BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL PETERSON, Claimant, vs. EMPLOYMENT PLUS, Employer, and DALLAS NATIONAL INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5041079 ARBITRATION DECISION Head Note Nos.: 1108; 1108.20; 1400; 1402; 1800; 1801; 1803; 2700

FILED
APR 17 2015
WORKERS' COMPENSATION

STATEMENT OF THE CASE

This is a proceeding in arbitration. The contested case was initiated when claimant, Michael Peterson, filed his original notice and petition with the Iowa Division of Workers' Compensation. He alleged he sustained a work-related injury to his left lower back and to his body as a whole when he was kicking a lid with a steel toed boot. Claimant alleged the injury occurred on March 11, 2012. (Original notice and petition) A single petition was filed on February 1, 2013.

Defendant-employer was insured for purposes of workers' compensation by Dallas National Insurance Company, a part of FREESTONE INSURANCE COMPANY. A final order of insolvency was entered against FREESTONE on July 22, 2014, making Dallas National Insurance Company, an "insolvent" insurer." The case had been stayed commencing on or about October 24, 2014. However, on March 9, 2015, Deputy Workers' Compensation Commissioner James F. Elliott, lifted the stay order and the deputy determined the case should proceed to conclusion. The Iowa Insurance Guaranty Association declined to file an appearance in the case. It is not a party to this matter.

Defendants filed their answer on February 5, 2013. Defendants denied the occurrence of the work injury. A first report of injury was filed on April 30, 2013.

The hearing administrator scheduled the hearing for March 13, 2014 in Waterloo, Iowa at the Iowa Workforce Development Building. The undersigned appointed

Ms. Abby M. Kurtz as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified at his hearing. He was the sole witness to testify that day.

Claimant offered exhibits marked 1 through 15, and 17 through 23. Defendants offered exhibits A through J, L, M, N, R through CC. Counsel for claimant did not paginate each exhibit he submitted for his client. This made it very difficult for the deputy to cite to the record. Counsel should be reminded to paginate each exhibit before it is submitted.

The parties filed post-hearing briefs. The case was deemed fully submitted on May 14, 2014.

From September 9, 2014 through February 15, 2015, the undersigned was unavailable to hear and write arbitration decisions as she had been appointed by Governor Terry Branstad as Acting Workers' Compensation Commissioner. Those duties have now concluded, and the undersigned is readily available to decide this case.

STIPULATIONS

The parties readily agreed:

1. There was the existence of an employer-employee relationship at the time of the alleged injury;

2. Claimant sustained an injury on March 11, 2012, which arose out of and in the course of her employment;

3. The injury was a cause of temporary disability during a period of recovery;

4. If claimant is entitled to permanent disability, the type of disability is an industrial disability;

5. If weekly benefits are awarded, the parties agree, the weekly benefit rate is $303.14 per week;

6. Prior to the hearing, claimant was paid weekly wages in lieu of workers' compensation benefits for the period from March 12, 2012 through November 11, 2012, and defendants shall take credit for the same;

7. Defendants have waived all affirmative defenses they may have had available; and

8. The parties are able to agree to the costs involved in litigating the contested case.

ISSUES

The parties contend the issues are:

1. Whether claimant's injury is a cause of permanent total disability or whether claimant is an odd-lot employee;

2. Whether claimant is entitled to a running award; and if not, the commencement date for any permanent partial disability benefits;

3. Whether claimant is entitled to certain medical expenses pursuant Iowa Code section 85.27 and/or whether the medical treatment was authorized;

4. Whether claimant is entitled to penalty benefits; and

5. Whether apportionment is appropriate pursuant to Iowa Code section 85.34(7)(a).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This deputy, after listening to the testimony of claimant, and after reading the voluminous evidence and the post-hearing briefs, makes the following findings of fact and conclusions of law:

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 Rule of Appellate Procedure 6.14(6).

Claimant is single and 57 years old. He smokes one-half pack of cigarettes per day. At the time of his work-related injury, he was the father of one adult daughter. However, he had a close personal relationship with two minor children of a former girlfriend. The children did not reside with claimant nor did he claim them as dependents for purposes of his income taxes. Claimant testified he weighed approximately 170 pounds at the time of his hearing. Claimant graduated from Cedar Falls High School in 1976. He did not pursue any additional education beyond the high school level. He has not owned a computer for 20 years but he does have a "Smart phone."

Claimant has an extensive medical history that covers both physical and mental issues. In September of 2012, claimant became eligible for Social Security disability benefits. (Exhibit 21) He receives $1,630.00 per month. A number of medical issues formed the bases for claimant's disability under the regulations of the Social Security Administration. For example: claimant had a long history of substance abuse. By his own admission, he had used methamphetamines, smoked marijuana, and tried psychedelic mushrooms, although he had curtailed the use of most of those substances. He had issues of depression and anxiety dating back to the 1980's with several suicide attempts that pre-dated his work injury. Claimant had several hospitalizations for severe issues of depression and anxiety. Claimant experienced

numerous relationship issues with a woman over the course of eight years. There were financial issues. Claimant had several job losses. Claimant and his girlfriend suffered the ravages of the flood of 2008. Claimant's adult daughter and claimant's girlfriend did not have a positive and loving relationship. The adult daughter looked to claimant for financial support. Claimant was unable to support the daughter in the style she felt entitled to receive. The girlfriend was also looking to claimant for financial support. On several occasions, claimant was homeless and living in his automobile. At other times, claimant was looking to "the kindness of friends" for lodging.

With respect to physical problems, claimant sustained a left shoulder injury as a result of a work injury. The company was owned by claimant's brother and the claim drove a huge wedge between the brothers' bond of love. Claimant lost his job. He was restricted from lifting above his shoulder level as a result of the work injury. (Transcript, page 91) He had a work-related left ulnar nerve condition and carpal tunnel syndrome. All of the workers' compensation injuries were resolved via the settlement process. On October 4, 2010, claimant entered into a compromise special case settlement with the Second Injury Fund of Iowa for the sum of $40,000.00. (Exhibit L, page 6) On October 4, 2010 claimant entered into a compromise special case settlement with Custom Fit Foot, Inc., and EMC Insurance Company for the sum of $30,000.00. (Ex. L, p. 18)

Claimant had cancer in his right shoulder for which he was treated at the Mayo Clinic. He had fractured a toe. He suffers from MRSA. He has had bouts of chronic diarrhea. He suffers from sinus problems. Claimant suffers from tinnitus. At times, the tinnitus has caused him anxiety.

Claimant sustained an injury to his cervical spine and he experienced some pain to his low back because of a motor vehicle accident in February of 2011. One of claimant's hospitalizations occurred shortly after the motor vehicle accident. The doctors diagnosed claimant with post-traumatic stress disorder. Claimant settled his motor vehicle accident for $25,000.00.

Claimant commenced employment with Employment Plus on February 6, 2012. The company hired claimant to work at Ryder Logistics. Ryder Logistics is a company that warehouses parts for John Deere. When certain parts are needed by Deere, the workers at Ryder Logistics are required to gather the parts from containers and ship the parts to Deere. At all times, claimant was an employee of Employment Plus and not an employee of Ryder Logistics. Claimant earned $10.50 per hour. His gross earnings were $466.92 per week.

On March 11, 2012, while at work, claimant kicked the lid of one of the many containers with his steel toed boot in order to open the container. Claimant testified this was the preferred method for opening the containers as hand tools were not furnished to the workers. As a result of his kicking method, claimant's boot caught in one of the crates. He fell back; struck his low back and his left buttock against a pallet. (Tr., p. 45) The accident was witnessed by two other workers. A short time after the incident,

claimant observed his backside in a mirror. He noticed a large black and blue bruise with a knot the size of a football. (Tr., p. 46) Claimant completed his shift.

Claimant presented to Allen Memorial Hospital on March 12, 2012 per the request of the employer. (Ex. 4, p. 1) Brittany A. Ruff, PA, diagnosed claimant with: low back pain and a hematoma of the hip. (Ex. 4, p.2) A CT scan of the abdomen and the pelvis showed:

IMPRESSION:

1. Large left-sided flank and buttock hematoma.
2. No acute injury of the abdominal and pelvic organs.

(Ex. 4, p. 1)

Claimant underwent a CT scan of the lumbar spine on the same date. The results showed, "No acute bony abnormalities." (Ex. 4, p. 2) MRI testing of the lumbar spine occurred on July 11, 2012. The results showed:

IMPRESSION:

1. No disc herniation.
2. L4-5 Level degenerative disc disease, mild spondylosis, and mild left foraminal stenosis.

(Ex. 4, p. 4)

Claimant returned to Allen Hospital on March 19, 2012. (Ex. 6, p. 1) Claimant was already taking Vicodin and Norflex. (Ex. 6, p. 1) Claimant was diagnosed with a large left low back contusion and a hematoma on the buttocks. (Ex. 6, p. 4) Claimant was restricted from working. (Ex. 6, p. 5) On March 20, 2012, claimant noticed swelling and pain after he went fishing. (Ex. 6, p. 6) Claimant engaged in physical therapy at Allen Hospital. (Ex. 6) On April 18, 2012, claimant reported pain with activity. (Ex. 6, p.14) He also reported sciatica. (Ex. 6, p. 16) On May 9, 2012, claimant reported a worsening of his back condition with pain down past his left knee. (Ex. 6, p. 26)

A referral was made to Chad D. Abernathey, M.D., a neurosurgeon. (Ex. G, p.1) Dr. Abernathey reviewed the results of the MRI tests. The neurosurgeon opined:

> MRI of the lumbosacral spine demonstrates mild degenerative changes consistent with age without significant neural compromise. The neural elements are well decompressed in these images.

(Ex. G, p. 4)

Dr. Abernathey recommended the following:

> Mr. Michael Peterson clinically presents with chronic left flank and hip pain following work related injury. I do not recommend an aggressive neurological stance due to a paucity of clinical and radiographic findings. His neural elements are well decompressed on his images and his neurologic function is intact. I do not identify any spinal injuries. Therefore, I advised the patient to contact me should he develop any new neurologic symptoms or signs in the future and I would be happy to see him in additional consultation.

(Ex. G, p. 4)

Dr. Abernathey testified by deposition. The deposition was given on December 18, 2013. The neurosurgeon testified claimant suffered from only mild degenerative changes consistent with claimant's age and there was no neural compromise. (Ex. X, p.6) Dr. Abernathey opined claimant had only subjective complaints with no objective findings. (Ex. X, p. 17)

Dr. Abernathey testified specifically:

> Q. Do you think he has any ratable condition in his back or his body, for that matter, from your evaluation that would be related to the March 2012 fall?
>
> A. I can only speak to the spine, and I do not believe that he has any ratable condition regarding his spine.
>
> Q. Do you think he has any need for permanent restrictions related to the fall as far as it relates to his spine?
>
> A. No.

(Ex. X, pp. 8-9)

Claimant underwent a steroid injection on November 16, 2012. On November 20, 2012, Robert Broghammer, M.D., examined claimant at Allen Occupational Health Services. Claimant reported the injection did improve claimant's pain. Additionally, his range of motion did improve. (Ex. 6, p. 42) Dr. Broghammer returned claimant to work as he had reached maximum medical improvement. (Ex. 6, p. 45) The physician intended to release claimant to work without restrictions. (Ex. W, pp. 17-18)

In his deposition that was given on January 23, 2014, Dr. Broghammer testified he diagnosed claimant as suffering from "[A] low back contusion with a large hematoma in the buttock, low back, and left posterior leg." (Ex. W, p. 6) In short, Dr. Broghammer stated claimant suffered from a "bruise." (Ex. W, p. 6) The authorized treating

physician indicated the bruise measured 6 by 4.3 by 1.3 centimeters on the MRI test results. (Ex. W, p. 11) Dr. Broghammer also testified claimant suffered from low back strain. (Ex. W, p. 10)

Dr. Broghammer testified about any permanent impairment in the deposition he provided. The doctor stated:

> Q. Basically, he fell, had a bruise, it resolved, and he's had no findings - - objective findings to support his subjective complaints at any time? Other than with the bruise.
>
> A. Correct. Other than with the bruise.
>
> Q. Now, we know that you've done a couple letters on this case. I think we had an issue about your November 20 record whether you released him with permanent restrictions or without permanent restrictions. Do you recall that?
>
> A. Yes.
>
> Q. And my understanding is that what you intended to do was to release him without restrictions on November 20, 2012, correct?
>
> A. That's correct.
>
> Q. And I think we've clarified that now in the record. Again, my understanding was that you rated him a zero permanent impairment under the guidelines from the contusion and hematoma he suffered. Correct?
>
> A. Correct.

(Ex. W, pp. 18-19)

Claimant exercised his right to an independent medical examination pursuant to Iowa Code section 85.39. On March 6, 2013, claimant presented to Farid Manshadi, M.D., a physiatrist in Waterloo, Iowa. Dr. Manshadi observed the following during the examination:

> On examination today, on observation Mr. Peterson was noticed to change position from sitting to standing every 15 to 20 minutes.
>
> On examination of the lower extremities there was no atrophy. Reflexes were 2+ in the knees and ankles and symmetrical.
>
> Straight leg raising was positive on the left at about 20 degrees, negative on the right. Strength in the left leg was about 4+/5 and that was mostly due to pain the low back. Strength in the right leg was at 5/5 on manual muscle testing.

Sensory examination was intact to light touch and pinprick in the lower extremities. Left leg was longer than the right leg. Patrick's sign was positive on the left, negative on the right. He also had tenderness to palpation over the left lumbosacral paraspinals as well as involving the left SI joint. The spinous processes were nontender to palpation. Left pelvic rim was lower than the right side.

Further, his gait was also mildly antalgic on the left.

IMPRESSION:

1) Left-sided low back pain with left lower extremity radicular symptoms

2) Abnormal MRI findings with findings of left-sided facet arthropathy at L4-5 as well as a left far lateral focal annular tear and mild left foraminal stenosis all at L4-5, as well as an oval shaped 6 x 4.3 x 1.3 cm signal abnormality in the subcutaneous soft tissue of the left side of the low back at the L4-5 level compatible with an old hematoma.

3) Clinical evidence of left-sided SI joint dysfunction.

DISCUSSION: I believe Mr. Michael Peterson sustained a back injury on March 11, 2012 while working for Employment Plus. Certainly the MRI findings indicate some arthritic changes; however, I also believe that the work injury of 03/11/12 did cause significant aggravation to Mr. Peterson's back. Further, it is well documented that Mr. Peterson had a fairly large hematoma in the vicinity of the L4-5 in the lumbar spine. Interestingly the hematoma still was evident after four months from the injury.

I also believe that Mr. Peterson sustained an SI joint dysfunction on the left side as a direct result of the work injury of 03/11/12. The date for maximum medical improvement would be 11/20/12.

I also believe Mr. Peterson has partial permanent impairment in regard to his work injury of 03/11/12.

. . . .

I used the American medical [sic] Association's Guide's to the Evaluation of Permanent Impairment, 5th Edition, Chapter 15, Page 384, Table 15-3 and I assign seven (7) percent impairment of the whole person.

In regard to any permanent restrictions I recommend for Mr. Peterson to avoid lifting of more than 10 to 20 pounds. He is to avoid any activity which requires repetitious bending or stooping or twisting at his waist.

(Ex.1, pp. 3-4)

Claimant did not return to work for Employment Plus. He testified someone at the temporary agency informed him there was no work available when claimant was released from work by Dr. Broghammer. (Tr., p. 96) Later in time, someone else from Employment Plus did contact claimant by telephone. Claimant informed the person he had been injured on the job. (Tr., pp. 96-97)

Claimant applied for unemployment insurance benefits. He was successful in receiving those benefits. As a requirement for obtaining unemployment benefits, claimant made application for work. The jobs are detailed in exhibit 18. Claimant did not find a position. The unemployment insurance benefits expired in June of 2013. (Ex. 18)

Before the hearing was held, claimant, his counsel, and representatives from the employer and the insurance carrier, engaged in a private mediation during July 2013. The process was unsuccessful in resolving the contested case. Claimant was extremely upset by the fact his case did not settle at the time of the mediation. He discussed the failed mediation with health care providers. Claimant had many negative feelings concerning the failed mediation.

Claimant admitted he feigned a suicide shortly after the failed mediation occurred. He told mental health professionals he took 30 pills in order to kill himself so he would be hospitalized for psychiatric issues, even though claimant knew he had not committed such an act. (Tr.. p. 109) The hospitalization occurred in August 2013.

Marvin F. Piburn, M.D., is claimant's personal psychiatrist. He is also the medical director of the Black Hawk-Grundy Mental Health Center. (Ex. Z, pp. 3-4) Dr. Piburn has been treating claimant for psychiatric issues since February 23, 2009. (Ex. Z, p. 4) At that time, the psychiatrist diagnosed claimant with major depressive disorder, past problems with substance abuse, disruption of employment and stress reactions when some "bad things happen to claimant." (Ex. Z, p. 10) Over the course of his treatment, Dr. Piburn had treated claimant with a variety of medications. Dr. Piburn never had any of claimant's medical records that related to the work injury in question.

Dr. Piburn authored a report on December 3, 2013 relative to claimant's mental condition and to his alleged pain condition. The psychiatrist opined in part:

1. Mr. Peterson, as I told you earlier, has a pre-existing mental health condition. But this condition (Major Depression) and a comorbid one (Pain Disorder) were both substantially worsened by his injuries of March 11, 2012. The work related injury created a large hematoma (blood collection) overlying the left sciatic nerve and the left lumbar (low back) region. This radiated pain down the left leg and upwards to the left mid-spine region.

   About 50% of people with unremitting pain develop major depression. The pain from his March 11, 2013 injury was indeed unremitting. Granted, he was already subject to depression but that depression was

substantially worsened by this injury. My medicine log reveals multiple medication adjustments following the March 2012 injury. The number of medicine adjustments reflected that this depression was not fully responding to treatments. Mood stabilizers are used to augment antidepressants. Depakote was used but proved ineffective. Subsequently Lamictal was tried. Neuroleptics are also tried to make antidepressants work better. Geodon was used for that purpose. His antidepressant was the largest size of Viibryd. August 2013 he was a psychiatric inpatient.

2. Aggravating factors have been seen earlier. His shoe company injury disrupted work January 2008 until August 2009. A motor vehicle accident February 2011 concussed him but he was back to work May 2011. But the last injury March 2012 was not followed by work return. November 2012 he was formally terminated by his employer. After more then [sic] a year he filed for Social Security Disability. Unemployment ended. Mediation of Workman's [sic] Compensation did not lead to resolution. Finally we heard October 2013 that he was approved for Social Security Disability. The federal government decided he was totally and permanently disabled. Obviously the 2008 and the 2011 events were temporary aggravating factors. Injury 2012 was not followed by work return. Instead it lead to SSD. Obviously the 2012 aggravation of depression was different from those of 2008 and 2011. What distinguishes this 2012 injury from the others in 2008 and 2011 is that recovery is no longer expected.

. . . .

6. What reasons make work return impossible? Well, sure his disability interferes with concentration, persistence and pace. But more than this, his disability makes attendance at all a problem, and should he show he would not last a full work shift. The defect is not a defect of understanding. His memory is reduced by not absent. Understanding 1 or 2 step instructions would be fair. Complex instructions and complex tasks would be problems. I might add that in view of his physical health problems, fixed standing, bending, lifting and repetitive motions would be limited, but this is not my field of expertise. The disability of major depression is pervasive negative mood, negative expectation. This goes beyond the physical. Since he is not capable of regular attendance or full work day preseverence [sic], questions about work days per month missed have little meaning since the answer "All the time" does not count except as "A lot more then [sic] four". And since his performance globally is decompensated, it is meaningless to count "Episodes" since his life is in general an "Episode".

(Ex. 2, pp.3-4)

In response to the psychiatric opinions of Dr. Piburn, defendants sent claimant for an independent medical examination with C. Scott Jennisch, M.D., a psychiatrist at Mercy Professional Practice Associates. The examination occurred on February 17, 2014. Claimant admitted to mental health issues commencing in 2009 that concerned his former girlfriend. (Ex. AA, p. 13) Claimant reported dissolving the relationship in May of 2011 because of the girlfriend's infidelity. (Ex. AA, p. 13) According to Dr. Jennisch, claimant's greatest problem was his inability to socialize with people. (Ex. AA, p. 13)

During the examination with Dr. Jennisch, claimant admitted the following:

> When asked about suicidal ideation, he stated that he was in Allen Hospital 3 to 4 months ago for this. He "admitted myself". He had no money for cigarettes or gas, and he was feeling more depressed. The hospitalization occurred right before the settlement meeting. He stated "nothing was going my way," in the proceedings. Recently, he maintained a sense of hopefulness and denied thoughts of suicide.
>
> I asked about specific events leading to that hospitalization. The record indicated that he overdosed on medication. He clarified that he did not actually hurt himself; he told Dr. Henderson that he had suicidal ideation and a friend took him to the hospital. He said that he had thought about taking the medications, but he did not, that they were never in his mouth. When asked why he would lie, he stated "I don't know why I did." He quickly added that he is fine now and denied current suicidal ideation.

(Ex. AA, p. 13)

Dr. Jennisch questioned claimant about the cause of his mental condition subsequent to his work injury on March 11, 2012. Claimant reported:

> I asked about the cause of his current psychiatric problems and he stated "I am not saying the relationship and living is a factor too. It's the depression of not having my own home. After Chrissa and I broke up...like I seen it coming... she put me through hell...but not being with the girls. She was sleeping with people while I was on the mental ward." He added that the relationship and his injury were all factors in depression, "It all has to be, I'm not saying it's not."

(Ex. AA, pp. 15-16)

The evaluating psychiatrist did not causally relate claimant's mental condition post-work injury to the incident on March 11, 2012. Dr. Jennisch detailed his opinions in his report. The psychiatrist opined:

> With respect to the issues of causality, I do not believe there is evidence to suggest that the 03/11/2012 injury is a causal factor in Mr. Peterson's

ongoing psychiatric condition. There are a number of reasons why I believe this and I will outline them below.

Mr. Peterson has a history of chronic recurrent depression and anxiety. He has a history of multiple psychiatric hospitalizations and previous suicide attempts. The nature and course of his illness has been refractory to treatment. He has been managed with multiple different psychiatric medications and combinations and was referred for therapy well before the accident.

Review of the record does not indicate a significant change in his overall level of psychiatric symptomatology or a significant change in the nature and course of his illness from before and after the 03/11/2012 injury. I don't believe that he is any more or less disabled psychiatrically after the injury than he has been at other times in his life. The fact that Social Security Disability approved his application does not prove he has a psychiatric injury exacerbated by the March of 2012 injury.

In addition, there are multiple other psychosocial issues that may be contributing to his depression. It is however, worth noting that highly recurrent and refractory depression can worsen without any external psychosocial stressors. It can also worsen when compliance with treatment, either missed medication or therapy or access to treatment is compromised. Those factors were issues before and after the injury.

Chronic pain issues are a psychosocial stressor that predates the March of 2012 injury. Relationship issues have also been significant and problematic dating back to 2009 as has unemployment, financial concerns, and access to insurance. Housing issues and family dynamic problems are also well documented in the record that predates the injury. Homelessness and break up of an 8 year relationship occurred in the 2 months immediately following the injury. It is likely that Mr. Peterson experienced a temporary exacerbation of his depressive symptoms as it relates to the injury.

To the extent that chronic pain is considered an exacerbating factor, the cause of that ongoing pain needs to be considered. There are varied opinions about the nature of his ongoing back and leg pain complaints. Both Dr. Abernathey and Dr. Broghammer find no evidence of specific neurologic problems to explain his ongoing complaints, and Dr. Broghammer is quite definitive in addressing his concerns about Dr. Manshadi's independent medical exam of Mr. Peterson. Dr. Broghammer believes that if he does have ongoing pain that it is no longer secondary to the contusion injury, but secondary to other unrelated health conditions. Dr. Piburn acknowledges that he had not reviewed the medical records as it related to the injury.

> I do not believe that relationship issues resolved in 2012. Mr. Peterson acknowledged on exam the significance of relationship issues even today as it impacts his mental health. Therapy notes indicate that here were ongoing problems related to the break up that continued into 2013.
>
> Additionally, Mr. Peterson's report that a significant component of depression today has to do with not having a house or the furnishings of a house would seem to be a condition that predated the March of 2012 injury and was not caused by this injury.

(Ex. AA, pp. 18-19)

Dr. Jennisch did discuss the issue of permanency in his report of March 6, 2014. The psychiatrist opined, "I do not believe Mr. Peterson has experienced any permanent psychiatric sequelae or any permanent psychiatric disability [sic] as it relates to the March 2012 injury." (Ex. AA, p. 20)

By stipulation, claimant sustained a temporary disability. Defendants paid claimant wages in lieu of workers' compensation benefits from March 12, 2012 through November 20, 2012, the date, Dr. Broghammer determined claimant had reached maximum medical improvement and could be released to return to work without any work restrictions. Claimant was paid for 36.429 weeks of wages. Defendants are entitled to a credit for all wages paid in lieu of weekly benefits.

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).

The salient issue here is whether claimant has established his claimed low back, left leg and mental condition are causally related to claimant's work injury on March 11, 2012. Overwhelmingly, the evidence does not support claimant's allegations. As far as

claimant's physical condition is concerned, the only objective evidence is the MRI test result. The test was administered in July 2012. The result showed claimant sustained a bruise on his left buttock and near his left low back. At the time, the oval bruise measured 6 x 4.3 x 1.3 cm. That is all claimant sustained. The lumbar spine was normal. There were no fractures or bony abnormalities. All other test results were negative with the exception of degenerative disk or joint disease common for someone of claimant's age. There was no neural encroachment. Neither Dr. Broghammer nor Dr. Abernathey found any other objective evidence to support a permanent condition. Numerous conservative treatment modalities were ordered to treat claimant's pain. No surgery was ever warranted. Claimant had over 36 weeks to treat his bruise with many forms of therapy.

It is acknowledged Dr. Manshadi rated claimant as having a permanent impairment of 7 percent. Dr. Manshadi examined claimant on one occasion only. The evaluating doctor found some arthritic changes, and he noted the oval shaped hematoma found on the MRI test results. Dr. Manshadi found sensory examination was intact to light touch and pinprick in the lower extremities. There was no atrophy of the lower extremities. There was little loss of strength in the left leg as compared to the right leg. The left leg was longer than the right leg but no one indicated the difference in length was the result of the March 11, 2012 work injury.

It is the determination of the undersigned; the greater weight of the medical evidence supports the conclusion; claimant sustained a physical condition that was temporary in nature only. There was no permanent condition to claimant's low back, left leg or buttocks.

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

The next issue for resolution is whether claimant's physical injury led to a permanent mental condition. Claimant has had pre-existing mental issues dating back to the 1980's. On a consistent basis, claimant has been treating for major depressive disorder at the Black Hawk-Grundy Mental Health Center since 2008. Dr. Piburn has been claimant's treating psychiatrist. Since 2009, the psychiatrist has attempted to find medications that would adequately treat claimant's depression and anxiety. Frequently, the psychiatrist has readjusted claimant's medications without much success. It was not until November 2013 that Dr. Piburn seemed to have some success with drug therapy. (Ex. Z, pp. 60-63) Then "There was an index of less desperation." (Ex. Z, p. 63) The problems claimant experienced all pre-dated his work injury. As discussed earlier in the body of this decision, claimant had experienced a multitude of on-going family difficulties; he had a history of substance abuse in remission; financial woes, several job losses, homelessness, other injuries which caused chronic shoulder pain,

tinnitus which lead to severe anxiety, and a bout with cancer in the right shoulder. All of those situations were causes for stress in claimant's life before the work injury, at the time of the work injury, and subsequent to the work injury. While Dr. Piburn opined claimant's work injury was a cause for claimant's major depressive disorder, Dr. Piburn rendered the opinion without ever looking at one medical record involving the March 11, 2012 work injury. Dr. Piburn rendered his opinions solely on statements made by claimant and not on any objective medical testing or evidence.

Dr. Jennisch interviewed claimant on one occasion. However, during the one examination, claimant admitted he had feigned his suicide in August 2013. Claimant also discussed all the reasons for his depression. Dr. Jennisch, in his report, explained in detail, why claimant's mental condition was not aggravated by claimant's work injury. The opinions of Dr. Jennisch are consistent with the behaviors claimant exhibited years before the work injury.

Therefore, it is the determination of the undersigned; claimant did not sustain a mental injury as a result of his temporary disability to his low back, left leg and left buttock.

The next issue for resolution is the matter of medical benefits pursuant to Iowa Code section 85.27. 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).

Defendants are liable for all medical expenses causally related to treat the low back, the left leg and the left buttock. Defendants are not liable for any treatment involving mental or psychiatric care. Defendants are liable for medical mileage to treat the low back, the left leg and the left buttock.

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

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify

for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Defendants are liable for the cost of Dr. Manshadi's independent medical examination. The cost is $300.00.

ORDER

THEREFORE IT IS ORDERED:

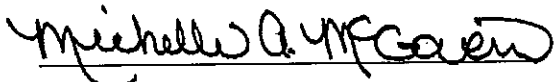
Claimant takes nothing additional from these proceedings in the form of weekly benefits.

Defendants are liable for all causally connected medical expenses necessary to treat the low back, left leg and buttocks, including medical mileage.

Pursuant to Iowa Code section 85.39, defendants are liable for the independent medical exam performed by Dr. Manshadi in the amount of three hundred and no/100 dollars ($300.00)

Each party shall pay his/its/their own costs.

Signed and filed this 17th day of April, 2015.



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