a little bit. So it wasn't quite an indent. It was more that it was not leveled, the two planks are not leveled.
>
> Q. If you were to step on that area where it's not level, would part of it sink?
>
> A. No, it wasn't sinking in. It wasn't bending. It was that they're not leveled. One is lower than the other.

(Ex. 7, p. 2) Duran agreed the unevenness of the floors could cause a person to trip and fall if the person was not paying attention. (Ex. 7, p. 2) Duran also relayed the employees made several comments to the supervisor about the floors being uneven. (Ex. 7, p. 2) Duran agreed the unevenness existed before the June 22, 2015 incident, but he could not recall if it was there a month before the incident. (Ex. 7, p. 3)

Martin Barajas was working near Laughlin at the time Laughlin fell, but he did not observe Laughlin fall. (Ex. 5, p. 2) Barajas heard a noise and stopped the line on his side. (Ex. 5, p. 2) Barajas testified before the accident on June 22, 2015, he looked at Laughlin a few times and "he looked a little stressed, but I don't know if it was because of work, or maybe he wasn't feeling well." (Ex. 5, p. 3) Barajas explained it was normal to look stressed at work because "[i]t's so fast." (Ex. 5, p. 3)

Crane testified she was not aware of any indentation in the surface of the floor where Laughlin was working at the time of the incident. (Ex. S, p. 3) Crane did not witness Laughlin's fall on June 22, 2015. (Ex. S, p. 8)

Crane relayed before the fall Laughlin went to his car to retrieve papers for the General's signature around the time of the morning break. (Ex. S, pp. 5-6) Crane noted when Laughlin returned he was wet, but she could not recall if he was slightly wet or soaked. (Ex. S, p. 6) Crane testified, "I noticed that he didn't seem very – like Cody every day. When he brought the paper in, he explained it was – I don't remember exactly what it was. And when he turned around, he hit the corner of the desk, and I – knocked over, hit this little tray, black tray, you put little papers in." (Ex. S, p. 7) Crane testified, "[w]hen I asked him if he was okay, he seemed kind of muffled and said that he was cold, that he was wet, and I believe that was it. I – I don't remember exactly. I just remember knowing that he was cold." (Ex. S, p. 7) When questioned about what she meant by the word "muffled," Crane replied, "[s]o like – I don't know how to explain it –- not as hyper as he normally was." (Ex. S, p. 7) Crane further relayed:

> I mean that normally Cody is very up, very hyper, very, you know, go get everything, and I know that he was not himself that morning. And the way he spoke it was slower. It was not Cody. And when I asked him after he knocked over that tray and he said he was cold, I mean, I probably should have sat him down, but then break was almost over, so he left.

(Ex. S, p. 7) Crane acknowledged no one told her Laughlin was having any difficulties on the job the day he fell. (Ex. S, p. 8) When questioned about the mumbling, Crane agreed it was hard to understand exactly what Laughlin was saying, but he had indicated he was cold. (Ex. S, p. 13)

Robin Mueller was the safety manager on June 22, 2015. (Ex. R, p. 2) At the time of her deposition in May 2017, Mueller had been promoted by Tyson to employment supervisor. (Ex. R, p. 1) Mueller spoke with Laughlin's coworkers the day of the incident and none of his coworkers reported Laughlin presented any behaviors before his fall. (Ex. R, pp. 3-4) Mueller recalled Laughlin reported he tripped on the edge of the flooring and fell. (Ex. R, p. 17) Mueller did not recall anyone else reporting the flooring was uneven near the floorboards before or after the incident. (Ex. R, p. 18)

Mueller went to Laughlin's workstation and walked the floor area, back and forth and front to back, and she jumped on the floor. (Ex. R, p. 5) When questioned about

the flooring, Mueller relayed, "[t]hese floors are a little spongy all the time because it's an elevated work platform with supports underneath of it, so it's slightly spongy, but it was secure. I didn't see anything that would have caused concern for someone's safety or a slip, trip and fall incident or a hazard." (Ex. R, p. 5) Mueller explained the flooring is called "Kem grating," which is not made out of wood and has a rough surface that is water resistant and does not allow water to soak in. (Ex. R, p. 5)

During her deposition Mueller was asked whether she noticed any unevenness between two boards in the work area, and she responded, "[n]ot that I recall." (Ex. R, p. 7) Mueller was further questioned, and responded:

> Q. If you were to stand on the edge or the corner of one of these boards, would it sink below the level of the other board?
>
> A. I can't – I can't say that it wouldn't. What I can tell you is that when I walked to this, if there was some there, it wasn't significant enough to be concerned about a trip hazard.
>
> Q. What would be a measurement that you would use?
>
> A. Quarter to half an inch you might catch your toe on it. But as I recall, when I walked these areas, I walked these seams, I did not – I didn't see or feel a surface difference significant enough to cause me to be concerned about a trip hazard.

(Ex. R, p. 7) Mueller acknowledged thirty-eights of an inch might be enough to catch a toe of a shoe if a foot is scuffed across it. (Ex. R, p. 7)

Laughlin relayed the floors of the plant are always wet and slippery. (Ex. R, p. 15) Laughlin testified given the wet and slippery condition Tyson would "educate and harp, if you will, to employees about the need to be careful when they walk, because the floors are always wet and slippery." (Ex. R, p. 15)

Laughlin hit the right side of his head on a table at his workstation on June 22, 2015. This is not Laughlin's first head injury. Laughlin has a preexisting history of traumatic brain injuries and encephalitis.

On October 4, 2007, at age fifteen, Laughlin was playing baseball at school and while sliding into home plate he landed awkwardly, hitting the top left side of his forehead and parietal region. (JE 4, p. 1) Laughlin denied loss of consciousness, but began experiencing pain on the top of his head fifteen minutes later, with nausea, and complained he was feeling cold and weak. (JE 4, p. 1) Laughlin went to lie down, lost consciousness, and his mother transported him to Covenant Medical Center. (JE 4, p. 1) Laughlin was assessed him with a "blunt head injury with an apparent likely mild concussion." (JE 4, p. 2) Laughlin received a head computerized tomography scan, which the reviewing radiologist noted was unremarkable. (JE 4, pp. 3-4)

Laughlin continued to complain of daily headaches and sought treatment with his family practitioner, Timothy Horrigan, M.D. (JE 3, p. 1) Laughlin attended an appointment with Dr. Horrigan on November 16, 2007, complaining of headaches and a red rash for one week on his trunk, back, arms, and legs. (JE 3, p. 1) During the night of November 17, 2007, Laughlin became delirious with a fever and ran away from home, and alleged "[h]e was instructed by voices he heard to run and jump off a bridge." (JE 4, p. 5) Laughlin ran out of energy while running and collapsed in a ditch and called his father on his cellular telephone, and his father transported him to Covenant Medical Center. (JE 4, p. 5) A head computerized tomography scan taken that day was unremarkable. (JE 4, p. 4)

During his hospitalization Laughlin complained of headaches and hearing voices after his girlfriend broke up with him, and he was agitated with hospital staff. (JE 4, pp. 7-9) Laughlin was placed in four point restraints in the intensive care unit. (JE 4, p. 14) Laughlin underwent brain magnetic resonance imaging, which the reviewing radiologist noted was negative. (JE 4, p. 12) Laughlin was diagnosed with viral encephalitis with delirium, aggression, and abnormal behavior. (JE 4, pp. 13-14) Laughlin received follow-up treatment with Farid Manshadi, M.D., a physiatrist, and from his family practitioner, Dr. Horrigan. (JE 3; JE 5)

On December 10, 2007, Laughlin attended an appointment with Dr. Manshadi. (JE 5, p. 1) Dr. Manshadi listed an impression of combination of traumatic brain injury and viral encephalitis, problems with cognition and memory, headaches, episodic symptoms with possible partial complex seizures, and subjective complaint of occasional loss of balance. (JE 5, pp. 1-2) Dr. Manshadi recommended Keppra, a neuropsychological evaluation with Megan Roberts, and physical therapy for balance training. (JE 5, p. 2)

During an appointment with Dr. Horrigan on November 26, 2007, Dr. Horrigan documented Laughlin had been hospitalized for an acute viral delirium and noted, "[h]e still has episodes where he feels like crows and trees are talking to him or his shadows are following him," and unsteadiness on his feet. (JE 3, p. 2) During an appointment on December 12, 2007, Dr. Horrigan noted Laughlin's parents had decided not to follow Dr. Manshadi's recommendations of Keppra and a referral to Iowa City. (JE 3, p. 6)

On June 6, 2010, during football practice Laughlin was hit in the head with a knee. (JE 4, p. 15) Laughlin relayed he could not remember the events just before or after his head injury, and he was unable to get up after the hit for moments. (JE 4, p. 15) Laughlin was taken to Covenant Medical Center the next day, complaining of a headache in the frontal and parietal regions, and his mother reported she heard him slip in the shower after he was dizzy. (JE 4, p. 15) Laughlin underwent a head computerized tomography scan, which the reviewing radiologist concluded was normal. (JE 4, p. 17) Dr. Horrigan examined Laughlin and diagnosed him with a concussion. (JE 4, p. 16)

On February 13, 2012, Laughlin was riding his bicycle when he was hit by a car. (JE 6, p. 1) Laughlin was transported to Covenant Medical Center. (JE 6, p. 1) Waterloo Fire Rescue paramedics noted during transport Laughlin became unresponsive, and following a sternal rub he became very agitated and confused, with no awareness of what had happened. (JE 6, p. 1)

At Covenant Medical Center Laughlin's mental status suddenly deteriorated, and he was intubated. (JE 4, p. 18) Hospital staff documented Laughlin looked "like he was using an imaginary bat and a number of other substantial changes" cognitively. (JE 4, p. 29) Laughlin underwent head, cervical spine, thoracic spine, lumbar spine, chest, abdomen, and pelvis computerized tomography scans, which the reviewing radiologist noted showed no acute abnormality. (JE 4, pp. 18, 23-25, 29) Laughlin was diagnosed with a decreased level of consciousness and a closed head injury/concussion. (JE 4, pp. 20-22) During treatment Laughlin reported he had sustained "a severe concussion in gym class eight to nine years ago with syncope and later told that he had to go back in the hospital with brain swelling . . . [with] late deterioration also." (JE 4, p. 29) Laughlin also complained of a constant bifrontal-occipital pounding headache with photophobia and audiophobia, nausea and spinning dizziness after his bicycle accident. (JE 4, p. 30) Marc Hines, M.D., examined Laughlin and listed an impression of a second concussion injury, a labyrinthine concussion, and a traumatic headache. (JE 4, pp. 30-31)

One month prior to his work injury at Tyson, Laughlin attended an appointment with Quentin Stenger, PA-C, a physician assistant in Dr. Horrigan's office, complaining of dizziness and nausea with some vomiting. (JE 3, p. 10)

Following the incident on June 22, 2015, Laughlin was transported to Allen Memorial Hospital, where he received a head computerized tomography scan, which Rajeev Anugu, M.D., documented was negative. (JE 7, p. 2) Hospital staff documented Laughlin had four generalized tonic-clonic seizures, confusion, memory impairment, and pain in the back of his head. (JE 7, p. 4) Laughlin was transferred to Mason City for care with David Beck, M.D., a neurosurgeon. (JE 7, p. 2; JE 8)

Dr. Beck admitted Laughlin to Mercy Medical Center North Iowa, with a diagnosis of cerebrocranial trauma on June 22, 2015. (JE 8, p. 1) Laughlin received a head computerized tomography scan, and the reviewing radiologist noted the scan was negative. (JE 8, p. 2) Dr. Beck restricted Laughlin from working. (JE 8, p. 3) Laughlin was discharged on June 24, 2015, with diagnoses of closed head injury, dysphagia, and history of seizures. (JE 8, p. 6)

Laughlin returned to Allen Memorial Hospital on June 30, 2015, for inpatient rehabilitation. (JE 7, pp. 6, 13) Hospital staff documented Laughlin had a closed head injury with left sided hemiplegia, impaired ambulatory status, impaired activities of daily living, expressive aphasia, left-sided peripheral vision impairment, and reduced

sensation of the left upper and lower extremities and lower lip. (JE 7, p. 14) Laughlin received physical therapy, occupational therapy, and speech therapy. (JE 7, p. 18)

On June 30, 2015, Laughlin underwent head magnetic resonance imaging, and the reviewing radiologist listed an impression of multifocal nonspecific subcortical white matter disease and noted the remainder of the exam was normal. (JE 7, p. 7) Hospital staff documented Laughlin presented with "extremely agitated with clenched fists, hyperventilation, impulsivity and non compliant with directions and commands . . . ." complaining of flashing lights." (JE 7, pp. 8, 22)

Dr. Manshadi examined Laughlin on July 1, 2015, and diagnosed him with a closed head injury with left-sided hemiplegia. (JE 7, p. 14) Dr. Manshadi noted Laughlin had an impaired ambulatory status, impaired activities of daily living, left-sided hemiplegia, expressive aphasia, left-sided peripheral vision impairment, and "[r]educed sensation left upper and lower extremities and involving the lower lip." (JE 7, p. 14)

During rehabilitation, Laughlin was examined by Muhammad Chowdhry, M.D., a psychiatrist. (JE 7, p. 23) Dr. Chowdhry found no psychiatric disability, but documented he was ruling out depression following Laughlin's traumatic brain injury. (JE 7, pp. 23-25) Dr. Chowdhry noted Laughlin's active problems were hemiplegia, seizures, left eye blurred vision, impaired taste, hemisensory loss, late effect of head trauma, cognitive deficits, impaired gait, and impaired mobility and activities of daily living. (JE 7, p. 24)

Ameer Almullahassani, M.D., a neurologist, ordered an electroencephalogram. (JE 7, p. 27) Dr. Almullahassani found the electroencephalogram was normal, and indicted no seizure activity or other abnormalities. (JE 7, pp. 28-29) Dr. Almullahassani also noted magnetic resonance imaging "showed very few nonspecific white matter changes, could be related to the old traumatic brain injury in 2006. Nothing acute." (JE 7, p. 29)

Laughlin was discharged from Allen Memorial Hospital on July 10, 2015. (JE 7, p. 43) Dr. Manshadi listed discharge diagnoses of rehabilitation for closed traumatic brain injury, rehabilitation of impaired ambulatory status, rehabilitation for impaired activities of daily living, cognitive deficit secondary to traumatic brain injury, expressive aphasia, balance issues, stuttering, left-sided weakness with good improvement, headaches, and seizures. (JE 7, p. 43) Dr. Manshadi noted Laughlin's magnetic resonance imaging was significant for multifocal subcortical while matter disease. (JE 7, p. 44)

During a follow-up appointment on July 14, 2015, Dr. Manshadi restricted Laughlin from working. (JE 5, p. 3) Dr. Manshadi also noted Laughlin needed to have a parent assist him with decision making regarding his employment with Tyson. (JE 5, p. 3)

On August 7, 2015, Laughlin returned to Dr. Manshadi. (JE 5, p. 4) Dr. Manshadi listed an impression of traumatic brain injury, expressive aphasia, cognitive deficits, stuttering, "probably related to TBI," left sided weakness, recovered, post-concussive headaches, and "MRI findings of multifocal subcortical white matter disease." (JE 5, p. 4) Dr. Manshadi restricted Laughlin from driving and working. (JE 5, p. 4)

Laughlin attended an appointment with Dr. Manshadi on September 11, 2015, reporting he was still having headaches, but his headaches had improved, and his stuttering is worse with a headache. (JE 5, p. 5) Laughlin's mother relayed his left leg continued to give out and he had fallen on several occasions. (JE 5, p. 5) Dr. Manshadi noted Laughlin was still having memory issues and he was receiving speech therapy. (JE 5, p. 5)

Dr. Gordon is a physician retained by Tyson to provide treatment to employees of Tyson. On September 15, 2015, Dr. Gordon opined Laughlin "had a transient very brief spell or clouding of consciousness that was antecedent to the fall that resulted in disequilibrium and him fall/lunging [*sic*] backwards and to the right," on June 22, 2015. (JE 2, p. 12) Dr. Gordon agreed when Laughlin fell he hit the right side of his "helmet/head on the table posterior to the line." (JE 2, p. 13)

Dr. Gordon also examined Laughlin's workstation at some point in time and noted "[t]he floor tiles are made from a composite material with an element of minor flexibility. There is not a base flooring under the floor tiles. In the area in question, there is an interface between two tile edges and in a portion of this interface there is an offset/dip of approximately 3/8 inches, where one would typically have the left foot." (JE 2, p. 13) Dr. Gordon found Laughlin had sustained a traumatic brain injury or concussion with post-concussive symptoms as diagnosed by Dr. Almullahassani, and recommended Laughlin not work at that time. (JE 2, pp. 13-15) Dr. Gordon reviewed additional medical records and opined he did not know Laughlin's baseline and he recommended an evaluation with a neuropsychiatric specialist and a neurologist. (JE 2, p. 23)

On October 12, 2015, Tyson sent Laughlin a letter noting Dr. Gordon had opined he had sustained "an antecedent transient brief neurological spell/clouding of consciousness that resulted in disequilibrium causing the initiation of the fall." (Ex. I, p. 1) Tyson informed Laughlin it was denying his claim effective that date, based on Dr. Gordon's finding. (Ex. I, p. 1) Tyson agreed to pay for all authorized medical bills incurred through that date. (Ex. I, p. 1)

Richard Roberts, Ph.D., performed a neuropsychological evaluation of Laughlin on October 28, 2015, at the request of Dr. Manshadi. (JE 10) Dr. Roberts noted Laughlin had experienced a head injury in 2012, and that he had a history of encephalitis, but reported he fully recovered. (JE 10, pp. 2-3) Dr. Roberts did not document Laughlin's head injuries from 2007 and 2010. (JE 10) Dr. Roberts performed

testing, but did not identify the tests he performed, noting Laughlin's full scale IQ was 85. (JE 10, p. 3) Dr. Roberts documented, "[t]here was no time for formal effort testing," but concluded Laughlin's motivation to perform testing was good and "[n]either the patient nor his mother appeared to be overtly lying to the examiner." (JE 10, p. 3)

Dr. Roberts concluded:

1. The patient still displays many cognitive deficits from his presumed brain injury as described above. His frank aphasic has recovered somewhat since discharge from Acute Rehab.

2. He failed dichotic word listening in the absence of any clear structural lesion in the temporal lobes; this, together with his endorsement of a number of episodic (partial seizure-like) symptoms, is consistent with the presence of underlying clinical or subclinical electrophysiological dysfunction in his brain.

3. Although he has manifested some recovery from his previous aphasia, confrontation naming performance was lower than expected and Sentence Repetition performance was still in the severely defective range.

4. Performances on tests of delayed recall of both verbal and non-verbal information after a 20' delay were clearly defective; although the patient is not totally amnestic, he does manifest a clinically significant problem with recent memory function.

5. Markedly decreased sense of smell, poor performances on all fluency tasks, difficulty holding a consistent fine-motor response-set on the Luria drawings, and clearly defective performances on the Fist/Edge/Palm sequence are consistent with decreased executive function, and his mother's report of the same.

6. Anosognosia (denial or minimization of the full extent of his deficits), most likely on a neurological basis rather than a psychological basis.

7. An almost continuous complaint of post-traumatic headaches.

8. Most likely there was a pre-existing developmental arithmetic disorder.

9. I see no evidence of obvious secondary gain, somatization, malingering, or "poor-effort" syndrome, though no formal "effort testing" or "catch-the-malingerer testing" was administered due largely to lack of time.

(JE 10, p. 4)

Laughlin continued to complain of dizziness and Dr. Manshadi restricted him from working. (JE 5, pp. 9-10) Laughlin's physical therapist contacted Dr. Manshadi's office on December 29, 2015 reporting she was concerned because Laughlin's eyes were darting and he was not able to follow a pen. (JE 5, p. 11) The physical therapist noted Laughlin reported he had fallen in the shower ten days before, hit the front of his head, and had a headache, but he returned to baseline the next day. (JE 5, p. 11)

During an appointment on January 6, 2016, Dr. Manshadi referred Laughlin to Dr. Fitzgerald for his eyes, and noted he did not believe Laughlin could return to work due to his cognition, head trauma, and eye issues. (JE 5, p. 12) Laughlin continued to treat with Dr. Manshadi, complaining of near daily headaches, memory problems, and left-sided weakness. (JE 5, p. 16)

Stanley Mathew, M.D., a physiatrist, conducted an independent medical examination for Laughlin on July 13, 2016. (Ex. 1) Dr. Mathew reviewed Laughlin's medical records and examined him. (Ex. 1) Dr. Mathew listed an impression of traumatic brain injury, cognitive deficits, seizure disorder, post-concussive symptoms, depression related to chronic pain, dizziness, insomnia, low moods, and expressive aphasia. (Ex. 1, p. 4)

Dr. Mathew opined after reviewing the medical records, Laughlin was not suffering from a preexisting condition at the time of the June 22, 2015 accident, after reviewing the video he was unclear of the cause of Laughlin's fall, and he believed the striking of Laughlin's head against the steel table was the cause of his traumatic brain injury, expressive aphasia, cognitive deficits, stuttering, left-sided weakness, post-concussive headaches, magnetic resonance imaging findings of subcortical white matter disease, benign paroxysmal position vertigo, and depression. (Ex. 1, p. 4) Dr. Mathew placed Laughlin at maximum medical improvement as of June 22, 2016, and noted he will require continued pain management, and follow up with psychology, psychiatry, neurology, and with a physiatrist. (Ex. 1, p. 4)

Using Table 13-7 of the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Mathew assigned a twenty-five percent whole person impairment to Laughlin based on his expressive aphasia, and using Table 13-8, he assigned a ten percent whole person impairment due to "low moods, cognitive deficits," for a combined thirty-five percent whole person impairment. (Ex. 1, p. 4) Dr. Mathew opined he was uncertain if Laughlin could work gainfully with moderate-to-severe cognitive deficits, "[h]e may be able to perform some sort of manual labor, but at this time I do feel that he is totally disabled," noting Laughlin has balance issues, cognitive deficits, chronic headaches, and speech deficits that would make it difficult for him to work. (Ex. 1, p. 4)

Counsel for Laughlin sent a letter to Dr. Manshadi on August 4, 2016, enclosing a report from Dr. Mathew, and asking for his opinions concerning Laughlin. (JE 5, pp. 18-20) Dr. Manshadi responded on October 4, 2016, checking yes to all questions posed, without providing any written comments, agreeing with Dr. Mathew's opinions. (JE 5, pp. 18-20)

Daniel Tranel, Ph.D., with the University of Iowa Hospitals and Clinics ("UIHC") Department of Neurology, conducted a neuropsychological assessment of Laughlin for Tyson on June 28, 2016, and issued his report on August 7, 2016. (Ex. Q) Laughlin and his mother attended the appointment. Laughlin and his mother informed Dr. Tranel his mother had power of attorney over Laughlin since his work injury and he had not driven since his work injury. (Ex. Q, p. 3) This information was not true. Laughlin admitted during his deposition on August 23, 2016 he had driven after his work injury and he represented himself in a traffic matter in October 2015. (Ex. 9, pp. 23-24)

Dr. Tranel noted Laughlin failed numerous direct and embedded performance validity tests, and thus, the test results are not a fully reliable estimate of his true, underlying cognitive capabilities. (Ex. Q, pp. 5, 10) Dr. Tranel diagnosed Laughlin with a conversion disorder, persistent, with mixed symptoms, which preexisted the work injury. (Ex. Q, p. 10) Dr. Tranel concluded Laughlin was at maximum medical improvement from his work injury and he does not have any impairment from the injury, but he may benefit from psychiatric treatment for his mental health condition that is unrelated to the June 22, 2015 accident. (Ex. Q, p. 11)

On September 12, 2016, Dr. Mathew sent a letter to Laughlin's counsel after reviewing the neuropsychological report from Dr. Tranel. (Ex. 2, p. 1) Dr. Mathew noted he has treated "thousands of traumatic brain injuries" over his career and he believes Laughlin has a classic brain injury and he found no evidence of a conversion disorder. (Ex. 2, p. 1) Dr. Laughlin opined the June 22, 2015 accident was the primary cause of Laughlin's traumatic brain injury and resulting symptoms and disability. (Ex. 2, p. 1)

During his August 2016 deposition, Laughlin relayed he is interested in auto body repair, fitness, and dancing. (Ex. 9, pp. 19-22) Laughlin has experience operating power sanders and grinders for auto body repair, and painting vehicles. (Ex. 9, pp. 19-20, 22) Laughlin reported he was working on small engines, including mower and car engines. (Ex. 9, p. 21) Laughlin testified he watches videos on YouTube and looks up diagrams to work on American and European cars. (Ex. 9, p. 19)

Surveillance from 2016 and 2017 shows Laughlin working on cars for extended periods of time, while standing, sitting, bending over, and lying on the ground, including in the dark with flashlights. (Ex. H) The video surveillance does not show Laughlin has any balance problems or left-sided weakness. (Ex. H) Laughlin did not fall over or lose his balance in the video surveillance. (Ex. H) Video surveillance from April 8, 2017, shows Laughlin pushing a parked car by himself in a driveway. (Ex. H)

Exhibit G contains videos taken by Laughlin lifting weights and exercising, and dancing. The videos were taken after his work injury. (Ex. 9, p. 23) Laughlin testified he continued to lift weights, exercise, and dance after his work injury. (Ex. 9, pp. 19-23) The videos do not reveal any obvious balance problems or left-sided weakness.

Laughlin relayed during his deposition he was able to help his mom cook, and clean. (Ex. 9, p. 21) Laughlin stated his biggest "upset" is not being able to play football anymore since his work injury. (Ex. 9, p. 21) Laughlin reported he played semi-pro football for two seasons in 2012 and 2014, but not 2013. (Ex. 9, p. 21)

Laughlin continued to treat with Dr. Manshadi from December 2016 through March 2017. (JE 5, pp. 21-22) In June 2017, the Black Hawk County Jail contacted Dr. Manshadi concerning Laughlin's treatment, following his arrest on May 27, 2017. (JE 5, pp. 23, 25) Laughlin's mother contacted Dr. Manshadi's office and relayed Laughlin's medical needs were not being met, he was having seizures, he had fallen and had a lump on the back of his head, and he was having very severe headaches and memory problems. (JE 5, p. 26)

Dr. Manshadi examined Laughlin on June 26, 2017, at his office accompanied by an officer from the jail. (JE 5, p. 29) Dr. Manshadi noted Laughlin had lost twenty-three pounds, and he was reporting seizures. (JE 5, p. 29)

On July 10, 2017, Laughlin attended an appointment with Dr. Manshadi accompanied by an officer from the jail, reporting additional seizure activity and increased memory issues. (JE 5, p. 33; JE 9, p. 1) Dr. Manshadi adjusted Laughlin's Keppra dosage. (JE 5, p. 33; JE 9, p. 1) Dr. Manshadi signed a note finding Laughlin had been unable to work since June 20, 2015, and he was unable to work until at least September 11, 2017. (JE 5, p. 34)

Tyson sent Laughlin a letter on June 29, 2017, notifying him his leave of absence would expire on July 10, 2017, and he would be required to provide a return to work certificate. (Ex. D, p. 2) Tyson terminated Laughlin's employment on September 20, 2017, when he failed to report to work. (Ex. D, p. 1)

Dr. Manshadi was deposed on July 18, 2017. (Ex. 10) Dr. Manshadi reviewed the Tyson video of the fall and relayed Laughlin fell and hit his head. (Ex. 10, p. 2) Dr. Manshadi testified he could not tell whether Laughlin stumbled or had a fainting spell at the time of his work injury, but noted he did fall and strike the right side of his head. (Ex. 10, p. 11) Dr. Manshadi opined within a reasonable degree of medical certainty the left-sided arm and leg weakness could be explained by a right-sided head injury. (Ex. 10, p. 4) Dr. Manshadi testified when Laughlin arrived at the rehabilitation unit he had significant left-sided weakness, and he was stumbling. (Ex. 10, p. 7) Dr. Manshadi relayed "it improved over time," but Laughlin continued to have problems with periodic stumbling. (Ex. 10, p. 7)

Dr. Manshadi relayed Laughlin was able to mentally and physically handle his job at Tyson before his work injury, and he did not have any evidence of lingering effects from his prior brain injuries when Tyson hired Laughlin. (Ex. 10, p. 10) Dr. Manshadi had not examined Laughlin for several years before the June 22, 2015 work injury. Dr. Manshadi relayed Laughlin's diagnoses have not changed in the last two years. (Ex. 10, p. 11)

Dr. Manshadi testified he insisted Laughlin's mother attend his appointments because he wanted to make sure she understood and he was afraid with Laughlin's cognition issues that he may not be able to remember everything said during his appointments, and to make sure he is controlling his medication properly. (Ex. 10, p. 7)

Counsel for Laughlin noted that soon after the June 22, 2015 incident Laughlin's head magnetic resonance imaging was normal, and during follow-up imaging on July 1, 2015 with contrast, the radiologist listed an impression of subcortical white matter disease. (Ex. 10, p. 5) When questioned about the imaging, Dr. Manshadi relayed, "[w]ell, not unusual, Counselor, that a noninfused MRI with contrast, that after these traumatic brain injuries are usually normal. . . . And if contrast is not infused you may lose – you may lose the findings, and that's why it was asked for a contrast to check for those micro injuries." (Ex. 10, p. 5) When questioned concerning causation of the white matter disease, Dr. Manshadi testified,

> [w]ell, it's my opinion, I feel a person who has had – who is known – excuse me – who's known who had head trauma – that was observed in the video that I saw – and then consequent to that – or subsequent to that rather he has five seizures, grand mal seizure activity in the emergency room. So to me it indicates that more likely than not, the findings on the MRI with the MRI with the contrast are the new – newer injuries.

(Ex. 10, p. 5)

Dr. Manshadi noted his impressions of Laughlin have not changed and he believes Laughlin sustained a permanent impairment as a result of the June 2015 work injury. (Ex. 10, p. 5) Dr. Manshadi relayed he has not released Laughlin to return to work at Tyson because he has "some issues with his thinking process," his expressive aphasia persists, he could not tolerate repetitious activity, and he believes overstimulation in a noisy place could cause more seizures. (Ex. 10, p. 5) Dr. Manshadi testified he believes Laughlin could possibly work in office work, part-time. (Ex. 10, p. 11) Dr. Manshadi has reviewed Dr. Tranel's report and stated he does not believe Laughlin has an underlying longstanding psychological impairment. (Ex. 10, p. 16)

Dr. Gordon issued an opinion letter for Tyson on July 25, 2017. (JE 2, pp. 24-31) Dr. Gordon opined Laughlin's symptoms are non-verifiable based upon his clinical exam, medical records, and neuropsychological testing, and that his complaints are

non-neurological and unrelated to the June 22, 2015 incident. (JE 2) Dr. Gordon documented Laughlin did not exhibit any left-sided weakness or cognitive deficits during his examination and there was no demonstrable difference in the circumferences of his bilateral and upper and lower extremities. (JE 2, p. 25) Dr. Gordon's findings are consistent with my observations of the surveillance conducted by Tyson, and the videos posted by Laughlin.

Dr. Gordon noted Laughlin spoke in a normal fluid manner, and at times spoke with "hesitancy/dysfluency" and may have an element of expressive aphasia, but based on further research "if he truly had an expressive aphasia (dysphasia) or otherwise a dysarthria he would demonstrate such language/speech difficulties persistently and not just intermittently thus indicating a non-neurologically based speech pattern." (JE 2, p. 25) Laughlin did not testify at hearing. He was deposed, but his deposition was not recorded by audio or visual recording.

Dr. Gordon opined he agreed with Dr. Tranel that Laughlin's complaints are non-neurological and are not related to the June 22, 2015 incident and that Dr. Tranel had performed the only thorough cognitive testing of Laughlin. (JE 2, pp. 25, 27, 31) Dr. Gordon agreed with Dr. Tranel's diagnosis of a preexisting conversion disorder, persistent, with mixed symptoms, not attributable to the June 22, 2015 incident. (JE 2, p. 31)

Dr. Gordon opined there is no evidence to support Laughlin's contention he sustained a frontal lobe injury while working for Tyson on June 22, 2015. (JE 2, p. 25) Dr. Gordon personally reviewed Laughlin's imaging. (JE 2, p. 25) Dr. Gordon found while Drs. Mathew and Manshadi concluded the multi-focal, non-specific subcortical white matter disease shown in the July 1, 2015 imaging are the reason for the constellation of symptoms exhibited by Laughlin,

> these few subcortical white matter lesions of the frontal lobes are very small and diffuse and do not encompass a notable volume and would not explain any cognitive deficit, motor deficit (weakness), balance issues, headaches, seizures, etc. It is also important to note that they are called "non-specific" because as the name implies the cause or the significance for them is not defined or otherwise specific for any one particular disease process. Interestingly enough, it was not mentioned in the IME reports from Stanley Mathew, MD or James Gallagher, MD that the only attending neurologist to evaluate Mr. Laughlin, Dr. Almullahassani, noted that the brain MRI showed very few non-specific white matter changes which could be related to the old traumatic brain injury of 2006.
>
> Dr. Almullahassani did not himself even assert that the findings were related to the 6/22/2015 incident. Therefore, for the reasons above, it is not medically/neurologically plausible to assert that the brain MRI findings are due to the 6/22/2015 event or that the finding of the brain MRI would

> explain his constellation of symptoms. It is also important to note that objective EEG testing on Mr. Laughlin was negative.

(JE 2, pp. 25-26)

On May 25, 2017, Laughlin and John Bennett, his uncle, were indicted for burglary and larceny in the United States District Court for the Northern District of Iowa, following a theft of $57,657.00 from Dupaco Credit Union in Waterloo. (Ex. M, p. 1)

On October 31, 2017, Laughlin entered into a plea agreement with the United States Attorney, agreeing to plead guilty to both charges. (Ex. M) Laughlin and his uncle were also accused of ramming stolen vehicles into the Texas Street Mart, Prime Mart, B&B East, and University of Iowa Community Credit Union for "smash-and-grab" burglaries over a two week period. (Ex. N, p. 1) Laughlin did not appear at hearing to testify regarding his crimes. Laughlin did not assert, nor did the federal court find, he was incompetent to enter into a guilty plea.

Laughlin's mother testified at hearing Laughlin told James Gallagher, M.D., a psychiatrist who performed an independent medical examination for Laughlin, that he had not driven since the accident. (Tr., p. 51) Laughlin's mother acknowledged after Dr. Gallagher learned Laughlin had driven after the accident and he had been charged with burglary and larceny, Dr. Gallagher withdrew his opinions. (Tr., p. 51)

CONCLUSIONS OF LAW

I. Arising Out of and in the Course of Employment

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000).). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

> it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an

> abandonment of employment or be an act wholly foreign to his usual work. *An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.*

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979) (emphasis in original).

Whether a claimant's injury arises out of the claimant's employment is a "mixed question of law and fact." Lakeside Casino v. Blue, 743 N.W.2d 169, 173 (Iowa 2007). The Iowa Supreme Court has held,

> [t]he factual aspect of this decision requires the [trier of fact] to determine "the operative events that [gave] rise to the injury." Meyer v. IBP, Inc., 710 N.W.2d 213, 218 (Iowa 2006). Once the facts are determined, a legal question remains: "[W]hether the facts, as determined, support a conclusion that the injury 'arose out of . . . [the] employment,' under our workers' compensation statute."

Id.

A. The Fall and the Alleged Personal Condition

It is undisputed Laughlin fell and hit his head on a table while he was working at Tyson. Tyson asserts Laughlin's fall was caused by a condition personal to Laughlin, which is not compensable, relying on the opinion of Dr. Gordon, a physician retained to examine and treat employees at Tyson. Laughlin rejects Tyson's assertion.

As a general rule, risks personal to the claimant are not compensable. Koehler Elec., 608 N.W.2d at 4. The Iowa Supreme Court has adopted the "actual-risk" doctrine for determining the compensability of an idiopathic fall. Lakeside Casino, 743 N.W.2d 177; Hanson v. Reichelt, 452 N.W.2d 164, 168 (Iowa 1990). Under the actual-risk doctrine adopted by the court in Hanson,

> [i]f the nature of the employment exposes the employee to the risk of such an injury, the employee suffers an accidental injury arising out of and during the course of employment. And it makes no difference that the risk was common to the general public on the date of the injury.

452 N.W.2d at 168. The court noted in Lakeside Casino, "[c]onsequently, with limited exceptions, we have abandoned any requirement that the employment subject the employee to a risk or hazard that is greater than that faced by the general public." 743 N.W.2d at 174-75.

Tyson appears to allege Laughlin sustained an idiopathic fall, which is not compensable. The appellate courts have not defined the term "idiopathic fall." There are a number of Iowa appellate published and unpublished idiopathic fall cases involving medical conditions personal to the claimant, such as epilepsy, dizziness, syncope, and alcoholism. Lakeside Casino, 743 N.W.2d at 171 (light-headed and nauseated); Koehler Elec., 608 N.W.2d at 4 (alcohol withdrawal); AARP v. Whitacre, No. 12-1519, 2013 WL 2107398, *2 (Iowa Ct. App. 2013) (choking and passing out); Bluml v. Dee Jays, Inc., File No. 5047125 (App. July 20, 2017) (seizure disorder).

The Iowa Court of Appeals has looked to the dictionary definition of the term "idiopathy" in a workers' compensation case. Tyson Foods. Inc. v. Tameklo, No. 15-0222, 2015 WL 7075834, *2 (Nov. 12, 2015). The court noted one of the physicians "leaned toward an 'idiopathic' or personal cause of the injury," and noted the term "'idiopathy' is defined as '1. a disease of unknown origin or cause; a primary disease. 2. A disease for which no cause is known.'" Tameklo, 2015 WL 7075834, *2 (quoting The American Heritage Dictionary 639 (2d College Ed. 1985)). The focus was on a disease of the claimant.

Laughlin testified at the time of his fall he was falling behind, and when he reached back to grab his knives from the table behind him,

> [w]ell, I forgot about the broken floorboard, because I'm rushing, and I – I didn't step over the top of it. I actually stepped like right in it and caught the heel of my – the heel of your boot sticks out further than, you know, your heel – well, the sole, I mean. And as I was going to pull back, I lost my balance, because I have no – my heel was stuck. And so I know I kept my blade away from me as I was falling, because the blade would have cut right into me if it hits me, because even if it's dull, it's sharp, very sharp.
>
> And I tried to break my fall, and I – the table is like this (indicating), and then it's got the – those sharp things that stick up (indicating) – or not sharp, but the plates so your tools don't fall off the edge of the table. Well, I fell back, and I got my helmet on, but it just got me in the very part that's not covered, and it hit me directly – directly there (indicating).

(Ex. 9, p. 7)

There were no witnesses to Laughlin's accident. Exhibits A and 14 are videos of the fall. The condition of the floor is not visible in the videos. The videos show Laughlin turned, fell, and hit the side of the table with the right side of his head.

Tyson has not alleged Laughlin intentionally hit his head on the table. Rather, Tyson relies on Dr. Gordon's opinion Laughlin "had a transient very brief spell or

clouding of consciousness that was antecedent to the fall that resulted in disequilibrium and him fall/lunging [*sic*] backwards and to the right." (JE 2, p. 12)

Dr. Mathew responded to Dr. Gordon's opinion, stating "[o]n my review of the video of June 22, 2015, I am unclear of the cause of the patient's fall. I disagree with Dr. Gordon that there was a transient loss of consciousness prior to the fall. The patient explains that an uneven surface is what caused his fall and his head injury." (Ex. 1, p. 4) Dr. Mathew further opined the striking of the table was the cause of Laughlin's traumatic brain injury and other conditions. (Ex. 1, p. 4) During his deposition, Dr. Manshadi testified that after reviewing the video and all of the medical records there is no way to tell from the video whether Laughlin stumbled or whether he had some kind of fainting spell that caused him to fall, but he did know Laughlin fell and struck the right side of his head. (Ex. 10, p. 11)

Crane, Laughlin's supervisor, testified prior to his work injury on June 22, 2015, Laughlin did not seem like himself, he was mumbling, cold and wet, and ran into the corner of a desk, knocking over a tray just before the accident. (Ex. S, p. 7) Barajas, Laughlin's coworker, testified before the accident on June 22, 2015, he looked at Laughlin a few times and "he looked a little stressed, but I don't know if it was because of work, or maybe he wasn't feeling well." (Ex. 5, p. 3) Barajas explained it was normal to look stressed at work because "[i]t's so fast." (Ex. 5, p. 3)

Duran was working next to Laughlin when he fell. (Ex. 7, p. 2) Duran testified he recalled before the incident Laughlin was "leaning forward, and sometimes, when the piece was coming, he would just let it go. He wouldn't grab it." (Ex. 7, p. 5) Duran relayed it appeared Laughlin was not paying attention to his work, "like he's not there." (Ex. 7, p. 6) When asked whether Duran thought Laughlin was acting dizzy before he fell, Duran responded, "I – I don't think he was dizzy. I just – he was leaning forward, and he wasn't grabbing his pieces, and I was grabbing them for him and cutting them for him." (Ex. 7, p. 5)

There is no evidence Laughlin was experiencing episodes of syncope within several years of the work injury. No witnesses testified Laughlin appeared dizzy or that he had experienced any seizures prior to the June 2015 work injury. Duran relayed when he helped Laughlin up after his fall he was dizzy. (Ex. 7, pp. 3-4)

This is not a case involving a fall on a level floor. Laughlin fell and hit the right side of his head on a table placed by Tyson at his workstation. Dr. Gordon agreed Laughlin hit the right side of his "helmet/head on the table posterior to the line." (JE 2, p. 13) The table created a condition in the workplace, an actual risk Laughlin encountered when he fell. AARP v. Whitacre, No. 12-1519, 2013 WL 2107398, *3 (Iowa Ct. App. May 15, 2013) (affirming deputy commissioner's finding the claimant's injury arose out of his employment where the conditions of the office where he hit the corner of the desk, the wall, and fell to the floor aggravated the effects of his fall); Benco Mfg. v. Albertsen, No. 08-0746, 2009 WL 249647, *2-4 (Iowa Ct. App. Feb. 4, 2009)

(noting the medical evidence was conflicting whether the claimant fainted, and affirming commissioner's determination that claimant sustained an injury arising out of her employment when the claimant fell backward and struck her head on a concrete wall screening the restroom from the work area).

Dr. Gordon also examined Laughlin's workstation at some point in time and noted "[t]he floor tiles are made from a composite material with an element of minor flexibility. There is not a base flooring under the floor tiles. In the area in question, there is an interface between two tile edges and in a portion of this interface there is an offset/dip of approximately 3/8 inches, where one would typically have the left foot." (JE 2, p. 13) Dr. Gordon noted there was a dip in the floor. Mueller, the safety manager at the time of Laughlin's fall also acknowledged thirty-eights of an inch might be enough to catch a toe of a shoe if a foot is scuffed across it. (Ex. R, p. 7)

During his deposition Duran was asked, and responded:

> Q. Okay. In the area where you and Cody were standing, was there an area on the floor that, if you stood on it, there would be an indentation in the floor?
>
> A. Yeah, there was. Like between the – so it's like a metal floor, and they're – one of the planks is sitting a little higher than the other one, so even when you walk, you could trip. So when one steps with their foot between the two, you kind of balance – lose your balance a little bit. So it wasn't quite an indent. It was more that it was not leveled, the two planks are not leveled.
>
> Q. If you were to step on that area where it's not level, would part of it sink?
>
> A. No, it wasn't sinking in. It wasn't bending. It was that they're not leveled. One is lower than the other.

(Ex. 7, p. 2) Duran agreed the unevenness of the floors could cause a person to trip and fall if the person was not paying attention. (Ex. 7, p. 2) Duran also relayed the employees made several comments to the supervisor about the floors being uneven. (Ex. 7, p. 2) Duran agreed the unevenness existed before the June 22, 2015 incident, but he could not recall if it was there a month before the accident. (Ex. 7, p. 3)

The dip in the floor observed by Duran and Dr. Gordon also created a condition in the workplace, and actual risk Laughlin encountered when he fell. Laughlin has established he sustained an injury arising out of and in the course of his employment with Tyson.

B. Nature of the Injury

Relying on the opinions of Dr. Manshadi, the treating physiatrist, and Dr. Mathew, a physiatrist retained to conduct an independent medical examination, Laughlin alleges he sustained a traumatic brain injury, expressive aphasia, cognitive deficits, seizures, stuttering, left-sided weakness, post-concussive headaches, subcortical white matter disease, benign paroxysmal position vertigo, and depression caused by the June 22, 2015 work injury. Tyson contends Laughlin sustained no permanent impairment as a result of the work injury, relying on the opinions of Dr. Tranel, an examining psychologist, and Dr. Gordon, an occupational medicine physician who treats employees of Tyson for Tyson. Dr. Gallagher, an examining psychiatrist retained by Laughlin, initially agreed with the conclusions of Drs. Manshadi and Mathew, but later retracted his opinion after he learned Laughlin had been driving when he said he had not, and Laughlin had been charged with burglary and larceny.

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. 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).

It is well-established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

> a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

Laughlin has sustained multiple assaults to his brain, including a traumatic brain injury while playing baseball in October 2007, encephalitis in November 2007, a concussion while playing football in June 2010, a closed head injury when he was hit by a car in February 2012, and a traumatic brain injury when he hit his head on a table while working for Tyson on June 22, 2015. Laughlin alleges he fully recovered after his prior brain injuries and encephalitis before he began working for Tyson.

Laughlin attended and passed a pre-employment physical with Tyson. He also qualified to perform a difficult job, the pull ribs job. There is no evidence in the record Laughlin complained of headaches or vertigo to his coworkers or supervisor, or that his coworkers or supervisor observed Laughlin had cognitive deficits, expressive aphasia, cognitive deficits, stuttering, or left-sided weakness prior to the June 2015 work injury.

Three physicians have given opinions on the nature of Laughlin's injury or injuries as a result of the June 22, 2015 fall, Drs. Gordon, Manshadi, and Mathew. All three physicians have biases. Drs. Manshadi and Mathew conduct independent medical examinations for claimants. Dr. Gordon's office is paid by Tyson to examine and treat Tyson's employees. Dr. Manshadi is the treating physiatrist in this case, and he examined Laughlin on a referral from his family physician in 2007, and then treated him following the June 2015 incident when Laughlin was admitted to the inpatient rehabilitation unit at Allen Memorial Hospital. (Ex. 10, p. 2) Dr. Tranel, a psychologist who works for the UIHC Department of Neurology, also provided an opinion, that was accepted by Dr. Gordon.

Dr. Gordon diagnosed Laughlin with a traumatic brain injury or concussion with post-concussive symptoms as diagnosed by Dr. Almullahassani, a neurologist who treated Laughlin at Allen Memorial Hospital. (JE 2, p. p. 13) Dr. Gordon restricted Laughlin from working in September 2015, pending further examination. (Ex. 2, pp. 13, 23) After reviewing additional medical records, Dr. Gordon issued an opinion on July 25, 2017, assigning no permanent impairment under the AMA Guides, agreeing with the opinion of Dr. Tranel that Laughlin's complaints are non-neurological. (JE 2, pp. 24-31)

In July 2016, Dr. Mathew issued a report, assigning a twenty-five percent whole person impairment for expressive aphasia using Table 13-7 of the AMA Guides, and a ten percent whole person impairment for Laughlin's low moods and cognitive deficits, using table 13-8 of the AMA Guides, for a total of thirty-five percent. Dr. Mathew noted Laughlin has balance issues, and chronic headaches. Dr. Mathew limited his findings to expressive aphasia, low moods, and cognitive deficits. He did not opine Laughlin has sustained permanent left-sided weakness, seizures, stuttering, benign paroxysmal position vertigo or assign a permanent impairment for these alleged conditions. (Ex. 1)

Following his work injury, Laughlin was admitted to an inpatient rehabilitation program at Allen Memorial Hospital, where he received therapy from multiple providers, including speech therapy. Dr. Mathew's brief report does not contain any findings concerning his observations of Laughlin's speech pattern, or any observed deficits in his

speech, apart from his summary conclusion Laughlin has "speech deficits." (Ex. 1, pp. 1-5)

Starting in February 2016, Dr. Manshadi listed an impression of expressive aphasia with improvement. (JE 5, p. 13) During an appointment on July 19, 2016, Dr. Manshadi documented, "he continues to have issues with word finding and he many times needs to think before he can say the word. I saw this on several occasions in my office today and I've seen it in the past as well." (JE 5, p. 16) Laughlin returned to Dr. Manshadi on September 13, 2016, and Dr. Manshadi documented Laughlin has "mild expressive aphasia, but that has improved. He also has some stuttering, and that also has improved to some extent." (JE 5, p. 17) Laughlin did not testify live at hearing. His deposition transcript was produced at hearing. I did not have a video or audio recording to listen to his speech cadence.

Drs. Manshadi and Mathew attribute the findings of multifocal subcortical white matter disease to the June 22, 2015 work injury. (JE 5; Ex. 1) Dr. Almullahassani, the treating neurologist at Allen Memorial Hospital noted magnetic resonance imaging "showed very few nonspecific white matter changes, could be related to the old traumatic brain injury in 2006. Nothing acute." (JE 7, p. 29) Dr. Almullahassani, a treating neurologist with superior training to Drs. Mathew and Manshadi, did not see any acute findings when looking at Laughlin's imaging connecting the nonspecific white matter changes to the June 22, 2015 work injury. Drs. Manshadi and Mathew did not explain or attempt to distinguish Dr. Almullahassani's findings.

In reviewing the video surveillance of Laughlin, I did not note any observable balance issues or left-sided weakness. Surveillance from 2016 and 2017 shows Laughlin working on cars for extended periods of time, while standing, sitting, bending over, and lying on the ground, including in the dark with flashlights. (Ex. H) The video does not reveal Laughlin had any balance problems or left-sided weakness. (Ex. H) Laughlin did not lose his balance or fall over in the video surveillance. (Ex. H) Video surveillance from April 8, 2017, shows Laughlin pushing a parked car by himself in a driveway. (Ex. H)

Exhibit G contains videos taken by Laughlin lifting weights and exercising, and dancing. The videos were taken after his work injury. (Ex. 9, p. 23) Laughlin testified he continued to lift weights, exercise, and dance after his work injury. (Ex. 9, pp. 19-23) The videos do not reveal any obvious balance problems or left-sided weakness, consistent with Dr. Gordon's observations during his examination of Laughlin.

Dr. Tranel conducted a full neuropsychological assessment of Laughlin in late June 2016, and issued his report in August 2016. (Ex. Q) Laughlin and his mother attended the appointment. Laughlin and his mother informed Dr. Tranel his mother had power of attorney over Laughlin since his work injury and he had not driven since his work injury. (Ex. Q, p. 3) The information they provided was not true. Laughlin admitted during his deposition on August 23, 2016 he had driven after his work injury

and he represented himself in a traffic matter in October 2015. (Ex. 9, pp. 23-24) Moreover, there was no evidence Laughlin claimed a disability requiring assistance from his mother or anyone else during the hearing on the traffic infraction in October 2015, or when he entered his recent guilty plea in the United States District Court.

Dr. Tranel noted Laughlin failed numerous direct and embedded performance validity tests, and thus, the test results are not a fully reliable estimate of his true, underlying cognitive capabilities. (Ex. Q, pp. 5, 10) Dr. Tranel diagnosed Laughlin with a conversion disorder, persistent, with mixed symptoms, which preexisted the work injury. (Ex. Q, p. 10) Dr. Tranel concluded Laughlin was at maximum medical improvement from his work injury and he does not have any impairment from the injury, but he may benefit from psychiatric treatment for his mental health condition that is unrelated to the June 22, 2015 accident. (Ex. Q, p. 11)

Dr. Roberts performed a neuropsychological evaluation of Laughlin in late October 2015, at the request of Dr. Manshadi. (JE 10) Dr. Roberts noted Laughlin had experienced a head injury in 2012, and that he had a history of encephalitis, but reported he fully recovered. (JE 10, pp. 2-3) The record does not support Laughlin reported his 2007 and 2010 accidents to Dr. Roberts or that Dr. Roberts was aware of these prior injuries. (JE 10) Dr. Roberts performed testing, but did not identify the tests he performed. (JE 10, p. 3) Dr. Roberts noted, "[t]here was no time for formal effort testing," but concluded Laughlin's motivation to perform testing was good and "[n]either the patient nor his mother appeared to be overtly lying to the examiner." (JE 10, p. 3) I find Dr. Roberts' report less convincing than Dr. Tranel's report because he did not perform any effort testing. He also failed to identify the tests he performed. Dr. Roberts did not reexamine Laughlin or provide a contrary opinion after Dr. Tranel issued his report in August 2016. Laughlin bears the burden of proving he sustained a permanent impairment from his work injury. Laughlin has not met his burden of proof.

II. Rate

The parties stipulated at the time of the alleged injury Laughlin was single and entitled to one exemption, but disagree upon the rate. Laughlin avers his weekly rate is $473.02. In its post-hearing brief, Tyson avers Laughlin's average weekly wage is $675.58, and his corresponding weekly rate is $416.92, based on the wage calculations in Exhibit F, and calculations in Exhibit 4. Neither party produced Laughlin's actual pay stubs. Laughlin avers the weeks of May 9, 2015 and May 16, 2015, are not representative. Many of the weeks have different hourly pay for each individual week. The parties both agree on the hourly pay and have not explained the variance in the hourly pay.

Iowa Code section 85.36 sets forth the basis for determining an injured employee's compensation rate. Mercy Med. Ctr. v. Healy, 801 N.W.2d 865, 870 (Iowa Ct. App. 2011). The basis of compensation shall be the "weekly earnings of the injured

employee at the time of the injury." Iowa Code § 85.36. The statute defines "weekly earnings" as

> gross salary, wages, or earnings of an employee to which such employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured, as regularly required by the employee's employer for the work or employment for which the employee was employed . . . rounded to the nearest dollar.

Id. The term "gross earnings" is defined as "recurring payments by employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits." Id. § 85.61. Weekly earnings for employees paid on an hourly basis

> shall be computed by dividing by thirteen the earnings, including shift differential pay but not including overtime or premium pay, of the employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury. If the employee was absent from employment for reasons personal to the employee during part of the thirteen calendar weeks preceding the injury, the employee's weekly earnings shall be the amount the employee would have earned had the employee worked when work was available to other employees of the employer in a similar occupation. A week which does not fairly reflect the employee's customary earnings shall be replaced by the closest previous week with earnings that fairly represent the employee's customary earnings.

Id. § 85.36(6). Thus under the statute, overtime is counted hour for hour, and shift differential, vacation, and holiday pay are also included. Irregular pay is not included. Laughlin included eight hours of holiday pay twice, once under other hours, and once with holiday pay. Holiday pay should not be included twice.

Tyson produced summary weekly wage records for the weeks ending January 17, 2015 through June 20, 2015. (Ex. F, pp. 1-3) The week ending May 9, 2015, Laughlin worked 33.92 hours, and for the week ending May 16, 2015, Laughlin worked 35.55 hours. (Ex. F, p. 2) During the first week of wages in January, Laughlin worked 4.57 hours. For the remaining weeks, Laughlin worked forty or more hours eighteen weeks, 39.08 hours for the week ending January 31, 2015, 38.33 hours for the week ending May 2, 2015, 33.92 hours for the week ending May 9, 2015, and 35.55 hours for the week ending May 16, 2015. Considering Laughlin's wage records, I agree the weeks ending May 9, 2015 and May 16, 2015 are not representative. For the thirteen representative weeks, Laughlin earned the following wages totaling $9,886.43, divided

by thirteen is $760.49. Under the ratebook at the time of Laughlin's work injury, Laughlin's weekly rate is $465.01.[1]

III. Temporary Benefits

Iowa Code section 85.33 governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012). As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. An award of healing period benefits or total temporary disability benefits is not dependent on a finding of permanent impairment. Dunlap, 824 N.W.2d at 556. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Id.

"[A] claim for permanent disability benefits is not ripe until maximum medical improvement has been achieved." Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 201 (Iowa 2010). "Stabilization of the employee's condition 'is the event that allows a physician to make the determination that a particular medical condition is permanent.'" Dunlap, 824 N.W.2d at 556 (quoting Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 200). If the employee has a permanent disability, then payments made prior to permanency are healing period benefits. Id. If the injury has not resulted in a permanent disability, then the employee may be awarded temporary total benefits. Id. at 556-57. As analyzed above, Laughlin established he sustained an injury arising out of and in the course of his employment, but he failed to meet his burden of proof he sustained a permanent impairment as a result of the work injury. Therefore, any benefits he is entitled to are temporary total disability benefits.

Under the statute, an employer is required to pay temporary total disability benefits "until the employee has returned to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, whichever occurs first." The parties stipulated Laughlin was off work from June 22, 2015 through June 22, 2016. No physician provided an opinion Laughlin was medically capable of returning to employment substantially similar to the employment in which he was engaged at the time of the work injury before June 22, 2016. Laughlin is entitled to temporary total disability benefits from June 22, 2015 through June 22, 2016, at the rate of $465.01 per week.

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[1] http://www.iowaworkcomp.gov/sites/authoring.iowadivisionofworkcomp.gov/files/2014ratebook.pdf.

IV. Medical Expenses and Medical Mileage

Tyson paid medical expenses for Laughlin's work injury up through the date it denied his claim, and is entitled to a credit for medical expenses paid by its group plan. Laughlin seeks payment of medical expenses set forth in Exhibit 13, and medical mileage.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses 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 the necessity therefor, 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).

Tyson denied Laughlin's claim on October 12, 2015, alleging Laughlin's fall was caused by a personal condition unrelated to his employment. (Ex. I, p. 1) Laughlin continued to receive treatment after October 12, 2015. As analyzed above, Laughlin has met his burden that he was entitled to temporary total disability benefits from June 22, 2015 through June 22, 2016.

On August 7, 2016, Dr. Tranel issued his opinion finding Laughlin was at maximum medical improvement from his work injury and he does not have any permanent impairment from the injury, but he may benefit from psychiatric treatment for his mental health condition that is unrelated to the June 22, 2015 accident. (Ex. Q, p. 11) No opinion was provided before this date that Laughlin had reached maximum medical improvement. Laughlin is not entitled to medical benefits after August 7, 2016. Tyson is responsible for all medical bills set forth in Exhibit 13, and medical mileage, causally related to the work injury prior to August 7, 2016. No pharmaceutical bills were submitted by Laughlin after August 7, 2016. Laughlin is not entitled to recover $600.00 in medical bills from Dr. Manshadi for September 13, 2016, December 13, 2016, and March 13, 2017. Laughlin is not entitled to medical mileage for the appointments with Dr. Manshadi, on September 13, 2016, December 13, 2016, and March 13, 2017, or with Dr. Gallagher on April 12, 2017, totaling 309.8 miles.

V. Costs

Laughlin seeks to recover costs set forth in Exhibit 11 totaling $14,614.61. Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides,

> [c]osts 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.

Laughlin seeks to recover medical record charges of $20.00 from Waterloo Fire and Rescue, $23.00 from Rock Valley Physical Therapy, $20.00 from PM&R Associates, $50.00 from PM&R Associates, and $40.00 for records from the Social Security Administration for records totaling $153.00. Laughlin also seeks to recover the cost of a telephone conference with Dr. Manshadi totaling $300.00, and deposition preparation with Dr. Gallagher totaling $350.00. The administrative rule does not allow for the recovery of the medical record charges, for the telephone conference with Dr. Manshadi, for the deposition preparation with Dr. Gallagher.

Laughlin seeks to recover the $1,500.00 "IME" expense for Dr. Gallagher from April 5, 2017, and two separate charges of $4,300.00 and $1,350.00. Itemized bills were not provided for these expenses showing what portions, if any, were for the examination, and what portions, if any, were for the report. No report was produced from Dr. Gallagher at hearing. Laughlin is not entitled to recover the charges from Dr. Gallagher. Iowa Code § 85.39; Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 846-47 (Iowa 2015) ("we conclude section 85.39 is the sole method for reimbursement of an examination by a physician of the employee's choosing and that the expense of the examination is not included in the cost of a report")

Laughlin also seeks to recover $1,550.00 for a charge from PM&R Associates/Dr. Manshadi. (Ex. 11, p. 2) Itemized billing was not provided for the charge. The description does not provide what the charge was for. I decline to award $1,550.00 for the unknown service performed by Dr. Manshadi.

Laughlin seeks to recover the cost of multiple reports, $1,063.20 from Dr. Mathew, $817.88 from Laughlin Enterprises, $275.20 from Dr. Mathew, $300.00 from PM&R, and $5.00 from PM&R. The administrative rule allows for the recovery of two doctor's or practitioner's reports. No itemized bill was produced from Laughlin Enterprises showing the cost of the actual report. I decline to award this cost. Laughlin is entitled to recover the cost of two reports. Laughlin is entitled to recover the $1,063.20 cost of Dr. Mathew's report, and the $300.00 cost of Dr. Manshadi's report.

Laughlin seeks to recover $418.80 for something from "VanWyngarden & Abrahamson." (Ex. 11, p. 2) It is unclear what this charge is for. I decline to award Laughlin the alleged cost for $418.80.

Laughlin also seeks to recover the $100.00 filing fee, $302.50 for deposition interpreter fees, and deposition fees of $503.00, $70.00, and $1,252.03. The administrative rule expressly allows for the recovery of the filing fee and deposition fees. Tyson is responsible for $2,227.53 in costs for the filing fee and deposition fees, $1,063.20 for Dr. Mathew's report, and $300.00 for Dr. Manshadi's report.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendant shall pay the claimant temporary total disability benefits from June 22, 2015 through June 22, 2016, at the rate of four hundred sixty-five and 01/100 dollars ($465.01) per week.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Tech., File No. 5054686 (App. Apr. 24, 2018).

Defendant is responsible for all causally connected medical bills and medical mileage set forth in this decision and the defendant is entitled to a credit for all medical bills paid through the claimant's group health insurance offered through the defendant.

Defendant is assessed one hundred and 00/100 dollars ($100.00) for the filing fee, two thousand one hundred twenty-seven and 53/100 dollars ($2,127.53) for depositions and interpreter fees for depositions, one thousand sixty-three and 20/100 dollars ($1,063.20) for Dr. Mathew's report, and three hundred and 00/100 dollars ($300.00) for Dr. Manshadi's report.

Defendant 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 14th day of September, 2018.

HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Joshua Moon
Attorney at Law
PO Box 810
Waterloo, IA 50704
moonj@wloolaw.com

Jason P. Wiltfang
Attorney at Law
905 Third St. SE, #111
Cedar Rapids, IA 52401
jwiltfang@corridorlaw.legal

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.