BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHANE W. ALLEN, Claimant, vs. AG PROCESSING, INC., Employer, and ACE AMERICAN INSURANCE COMPANY, Insurance Carrier, Defendants.	:	File No. 5040225 REVIEW-REOPENING DECISION Head Note Nos.: 1402.30, 1801, 1804, 2204, 2206, 2701, 2905

FILED
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WORKERS' COMPENSATION

Claimant Shane Allen filed a petition in arbitration on March 12, 2012, alleging he sustained a cumulative injury to his throat, cervical spine, left shoulder, left upper extremity, other spinal injury, and mental injury while working for the defendant, Ag Processing, Inc. and Ace American Insurance Company, (collectively "Ag Processing"), on May 11, 2007. An arbitration hearing was held on March 19, 2013. Exhibits 1 through 31 and A through Q were admitted into the record. On October 23, 2013, a deputy workers' compensation commissioner filed an arbitration decision, finding Allen sustained a fifty percent industrial disability, finding Ag Processing was entitled to a credit of eighty-five weeks of permanent partial disability benefits, totaling $37,179.00, ordering Ag Processing to pay Allen's medical expenses, and assessing costs against Ag Processing.

Ag Processing appealed the decision to Workers' Compensation Commissioner Christopher Godfrey. Commissioner Godfrey affirmed, in part, and modified, in part, the decision on April 22, 2014, finding Allen had sustained a forty percent industrial disability, finding Ag Processing was entitled to a credit of eighty-five weeks of permanent partial disability benefits, totaling $37,179.00, ordering Ag Processing to pay Allen's medical expenses, and assessing costs against Ag Processing.

Ag Processing filed a petition for judicial review. The district court issued a ruling on petition for judicial review on December 29, 2014, denying the petition and affirming Commissioner Godfrey's decision. The ruling on petition for judicial review was not appealed.

On January 3, 2017, Allen filed a review-reopening petition, alleging a change of condition warranting an award of additional benefits. Ag Processing filed an answer on January 25, 2017, denying Allen had sustained a change of condition warranting an award of additional benefits.

The hearing on the review-reopening petition was held on January 18, 2019, at the Division of Workers' Compensation in Des Moines, Iowa. Attorney Richard Maher represented Allen. Allen appeared and testified. Attorney Sarah Kleber represented Ag Processing. Joint Exhibits ("JE") 1 through 23, Exhibits 1 through 13, and A through P were admitted into the record. The record was held open through February 26, 2019, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

At the start of the hearing the parties completed a hearing report, listing stipulations and issues to be decided. Ag Processing waived all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between Ag Processing and Allen at the time of the alleged injury.

2. Allen sustained an injury on May 11, 2007, which arose out of and in the course of his employment with Ag Processing.

3. The alleged injury is a cause of temporary disability during a period of recovery.

4. The alleged injury is a cause of permanent disability.

5. Although entitlement to temporary benefits cannot be stipulated, Allen was off work from March 24, 2018 through January 6, 2019.

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

7. At the time of the alleged injury Allen's gross earnings were $696.84 per week, he was single and entitled to two exemptions and the parties believe the weekly rate is $437.40.

8. Prior to the hearing Ag Processing paid Allen 32.43 weeks of compensation at the weekly rate of $437.40 per week from August 9, 2017 through March 23, 2018.

ISSUES

1. Has Allen sustained a change of condition warranting an award of additional industrial disability benefits?

2. If Allen has sustained a change of condition warranting an award of additional industrial disability benefits, what is the extent of disability?

3. Is Allen permanently and totally disabled under the statute or under the common law odd-lot doctrine?

4. If Allen is entitled to additional industrial disability benefits, what is the commencement date for permanency?

5. Is Allen entitled to temporary benefits form March 24, 2018 through January 6, 2019?

6. Is Allen entitled to payment of medical expenses and alternate medical care?

7. Should costs be assessed against either party?

FINDINGS OF FACT

Allen is divorced and lives in Plattsmouth, Nebraska. (Transcript, page 19) Allen has two sons who are seventeen and fourteen. (Tr., p. 19) Allen graduated from high school and received a diploma in auto body repair from Northwest Iowa Community College in 1993. (App. Dec., p. 2) Allen is right-hand dominant. (App. Dec., p. 2) At the time of the review-reopening hearing he was forty-four years old. (Tr., p. 25)

From 1992 through 2004, Allen worked for Advanced Brands as a meat packager, palletizer, machine operator, kettle cooker, and supervisor. (App. Dec., p. 2) Allen worked as a supervisor for Advanced Brands for the last five to six years of his employment. (App. Dec., p. 2) Allen supervised forty people and he was responsible for completing production records and personnel records. (App. Dec., p. 2) When Allen left his employment he was earning $30,000.00 per year. (App. Dec., p. 2)

In 2004 Ag Processing hired Allen. (App. Dec., p. 2; JE 1) Allen initially worked as a bean dryer operator, moving beans by conveyor and operating a Bobcat shoveling beans and opening and closing railroad boxcar doors. (JE 1) Ag Processing moved Allen to the scale house where he operated a probe to check the moisture content of the grain, unloaded trucks, and operated a console. (JE 1)

On May 11, 2007, Allen fell when his foot slipped while climbing down a ladder on the side of a large steel soybean bin while working for Ag Processing. (App. Dec., p. 2) As he was falling, Allen reached out his left arm to catch himself and grabbed the rung of the ladder and came to an abrupt stop, jerking his left arm sharply. (App. Dec., p. 2)

On May 17, 2007, Ag Processing sent Allen to Timothy Walker, M.D. for treatment. (App. Dec., p. 2) Dr. Walker treated Allen until June 13, 2007. (App. Dec., p. 2) On May 25, 2007, Allen received magnetic resonance imaging, which revealed some compression of C5-C6 and exiting right of the C6 nerve root, and a disc bulge at C6-C7. (App. Dec., p. 2) After administering steroid injections Dr. Walker referred Allen

to Bryan Wellman, M.D., a neurosurgeon, and Dr. Wellman performed an anterior cervical decompression at C5-C6 with an artificial disc placement. (App. Dec., p. 2)

Clayton Van Balen, M.D., an occupational medicine and family practice physician, conducted an independent medical examination of Allen for Ag Processing. (App. Dec., p. 2) Dr. Van Balen opined Allen had reached maximum medical improvement on March 25, 2008, and assigned Allen a fifteen percent permanent impairment rating. (App. Dec., p. 2)

Allen continued to experience pain in his neck, shoulders, and bilateral upper extremities and paresthesias. (App. Dec., pp. 2-3) Ag Processing referred Allen to James Devney, D.O., a physiatrist with the Nebraska Spine Center. (App. Dec., p. 3) Allen underwent a computerized tomography scan on July 28, 2009, which revealed chronic left C6 radiculopathy with active ongoing denervation and mild right carpal tunnel syndrome. (App. Dec., p. 3) Dr. Devney prescribed medication and administered a cervical transforaminal injection. (App. Dec., p. 3) The injection did not provide relief and Dr. Devney referred Allen for a surgical consultation. (App. Dec., p. 3)

Ag Processing terminated Allen in 2008 for violating the work rules. (App. Dec., p. 2; JE 1) In August 2008, Cox Cable hired Allen as a contractor to perform upgrades to the cable system in Omaha, Nebraska. (App. Dec., p. 2) Allen worked for Cox Cable from August to December 2008. (App. Dec., p. 2)

In June 2009 Linder Tire and Auto ("Linder Tire") in Plattsmouth, Nebraska, hired Allen as an auto and light truck mechanic where he installed and changed tires. (App. Dec., p. 2; JE 1) At the time of the original arbitration hearing Allen continued to work for Linder Tire, working forty-four hours per week, and earning $12.50 per hour. (App. Dec., p. 2) Allen testified during the original arbitration hearing he did not believe he could continue working for Linder Tire because of his pain and because the job required heavy lifting. (App. Dec., p. 2)

Bradley Bowdino, M.D., neurosurgeon, examined Allen and recommended surgery. (App. Dec., p. 3) Dr. Bowdino performed a removal of cervical disc arthroplasty, anterior cervical discectomy, fusion and allograft, and plating on December 10, 2009. (App. Dec., p. 3)

Following surgery Allen continued to complain of left arm pain. (App. Dec., p. 3) Allen received physical therapy. (App. Dec., p. 3) Dr. Bowdino released Allen to return to work on May 10, 2009, with a lifting restriction of up to seventy-five pounds on an infrequent basis. (App. Dec., p. 3)

During an appointment on June 18, 2010, Dr. Bowdino noted Allen had left arm pain, numbness, and tingling that had decreased some since surgery and found Allen had reached maximum medical improvement. (App. Dec., p. 3) On August 16, 2010, Dr. Bowdino assigned Allen a seventeen percent permanent impairment rating and released Allen to return to work without restrictions. (App. Dec., p. 3)

On December 17, 2010, Allen returned to Dr. Bowdino complaining of left-sided arm pain with numbness and tingling that was "not quite as bad as before the surgery." (App. Dec., p. 3) Dr. Bowdino decreased Allen's hydrocodone and increased his Lyrica, and referred Allen for pain management. (App. Dec., p. 3)

On September 7, 2011, Douglas Rennels, M.D., an anesthesiologist specializing in pain management, examined Allen and recommended cervical magnetic resonance imaging. (App. Dec., p. 3) Dr. Rennels adjusted Allen's medication. (App. Dec., p. 3)

Patrick Bowman, M.D., an orthopedic surgeon with the Nebraska Spine Center, conducted an independent medical examination for Allen. (App. Dec., p. 3) Dr. Bowman examined Allen and reviewed his medical records. (App. Dec., p. 3) Dr. Bowman found he did not have a surgical option for Allen and opined Allen would need pain management with Dr. Rennels indefinitely. (App. Dec., p. 3)

Dr. Rennels continued Allen's clonidine, Avinza, Lyrica, and Skelaxin, weaned him off Cymbalta, and replaced the Cymbalta with Savella, prescribed a home traction device, found there was not a surgical solution for Allen's ongoing radicular pain, and noted, "I do believe at some point it would be reasonable for him to again consider a dorsal column stimulator trial unless his independent reviewer has other suggestions that he might think [*sic*] be more beneficial for him as a next step." (App. Dec., pp. 3-4) Dr. Rennels recommended a second opinion from a pain management specialist at the Cleveland Clinic or Mayo Clinic. (App. Dec., p. 4)

Allen's attorney sent Allen for a functional capacity evaluation. (App. Dec., p. 4) The evaluator placed Allen in the light-medium category of work. (App. Dec., p. 4) Ag Processing also sent Allen for a functional capacity evaluation. (App. Dec., p. 4) The evaluator placed Allen in the lower end of the heavy physical demand level, noting Allen continued to work in a position with physical demands within the heavy physical demand level. (App. Dec., p. 4) The Commissioner noted that after reviewing only the first functional capacity evaluation, Dr. Bowdino changed Allen's work restrictions based on the recommendations from the first functional capacity evaluation. (App. Dec., p. 6) After Dr. Bowdino reviewed both functional capacity evaluations Dr. Bowdino testified the second functional capacity evaluation ordered by Ag Processing was more consistent with the work Allen had been performing for Linder Tire. (App. Dec., p. 6)

Considering all of the factors of industrial disability, including Allen's ability to find and maintain full-time employment and work overtime, the Commissioner determined Allen had sustained a forty percent industrial disability premised on his employment with Linder Tire. (App. Dec., p. 6) The Commissioner found Allen would require pain management indefinitely. (App. Dec., p. 6)

Following the March 19, 2013 arbitration hearing Allen continued to treat with Dr. Rennels and work for Linder Tire. (JE 8; Tr., p. 24) At Linder Tire Allen performed mechanic work and changed tires for cars and trucks. (Tr., pp. 24-25) Allen worked eight hours per day Monday through Friday and four hours on Saturday. (Tr., p. 25) Allen reported he performed his duties at Linder Tire using his right hand to do most of

the work. (Tr., pp. 26, 30) Allen relayed he learned not to hold objects with his left hand because he would drop objects. (Tr., p. 30; JE 23, p. 7) Allen used power tools and ratchets with his right hand to loosen, remove, and tighten bolts and nuts at work. (Tr., pp. 31-32)

During an appointment with Dr. Rennels on May 8, 2013, Allen relayed his medication was helping some, but it did not reduce his pain to a manageable level, and noted he was only able to sleep for ninety minutes to two hours at a time. (JE 8-h) Dr. Rennels increased Allen's amitriptyline, and recommended a referral to the Cleveland Clinic for pain management. (JE 8-h)

Allen returned to Dr. Rennels on December 5, 2013, reporting he was no longer lifting the big truck tires at work, and complaining of ongoing symptoms. (JE 8-i) Dr. Rennels listed an impression of persistent left cervical radiculopathy and opined he had maximized what he could do for Allen and recommended a referral to the Cleveland Clinic. (JE 8-i, pp.1-3) Allen continued to treat with Dr. Rennels, reporting he was just performing mechanical type work, and Dr. Rennels continued to recommend a referral to a comprehensive pain center. (JE 8-k - JE 8-n)

On June 15, 2015, Dr. Runnels referred Allen to John Treves, M.D., a neurosurgeon, and David Siebels, PA-C, for consideration of a spinal cord stimulator. (JE 13-a, p. 1) Allen relayed that he wanted to proceed with the stimulator and Siebels and Dr. Treves recommended a trial of a cervical spinal cord stimulator. (JE 13-a, p. 4; JE 13-b, p. 2)

Allen was not referred to a comprehensive pain center and he continued to treat with Dr. Rennels. (JE 8-o) Allen continued to complain his pain was worse in the morning and after working a full day, noted problems urinating with mostly pain being an issue, and that he was only able to sleep an hour at a time because of the pain. (JE 8-o, p. 1) Dr. Rennels noted Allen had "[p]ersistent left cervical radiculopathy with continued slow increase in pain," recommended a stimulator trial, and continued Allen's medications. (JE 8-o-JE 8-s)

On August 25, 2015, John Massey, M.D., an anesthesiologist specializing in pain management with the Nebraska Spine and Pain Center, conducted an independent medical examination to consider the possibility of a spinal cord stimulator. (JE 14) Dr. Massey opined he could not assess if Allen was a potential candidate without a neuropsychological assessment to determine a likelihood of a successful response. (JE 14-a, pp. 4-5)

Robert Arias, Ph.D., conducted a neuropsychological evaluation of Allen on December 7, 2015. (JE 15-a, p. 1) Dr. Arias opined Allen would be a "reasonable candidate for a spinal cord stimulator, although some concerns were noted primarily from a psychological/emotional standpoint." (JE 15-a, p. 1) Dr. Arias noted testing indicated tendencies to displace psychological stress into physical symptoms, with symptoms of elevated anxiety and depression, and his testing revealed significant defensiveness, suggesting difficulty with self-disclosure and potential resistance to

psychological treatment to address his emotional difficulty. (JE 15-a, p. 1) Dr. Arias recommended weekly cognitive behavioral psychotherapy throughout the spinal cord stimulator implantation process, and noted he did not expect the mild cognitive difficulties persist. (JE 15-a, p. 1)

Allen reported to Dr. Arias that he was hospitalized for one week in 2006 after his divorce for major depression, and he received additional treatment in partial hospitalization. (JE 15-a, p. 2) Allen was diagnosed and treated for depression prior to his work injury with Ag Processing in May 2007.

On January 20, 2016, Dr. Massey sent a letter to Ag Processing's third party administrator, stating he was providing an addendum in response to the neuropsychological evaluation Dr. Arias conducted of Allen. (Ex. A) Dr. Massey opined the testing revealed Allen had "a strong tendency to experience exacerbation of his physical complaint of pain and associated with elevations in the psychological distress," noting, "[i]ndividuals with this type of profile respond poorly to long-term treatment with spinal cord stimulation." (Ex. A) Hence, Dr. Massey did not recommend Allen be offered spinal cord stimulation. (Ex. A)

On December 18, 2016, Dr. Treves sent an opinion letter to Allen's attorney, after reviewing Allen's medical records and neuropsychological evaluation and responded to Dr. Massey's opinions. (Ex. 2-b) Dr. Treves rebutted Dr. Massey's opinions and opined Allen would be a reasonable candidate for a trial stimulator. (Ex. 2-b, pp. 1-3)

Allen filed a review-reopening petition on January 3, 2017, alleging he had sustained a change of physical and economic condition warranting an award of additional benefits. Allen alleges since the original arbitration hearing he has developed mental illness and a lumbar spine condition, lumbar radiculopathy, sciatica, and lower extremities issues caused by the original work injury. Ag Processing filed an answer on January 25, 2017, denying Allen had sustained a change of condition warranting an award of additional benefits. Ag Processing denies Allen has sustained additional sequelae conditions caused by the original work injury.

On March 2, 2017, Allen attended a follow-up appointment with Dr. Treves, complaining of ongoing pain. (JE 13-c, pp. 1-2) Dr. Treves examined Allen and recommended a trial spinal cord stimulator. (JE 13-c, p. 2)

Allen attended an appointment with Thomas Guck, Ph.D., on March 2, 2017. (JE 16-a) Dr. Guck diagnosed Allen with a pain disorder associated with psychological factors and medical condition, and major depression, recurrent, chronic. (JE 16-a, pp. 2, 5) Allen informed Dr. Guck he wanted to pursue counseling to work on his function and mood before he received the trial stimulator. (JE 16-a, pp. 3, 5) Dr. Guck's records do not document Allen reported his hospitalization and treatment in 2006 for major depression to Dr. Guck. (JE 16-a, p. 4) Dr. Guck noted Allen reported he participated in counseling in 2007 while going through a divorce. (JE 16-a, p. 4)

Allen treated again with Dr. Guck on March 7, 2017. (JE 16-b) During the appointment Dr. Guck documented while Allen continued to be active in regards to his work, "he has shut down quite extensively in regard to social and recreational activities." (JE 16-b, p. 1) Dr. Guck recommended Allen become more active, discussed Allen should play miniature golf instead of golf or bowling, and also recommended Allen use progressive muscle relaxation and a CD for home practice. (JE 16-b, p. 1)

Dr. Treves attempted to implant the trial stimulator in Allen on April 5, 2017, but he could not proceed into the interlaminar space without hitting either calcified ligament or bone, and he aborted the procedure. (JE 13-d, pp. 1-2) Dr. Treves recommended an option of going lower in the thoracic spine or even potentially thoracolumbar and to push the electrode up to the cervical region. (JE 13-e)

On June 7, 2007, Dr. Treves implanted a trial stimulator into Allen, going through T8. (JE 13-f, p. 1) During an appointment two days later Allen reported overall pain relief of forty to fifty percent from the trial stimulator, but also reporting he did not receive much help with his neck pain. (JE 13-g) Dr. Treves recommended placement of a permanent stimulator, and he released Allen to return to work on June 12, 2017. (JE 13-g; JE 13-h)

On June 14, 2017, Allen reported he did not have full resolution of his symptoms with the trial stimulator, but he also reported his pain decreased by forty to fifty percent with the stimulator in place, and he continued to work full time. (JE 8-t p. 1) Allen described his quality of life as poor due to his pain and inability to do as much as he would like with his children, noted he was sleeping better with the trial stimulator, and he wanted to proceed with a permanent neurostimulator. (JE 8-t)

During an appointment with Siebels and Dr. Treves on July 28, 2017, Allen reported he was experiencing back and shooting leg pain he thought was related to the trial. (JE 13-i) Dr. Treves told Allen he believed he could have some local discomfort from the placement of the needle into the lower thoracic area, but this would involve local pain at the site. (JE 13-i) At hearing Allen testified when the temporary stimulator lead was pulled out "that's when I first initially got that sensation that I have all the time now down my leg, and that's when he grabbed me" in June 2017. (Tr., pp. 90-91)

On August 9, 2017, Dr. Treves implanted a permanent stimulator into Allen. (JE 13-j) Following surgery Allen had a low-grade fever and night sweats, and Dr. Treves prescribed an antibiotic. (JE 13-k) The infection resolved.

Allen reported his boss at Linder Tire told him not to come back to work unless he was 100 percent. (Tr., pp. 32-33) Allen did not return to work at Linder Tire after he received the permanent stimulator on August 9, 2017. (JE 1; Tr., p. 32) At that time Allen was earning fourteen dollars per hour. (JE 1; JE 23, p. 10) Allen has not worked since August 9, 2017. (Tr., p. 33)

Allen returned to Dr. Treves and Siebels on September 1, 2017. (JE 13-L) Dr. Treves documented Allen reported he was doing well and "getting decent coverage

down the left arm," and that he remained off work. (JE 13-L) Dr. Treves restricted Allen from working until October 12, 2017. (JE 13-m)

Allen did not return to Dr. Guck after his March 2017 appointment until September 20, 2017. (JE 16-c, p. 1) During the September 20, 2017 appointment, Dr. Guck documented Allen reported he received twenty to thirty percent improvement in his pain after the temporary stimulator was placed on August 9, 2017, but he still had significant pain. (JE 16-c, p. 1) Allen reported his bills were adding up, which was a source of stress, his employer wanted him to be fully cleared before returning to work, and he had limited social interactions. (JE 16-c, p. 1) Dr. Guck noted Allen had not tried the relaxation CD he had given him and Dr. Guck encouraged him to try it and to remain as active as possible. (JE 16-c, pp. 1-2)

During an appointment on September 27, 2017, Dr. Rennels documented Allen told Dr. Rennels his pain relief was down to twenty to thirty percent, but he was working with the stimulator representative on better coverage. (JE 8-u, p. 1) Dr. Rennels noted Allen reported when the trial lead was removed he developed a pain which is located at the site of his generator and reported the pain "feels like a needle is being stabbed into him." (JE 8-u, p. 2)

On October 12, 2017, Allen attended an appointment with Dr. Treves, and reported the stimulator was helping him and providing coverage from his shoulder and down his arm, but complained the battery site was painful. (JE 13-n) Dr. Treves noted

> I am not sure what to make of Shane's pain around the battery site. Externally the site looks fine. It could be from tunneling the electrodes or maybe it is just a cutaneous phenomenon. He may have been limping or favoring that side and he has flared up his SI joint. The Medtronics representative thinks the stimulator is working fine, all the impedances check out so I do not believe it is outbreak stimulation. I am going to check and x-ray of the battery site including the SI joint just to make sure there is no obvious problem with the device or the connecting wire.

(JE 13-n, p. 1) Dr. Treves found Allen could return to light duty with a lifting restriction, and noted if Allen made the decision not to go back to work "then it is more related to his underlying problems at the C5-6 level, not really the stimulator thus we are going to have to have the people that operated on him previously opine as to the percentage of disability he has and restrictions he may require related to his cervical fusion and chronic radiculopathy." (JE 13-n, p. 2) Allen received a lumbar spine x-ray and the reviewing radiologist noted the soft tissues were unremarkable, and listed an impression of mild disc degenerative changes at L3-4 and L4-5. (JE 13-o) Dr. Treves released Allen to light duty work. (JE 13-D) Allen continued to complain of some pain around the stimulator battery site, and Dr. Treves noted the stimulator was working and investigation of the device did not reveal any electrical abnormalities. (JE 13-q)

Allen returned to Dr. Guck on November 13, 2017, reporting he had the spinal cord stimulator placed and he had received little pain relief. (JE 16-d) Dr. Guck

diagnosed Allen with pain disorder associated with psychological factors and medical condition, and major depression, recurrent, chronic. (JE 16-d)

On December 21, 2017, Allen returned to Dr. Treves, and Dr. Treves documented Allen reported pain relief of twenty to thirty percent with the stimulator, and that he also complained of left flank pain, left buttock pain, and radicular pain radiating down his left leg. (JE 13-r, p. 1) Dr. Treves noted during his previous visit Allen complained mostly of left flank and buttock pain and now he was limping while walking and acting like he had sciatica. (JE 13-r, p. 1) Dr. Treves assessed Allen with chronic neuropathic pain involving the left C6 distribution, a functional cervical dorsal column neurostimulating system, and left-sided radicular pain that may be "a new problem with his low back, stenosis, disc herniation or foraminal compromise." (JE 13-r, p. 1) Dr. Treves opined he did not believe Allen's cervical stimulator and IPG site were causing him to have left flank, buttock, and left lower extremity pain, and noted he was concerned Allen had a new problem involving his low back, unrelated to his cervical stimulator. (JE 13-r, p. 2) Dr. Treves recommended a lumbar computerized tomography scan, and opined Allen did not need any new work restrictions for his stimulator, but he could not work at that time due to his radiculopathy. (JE 13-r, p. 2)

Allen underwent a lumbar spine computerized tomography scan on December 26, 2017. (JE 13-t, p. 1) The reviewing radiologist listed an impression of mild to moderate right foraminal stenosis at L4-5, "[d]isc material extending right lateral recess from L4-5 abutting/compressing the right L5 nerve root," and mild spondylosis at L2-3 and L3-4. (JE 13-t, p. 1)

On January 10, 2018, Allen attended a follow-up appointment with Dr. Rennels. (JE 8-v, p. 1) Allen relayed the stimulator was not working well for him, he was frustrated and miserable, and he was having difficulty sleeping. (JE 8-v, p. 1) Dr. Rennels documented Allen reported he was receiving twenty percent relief from the stimulator, but his neck and arm were still bothering him and "[h]is left lower back has become more of an issue, as has his pain in the left leg," which he did not have before the stimulator. (JE 8-v, p. 1)

On January 15, 2018, Dr. Treves spoke with Allen by telephone, and noted he told Allen the scan showed a disc herniation at L4-5 in combination with spondylosis causing foraminal stenosis with no inciting event, and mild degenerative changes at L2-3 and L3-4. (JE 13-u) Dr. Treves told Allen he believed he would be a candidate for a lumbar discectomy and foraminotomy, and noted Allen wanted to proceed with surgery. (JE 13-u)

Allen spoke with Dr. Treves on February 1, 2018, by telephone reporting the stimulator was not helping much, and providing "maybe 20-25 percent pain relief" and he was complaining of increasing neck, shoulder, and arm discomfort. (JE 13-v, p. 1) Dr. Treves documented:

> [h]e now has developed a left lumbar radiculopathy. We checked a CT scan of the lumbar spine showing degenerative change with foraminal

> stenosis L4-5 and he has right L4-5 disk herniation side opposite his painful leg. I imagine the L4-5 level has been getting degenerative with some stenosis over time. The right sided disk herniated and it was enough to cause a radicular pain. I have explained to Shane that the disk herniation is side opposite his painful leg and that his radiculopathy is likely due to foraminal stenosis, stenosis, and spondylosis. I think Dr. Rennels might be able to help him out with a targeted epidural at the L4-5 level. I have a fairly lengthy legal letter in Mr. Allen's chart wondering why he has not returned to work. Shan [*sic*] was under the impression that his lumbar radiculopathy is related to his cervical problems. This is not the case which is one of the reasons I called him back. There is no way that I can relate his current lumbar radiculopathy, disk herniation and foraminal stenosis to his previous cervical radiculopathy, chronic pain syndrome, and neurostimulator implantation. These appear to be separate events.

(JE 13-v, p. 1) Dr. Treves noted the neurostimulator implantation did not relieve Allen's pain, noted he will need ongoing chronic pain management, and he may be a candidate for a lateral recess and foraminal decompression at the L4-5 level if conservative treatments and injections do not work, and noted he believed "this would be unrelated to his previous chronic cervical radiculopathy and pain syndrome." (JE 13-v, p. 2) Dr. Treves discussed Allen's case with Dr. Rennels and Dr. Rennels agreed to see Allen to discuss a L4-5 epidural steroid injection or foraminal block. (JE 13-w)

During an appointment on April 5, 2018 with Dr. Rennels Allen reported his leg was hurting "all the way to the foot" and he described the pain as sharp. (JE 8-w, p. 1) Dr. Rennels noted Allen was not seeing Dr. Guck and he was agreeable to seeing Jane Theobald. (JE 8-w, p. 2)

Allen has had Crohn's disease for many years that had been well-controlled. (JE 17-a, p. 1) He sought emergency treatment at the University of Nebraska for a flare of his disease on July 8, 2018. (JE 17) At hearing Allen's counsel agreed Allen was not asserting the flare-ups of his Crohn's disease are causally related to the work injury.

James Mathisen, Psy.D., prepared a psychological report on July 12, 2018, for the Social Security Administration after Allen filed an application for Social Security Disability Insurance benefits. (Ex. 4-a) Using the DSM-IV, Dr. Mathisen diagnosed Allen with a pain disorder with medical and psychological factors, and depressive disorder due to general medical condition, and opined Allen's prognosis was poor. (Ex. 4-a, pp. 4-5) Dr. Mathisen completed a check the box letter for the Social Security Administration, indicating Allen has restrictions for activities of daily living, difficulty maintaining social functioning, he cannot sustain concentration and attention needed for tasks, he cannot relate appropriately to coworkers and supervisors, and he cannot adapt to changes in the environment. (Ex. 4-a, p. 6) Dr. Mathisen made hand-written notes I found to be unintelligible. (Ex. 4-a, p. 6) Dr. Mathisen agreed Allen can understand and remember simple instructions and carry out short and simple instructions under ordinary supervision. (Ex. 4-a, p. 6)

Chris Cornett, M.D., an orthopedic surgeon, conducted an independent medical examination of Allen for Ag Processing on July 25, 2018. (Ex. K) Dr. Cornett reviewed Allen's medical records and examined him. (Ex. K) Dr. Cornett agreed with Dr. Treves that Allen's lumbar radiculopathy and treatment for such are not causally related to the May 11, 2007 work injury. (Ex. K, p. 6) Dr. Cornett opined Allen had reached maximum medical improvement with respect to the spinal cord stimulator implantation for the May 11, 2007 work injury, and Allen had not sustained an additional impairment rating under the AMA Guides beyond the seventeen percent body as a whole impairment rating assigned by Dr. Bowdino. (Ex. K, p. 6) Dr. Cornett agreed with Dr. Treves the spinal cord stimulator implantation did not add any permanent restrictions related to the May 11, 2007 work injury, and apart from restrictions that may be necessary for Allen's lumbar issue, Allen could be released from further care for the spinal cord stimulator to return to work with his pre-spinal cord stimulator permanent restrictions. (Ex. K, p. 6) Dr. Cornett also noted Allen was receiving significant pain medications and he recommended he be weaned of his significant narcotic medications. (Ex. K, p. 6)

Erick Alverio, P.T., conducted a functional capacity evaluation for Allen on July 31, 2018. (Ex. 5-b) Alverio opined Allen gave maximum, consistent effort during testing. (Ex. 5-b, p. 2) Alverio during the January 2013 functional capacity evaluation Allen was capable of engaging in the light-medium work category and since that time he had a "significant decrease in his capabilities," and now "at best is rated in the **sedentary** work category; if allowed to work at his own pace and schedule." (Ex. 5-b, pp. 3-4) Alverio noted Allen would be unable to work a consistent daily job as he must take frequent breaks, change position often, he is unable to functionally and safely lift from the floor or a low shelf without exacerbating his symptoms, and his ability to walk, sit, or stand for a long period is hampered by his pain behaviors and weaknesses, and requires maximum support or bracing to transfer from the floor. (Ex. 5-b, p. 4)

On August 1, 2018, Allen returned to Dr. Rennels complaining of pain, tingling in his left arm, neck, thumb, index finger, and middle finger, more prominent on the left than the right. (JE 8-y, p. 1) Allen reported he had three recent falls when his leg gave out and that his lower back "is beginning to be a factor as well." (JE 8-y, p. 1)

On August 10, 2018, Allen attended an appointment with Melissa Rasmussen-Donnelly, PA, associated with Christopher Gillis, M.D., a neurosurgeon at the University of Nebraska, complaining of back and leg pain following the removal of leads from a spinal cord stimulator a year ago. (JE 18-a, p. 1) Rasmussen-Donnelly examined Allen, documented he had an antalgic gait, and on exam his lumbar spine range of motion was limited and painful in all directions, with full rotation of the bilateral hips without discomfort. (JE 18-a, p. 3) Rasmussen-Donnelly reviewed a computerized tomography report from December 2017, which she documented stated Allen had mild to moderate right foraminal stenosis at L4-5, disc material extending into the right lateral recess from L4-5 abutting and compressing the right L5 nerve root, and mild spondylosis at L2-3 and L3-4. (JE 18-a, p. 3) Rasmussen-Donnelly noted Allen complained of "left-sided low back pain and radicular symptoms in an L5 and S1 pattern on the left." (JE 18-a, p. 3)

Rasmussen-Donnelly recommended and Allen received lumbar spine magnetic resonance imaging. (JE 18-a, p. 3) The reviewing radiologist listed an impression of "[m]ultilevel age-related lumbar spine changes, most prominent to the right at L3-L4," noting at L3-L4 Allen had "[m]ild disc bulge. Minimal central canal narrowing. Mild bilateral foraminal narrowing. Just lateral to the foramen on the right, there is absence of fat adjacent to the L3 nerve root. Clinical correlation with right L3 radiculopathy is suggested." (JE 18-a, pp. 4-5)

On August 23, 2018, Dr. Rennels responded to a letter from Allen's counsel requesting his opinions. (Ex. 6-a) Dr. Rennels noted Allen's cervical radiculopathy remains an ongoing problem and his symptoms "have continued to worsen since 3/19/13, as has his overall physical condition. His pain has continued to worsen despite continued attempts at management including placement of a neuro-stimulator by Dr. John Treves." (Ex. 6-a, p. 2) Dr. Rennels noted Allen continues to take amitriptyline, clonidine, Lyrica, Skelaxin, tizanidine, Norco, and morphine ER for his injury. (Ex. 6-a, pp. 2-3) Dr. Rennels opined Allen has "severe psychological stressors due to his work related injury. His physical and mental conditions are directly interrelated. He has significant depression likely exacerbated by his injury and need for management of his ongoing pain." (Ex. 6-a, p. 3)

Dr. Rennels opined Allen has received some relief, though not complete relief, with his current pain medications and he is unable to work or complete his activities of daily living on a regular basis. (Ex. 6-a, pp. 3-4) Dr. Rennels noted "[t]he ongoing nature of his pain certainly contributes to his depression, frustration, and exhaustion." (Ex. 6-a, p. 4)

Dr. Rennels concluded since the placement of the neurostimulator, Allen has had further deterioration of his physical condition and "[h]e now has pain in his lower back as well as pain extending down his left leg. Though this occurred after placement of the stimulator it does not appear to be due to the stimulator placement. He has degenerative changes at the L4-5 level and a right L4-5 disc herniation." (Ex 6-a, p. 4)

Dr. Rennels agreed with Dr. Mathisen that it would be very difficult for Allen to perform any type of work due to the effect of pain and pain medications on his ability to perform activities of daily living, due to physical, mental, and emotional factors. (Ex. 6-a, p. 5) Dr. Rennels recommended a referral to the Cleveland Clinic for pain control, and noted he had treated Allen on a regular basis for several years and Allen's overall health had deteriorated, noting Allen's chronic pain had become exhausting for him. (Ex. 6-a, p. 5) Dr. Rennels noted Allen had continued to work for years and "try to fight through it. However, his depression seems to be worsening and his pain has continued to intensify over the years." (Ex. 6-a, p. 5) Dr. Rennels found that given his pain, in combination with the increasing degree of pain on a daily basis Allen's ability to continue work is "impossible." (Ex. 6-a, p. 6) Dr. Rennels also agreed with the results of the functional capacity evaluation performed by Alverio, and with the reports from Dr. Treves and Dr. Mathisen "that in his current condition that there is no way that he could perform the type of work he has previously or any other type of work." (Ex. 6-a, p. 6)

A nurse with Dr. Gillis at the University of Nebraska returned a call to Allen on August 24, 2018. (JE 18-b) The nurse documented she spoke with Dr. Gillis and he indicated the imaging showed a slight disc bulge at L4-L5, with no severe stenosis and Dr. Gillis had not identified a surgical need. (JE 18-b) Allen inquired whether anything on his lumbar imaging could have been caused from his prior cervical injury and the nurse documented she told Allen "Dr. Gillis is not able to make that determination." (JE 18-b)

Ag Processing ordered a functional capacity evaluation of Allen, which was conducted by Neal Wachholtz, P.T., D.P.T., on August 27, 2018. (Ex. M) Wachholtz opined the examination was valid, and

> Shane demonstrates the ability to lift and carry 15-20 pounds on an occasional basis and 10 pounds on a frequent basis. He should be restricted from lifting from floor level secondary to difficulty bending/squatting to floor level. He should also be restricted from overhead lifting secondary to limitations in cervical/upper extremity mobility and subjective complaints of pain. Please see the enclosed functional capacities form for a summary of his current capabilities. Based on these findings, Shane is currently restricted to performance of work activities within the SEDENTARY to LIGHT physical demand level.
>
> Based on test results, Shane would benefit from the following restrictions within the SEDENTARY to LIGHT physical demand level:
>
> 1. Shane is capable of sitting, standing, walking each on a frequent basis. He would benefit from occasional alternate in postures to limit aggravation of symptoms.
> 2. No prolonged or repetitive overhead work.
> 3. No prolonged or repetitive forward bending. Forward bending should be restricted to an occasional basis secondary to low back and lower extremity pain complaints.
> 4. Climbing and squatting should be restricted to an occasional basis secondary to low back and lower extremity pain complaints.

(Ex. M, pp. 1-2)

On August 27, 2018, Jack Green, M.Ed., C.R.C., prepared a vocational evaluation report for Allen. (Ex. 3-h) Green reviewed Allen's medical records and interviewed Allen. (Ex. 3-h) Green opined given his physical and psychological impairments, Allen is precluded from returning to any new competitive employment. (Ex. 3-h, p. 20)

On September 7, 2018, Allen attended an appointment with Michael Lankhorst, M.D., an anesthesiologist specializing in pain management with the University of Nebraska, and Arlene Lazaro, D.O., complaining of low back pain. (JE 20-a, p. 1) Allen relayed approximately one year before when his spinal cord stimulator leads were removed he immediately felt sharp, shooting pain down his left leg that has persisted. (JE 20-a, p. 1) Allen reported the pain was located to the left low back and radiated down the posterior aspect of his left leg into the sole of his left foot as well as the dorsum and the first three toes, with left anterolateral thigh pain. (JE 20-a) Allen described experiencing shooting pain, numbness, and tingling in his whole leg. (JE 20-a, p. 1) Allen was taking morphine, Lyrica, tizanidine, Skelaxin, and Norco without much relief. (JE 20-a, p. 1) Dr. Lankhorst documented Allen's mood was appropriate, he was socially appropriate, and he did not appear to be in distress. (JE 20-a, p. 3) Dr. Lankhorst noted extension and side bending of the lumbar spine produced pain. (JE 20-a, p. 4) Dr. Lankhorst assessed Allen with low back pain with left-sided radiculopathy in L4, L5, and S1, and recommended a left L4-L5 transforaminal steroid injection. (JE 20-a, pp. 4-5)

On September 11, 2018, Karen Stricklett, M.S., C.R.C., re-examined her opinions concerning Allen's industrial disability in light of recent changes in his medical condition. (Ex. O) Stricklett examined Allen's medical records, including the results from two functional capacity evaluations conducted by Alverio and Wachholtz. (Ex. O, p. 1) Stricklett met with Allen before the original arbitration hearing, but she did not meet with him for the review-reopening action. (Tr., p. 78) Stricklett opined that in the event the deputy workers' compensation commissioner determined Allen's lumbar pain and resulting radiculopathy were related to the original injury, with consideration of the July 31, 2018 and August 30, 2018 functional capacity evaluation results, she "would have to agree that Mr. Allen is not competitively employable at the present time. This is due to the fact that he would be unable to qualify for employment in the open labor market that would be compatible with his physical limitations, regardless of which FCE guidelines are considered," but also noted Allen had not reached maximum medical improvement for his lumbar condition and radiculopathy. (Ex. O, pp. 3-4)

Dr. Lankhorst administered a left-sided L4-L5 lumbar transforaminal epidural steroid injection to Allen on September 18, 2018. (JE 20-a, pp. 10-11) Allen returned to Dr. Lankhorst on October 19, 2018, reporting he received a good benefit for one hour, and then no benefit from the transforaminal epidural steroid injection, noting his symptoms were worsening. (JE 20-b, pp. 1-4)

Allen experienced another flare of his Crohn's disease and he sought emergent treatment at the University of Nebraska on October 23, 2018. (JE 19-a-JE 19b) Allen was admitted and hospitalized from October 23, 2018 through October 30, 2018. (JE 19-a-JE 19-f) Hospital staff noted Allen's Crohn's disease had been in remission for the past twelve years. (JE 19-e) Allen received abdominal x-rays. (JE 19-c) The reviewing radiologist noted mild to moderate degenerative lumbar and thoracic spondylosis. (JE 19-c)

Allen attended an appointment with Dr. Rennels on November 7, 2018. (JE 8-z, p. 1) Allen reported he had had two flare-ups of Crohn's disease in the past three to four months, that he believed the stimulator was causing pain, but it also took the edge off the pain. (JE 8-z, p. 1)

On November 8, 2018, Allen returned to Dr. Lankhorst, complaining of low back pain. (JE 20-b, pp.4-7) Dr. Lankhorst recommended a left L3, L4, and L5 medial branch block, which he administered on November 30, 2018. (JE 20-b, p. 7; JE 20-c)

On November 30, 2018, Allen attended an appointment with Dr. Guck, reporting significant pain in his upper back and now his lower back and left leg. (JE 16-e, p. 1) Allen had not seen Dr. Guck in a year. Dr. Guck documented Allen acknowledged he was depressed. (JE 16-e, p. 1) Dr. Guck recommended Allen participate in a four week comprehensive pain program to address issues related to reactivation and treatment of depression related to his pain problems. (JE 16-e, p. 1) Dr. Guck diagnosed Allen with pain disorder with psychological factors and medical condition and major depression, recurrent, chronic. (JE 16-e, p. 1) Dr. Guck documented Allen had no further sessions scheduled with him. (JE 16-e, p. 1)

Allen attended a follow-up appointment with Dr. Lankhorst on December 6, 2018, reporting he received moderate pain relief of fifty percent for three days following the injection. (JE 20-d, p. 1) Allen relayed his symptoms had been gradually worsening and interfering with his activities of daily living. (JE 20-d, pp. 1, 3-4) Dr. Lankhorst determined he did not have any other interventional options for Allen, noting he believed Allen would be best served by working with the chronic pain management program. (JE 20-d, p. 4) When questioned whether he thought whether the spinal cord stimulator was causing Allen's lumbar back pain, Dr. Lankhorst stated that was "possible." (JE 20-d, p. 4)

On December 20, 2018, Allen attended an appointment with Clare Lookian, PA-C, with University of Nebraska General Psychiatry. (JE 21-a) Lookian diagnosed Allen with a cervicalgia, Crohn's disease, generalized anxiety disorder, lumbar back pain with radiculopathy affecting the left lower extremity, major depressive disorder, recurrent episode, severe, and osteoarthritis of the spine with radiculopathy in the lumbar region. (JE 21-a, p. 2) Lookian scheduled a return visit for Allen on January 17, 2019. (JE 21-a, p. 1) Lookian prescribed Effexor, recommended therapy, and lifestyle changes to include diet changes, sleep changes, and increased activity. (JE 21-a, p. 4) Lookian did not offer any causation opinions, specific therapy recommendations, or address what treatment other than Effexor Allen would require and for what duration. (JE 21)

On January 7, 2019, Allen attended a follow-up appointment with Dr. Treves. (JE 13-y, p. 1) Dr. Treves assessed Allen with multifactorial chronic pain, a history of a cervical artificial disc which failed, cervical fusion, and chronic C6 injury. (JE 13-y, p. 2) Dr. Treves noted Allen has a cervical dorsal column neurostimulator, and Allen reported the battery site was painful, "potentially causing some of his left-sided discomfort." (JE 13-y, p. 2) Dr. Treves further noted Allen had left-sided sciatica, which in his opinion is related to facet arthropathy and foraminal stenosis left L5-S1. (JE 13-y, p. 2) Dr.

Treves noted he did not think there was anything further to offer for Allen's neck and shoulder pain, cervical fusion, and C6 nerve injury, noting Allen only received thirty percent relief with the stimulator and medical management with Dr. Rennels. (JE 13-y, p. 2) Dr. Treves recommended Allen continue to use the stimulator with ongoing medical management. (JE 13-y, p. 2) He noted,

> I do believe that the left IPG site could be causing him some pain. This is not causing his sciatica. I agree with Dr. Lankhorst that one could consider moving the left-sided battery either farther onto the flank or over to the right side which would be preferable away from his left low back pain and sciatica in hopes of helping the left low back discomfort.

(JE 13-y, p. 2) Dr. Treves also noted the stimulator could be removed, which Allen was not interested in. (JE 13-y, p. 2) Dr. Treves again noted he believed the sciatica is "mainly related to progressing facet arthropathy and foraminal stenosis left L5-S1. He does have right L4-L5 degenerative change and a disc bulge, though that is his asymptomatic side. The left L5 foraminal and lateral recess stenosis correlates most with his sciatic pain." (JE 13-y, p. 2) Dr. Treves recommended conservative management with Dr. Rennels, found Allen had reached maximum medical improvement for his cervical fusion, cervical nerve injury, and neurostimulator, and opined he did not have anything to offer other than moving the stimulator battery. (JE 13-y, pp. 2-3) Dr. Treves opined, "I think for a variety of reasons, he is not going to go back to the type of labor-type job he was doing previously and likely at this point in time, he is not employable in any capacity due to his multifactorial chronic pain and other medical condition." (JE 13-y, p. 3)

Allen testified the pain in his neck, left shoulder and left arm down into his hand has become worse since the original arbitration hearing. (Tr., pp. 27-28, 41-42) Allen reported he has struggled with the pain. (Tr., pp. 27-28) He reported he also has problems with his right upper extremity, including numbness, tingling, shooting pain down into his thumb, index, and middle finger, and spasms. (Tr., pp. 28, 49-50; JE 23, p. 10) Allen noted he experiences shooting pain in the same fingers of his left arm. (Tr., pp. 28-29) Allen testified he experiences the problems with his fingers ten to twelve times per day, and he experiences neck pain and pain in his left arm "all the time." (Tr., pp. 41, 49-50) Allen also reported he does not have the strength he used to have in his left hand. (Tr., p. 51)

Allen relayed he has a difficult time sleeping, he becomes short, upset, and angry with people, and struggles with thinking. (Tr., pp. 42-43, 92) Allen reported his sleeping problem has become progressively worse and he normally receives three to five hours of interrupted sleep each night due to his pain. (Tr., p. 43)

Allen testified he did not have any problems with his lower back, left buttock, or left leg before he received the permanent stimulator. (Tr., pp. 39-40) Allen reported when the leads from the trial stimulator were removed, "I lost feeling down my left leg and I started to fall and [the physician's assistant] reached out and grabbed me and lifted me back up." (Tr., pp. 61-62) Allen stated the problem "runs down right there –

my lower part of back, runs down through my butt cheek, back of my leg, and ends up in the three left toes" on his left side. (Tr., p. 62) Allen testified the pain down his leg has become progressively worse over time. (Tr., p. 62) Allen relayed his lumbar problem hinders his ability to sit "a lot more." (Tr., p. 75)

Allen reported the stimulator has provided him with pain relief in his left shoulder down into his left arm, but it has not provided any relief of his neck pain. (Tr., p. 64) Allen estimated his pain relief at the time of hearing was fifteen to twenty percent. (Tr., p. 65) Allen's medical records do not support Allen has received only fifteen percent relief from the stimulator. Allen testified if his medical records show he reported he received more than fifteen to twenty percent pain relief the records would be in error. (Tr., p. 110) Allen denied telling Dr. Treves in January 2019 that he received thirty percent pain relief from the stimulator. (Tr., pp. 117-18)

Allen testified he can no longer carry heavy items because of his neck and leg pain. (Tr., p. 89) Allen stated that his left leg has given out on him when walking up and down stairs, causing him to fall six times. (Tr., p. 89) Allen testified when he puts pressure onto his left leg "it shoots a pain, shoots down, and it gives out and I lose my balance and tip forward." (Tr., p. 90) Allen reported he is able to do small loads of laundry. (Tr., p. 89)

Allen would like to see a psychiatrist. (Tr., p. 53) Shortly before the hearing Allen saw a physician's assistant twice at the University of Nebraska. (Tr., p. 53) Allen reported his mental condition has become worse since 2013, noting he does not feel like doing anything anymore. (Tr., p. 54)

After the original arbitration hearing until 2017, Allen did not seek other employment from Linder Tire. (Tr., pp. 97-98) Allen continued to work for Linder Tire full-time until August 2017. (Tr., pp. 98, 106) Allen was not disciplined by Linder Tire, but noted his boss would say, "[y]ou guys need to hurry up. You need to hurry up and get that job done," even before March 2013. (Tr., p. 99) Allen had a lifting restriction of seventy-five pounds before the March 2013 hearing, and through the duration of his employment with Linder Tire. (Tr., pp. 101-02; JE 23, p. 7)

Allen has not looked for work since his employment with Linder Tire ended. (Tr., p. 119; JE 23, p. 6) Allen reported he cannot work because he is in too much pain, and he does not know of positions that will allow him to get up and walk around and sit or stand as needed. (Tr., p. 119)

CONCLUSIONS OF LAW

I. Review-Reopening

Iowa Code section 86.14 governs review-reopening proceedings. When considering a review-reopening petition, the inquiry "shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded." Iowa Code § 86.14(2). The deputy workers' compensation

commissioner does not re-determine the condition of the employee adjudicated by the former award. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 391 (Iowa 2009). The deputy workers' compensation commissioner must determine "the condition of the employee, which is found to exist subsequent to the date of the award being reviewed." Id. (quoting Stice v. Consol. Ind. Coal Co., 228 Iowa 1031, 1038, 291 N.W. 452, 456 (1940)). In a review-reopening proceeding, the deputy workers' compensation commissioner should not reevaluate the claimant's level of physical impairment or earning capacity "if all of the facts and circumstances were known or knowable at the time of the original action." Id. at 393.

The claimant bears the burden of proving, by a preponderance of the evidence that, "subsequent to the date of the award under review, he or she has suffered an *impairment or lessening of earning capacity proximately caused by the original injury*." Simonson v. Snap-On Tools Corp., 588 N.W.2d 430, 434 (Iowa 1999) (emphasis in original).

On appeal, Commissioner Godfrey determined Allen sustained permanent impairments to his neck, shoulders, and bilateral upper extremities and found Allen had sustained a forty percent industrial disability. (App. Dec) Commissioner Godfrey noted Allen would require pain management indefinitely for his condition. (App. Dec., p. 6) The district court affirmed the Commissioner Godfrey's decision. The deputy workers' compensation commissioner and Commissioner Godfrey did not find Allen sustained a temporary or permanent mental health impairment caused by the work injury.

In this review-reopening action Allen alleges he has sustained a change of condition based on a worsening of his original injuries to his neck, shoulders, and bilateral upper extremities, and new sequelae mental health, lumbar spine, lumbar radiculopathy and lower extremity conditions caused by the original work injury, and a change of economic condition. Ag Processing rejects Allen's assertion and contends he has not established causation for the alleged sequelae conditions, or a worsening of his physical or financial condition caused by the original work injury.

A. Alleged Sequelae Conditions

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. Wills, 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., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979) (quoting Bushing v. Iowa Ry. & Light Co., 208 Iowa 1010, 1018, 226 N.W. 719, 723 (1929)).

The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997). "In order for a cause to be proximate, it must be a 'substantial factor.'" Ayers, 731 N.W.2d at 17. A probability of causation must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). The cause does not need to be the only cause, "[i]t only needs to be one cause." Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 64 (Iowa 1981).

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 deputy 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).

1. Lumbar Spine, Lumbar Radiculopathy, Sciatica, and Lower Extremities

Four physicians have provided opinions concerning Allen's lumbar spine, lumbar radiculopathy, sciatica, and lower extremity complaints, Dr. Treves, a treating neurosurgeon, Dr. Rennels, a treating pain specialist, Dr. Lankhorst, a treating pain specialist, and Dr. Cornett, an orthopedic surgeon retained by Ag Processing to conduct an independent medical examination. Dr. Lankhorst is the only physician to opine it is "possible" Allen's lumbar spine complaints, lumbar radiculopathy, sciatica complaints, and lower extremity complaints relate to the original work injury. I do not find his opinion persuasive. I find the opinion of Dr. Treves, a neurosurgeon who has treated Allen over time, as supported by Dr. Cornett, to be the most persuasive.

After placement of the trial and permanent spinal cord stimulators to treat Allen's cervical and upper extremity pain, Allen complained of left flank, buttock, and lower extremity pain to Dr. Treves. (JE 13-r, p. 2) Dr. Treves stated, "I do not think Mr. Allen's cervical stimulator and IPG site are causing him to have left flank, buttock and left lower extremity radicular pain. I am concerned that he has a new problem involving his low back, unrelated to his cervical stimulator." (JE 13-r, p. 2) Dr. Treves then opined Allen did not require any additional restrictions for his cervical stimulator, but also noted Allen could not work due to his lumbar radiculopathy, and ordered a computerized tomography scan. (JE 13-r, p. 2)

Allen underwent a lumbar spine computerized tomography scan in December 2017, and the reviewing radiologist listed an impression of mild to moderate right foraminal stenosis at L4-5, "[d]isc material extending right lateral recess from L4-5 abutting/compressing the right L5 nerve root," and "[m]ild spondylosis at L3-4 and L2-3." (JE 13-t, p. 1) Dr. Treves recommended additional treatment for Allen's lumbar condition, including pain management and possible surgery. (JE 13-u; JE 13-v, p. 1) Dr. Treves again noted in February 2018,

> Shan[e] was under the impression that his lumbar radiculopathy is related to his cervical problems. This is not the case which is one of the reasons I called him back. There is no way that I can relate his current lumbar radiculopathy, disk herniation and foraminal stenosis to his previous cervical radiculopathy, disk herniation and foraminal stenosis to his previous cervical radiculopathy, chronic pain syndrome, and neurostimulator implantation. These appear to be separate events.

(JE 13-v, p. 1)

Dr. Cornett, an orthopedic surgeon conducted an independent medical examination of Allen for Ag Processing on July 25, 2018. (Ex. K, p. 6) Dr. Cornett opined Allen's lumbar radiculopathy and treatment for such are not causally related to the May 11, 2007 work injury. (Ex. K, p. 6)

In August 2018, Dr. Rennels, a treating anesthesiologist specializing in pain management, noted Allen experienced further deterioration of his physical condition and "[h]e now has pain in his lower back as well as pain extending down his left leg. Though this occurred after placement of the stimulator it does not appear to be due to the stimulator placement. He has degenerative changes at the L4-5 level and a right L4-5 disc herniation." (Ex. 6-a, p. 4)

In September 2018, Dr. Lankhorst provided treatment to Allen for his lumbar spine condition. Dr. Lankhorst diagnosed Allen with "[m]ultilevel age-related lumbar spine changes," including mild disc bulging at L3-L4 and L4-L5. (JE 20-a, pp. 1-2) Dr. Lankhorst administered injections which did not relieve Allen's pain. (JE 20-a, pp. 5, 10-11; JE 20-b, pp. 1-4; JE 20-c; JE 20-d, p. 1) When questioned whether he thought whether the spinal cord stimulator was causing Allen's lumbar back pain, Dr. Lankhorst stated that was "possible." (JE 20-d, p. 4) Dr. Lankhorst did not opine the stimulator was more likely than not causing Allen's lumbar back pain. While absolute certainty is not required to prove causation, "probability is necessary;" a mere "possibility" is insufficient. Sondag v. Ferris Hardware, 220 N.W.2d 903, 907 (Iowa 1974); Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296, 297 (Iowa 1974). I do not find Dr. Lankhorst's opinion persuasive.

In January 2019, Dr. Treves, the treating neurosurgeon who implanted the trial and permanent stimulators into Allen, examined Allen and again noted Allen had left-sided sciatica, which he believed was related to facet arthropathy and foraminal stenosis left L5-S1. (JE 13-y, p. 2) Again, Dr. Treves did not opine Allen's lumbar condition and sciatica are related to the May 11, 2007 work injury.

Allen has not proven his lumbar spine, lumbar radiculopathy, sciatica, or any lower extremity conditions or complaints are causally related to the May 2007 work injury. Allen has not proven a change of condition based on a lumbar spine, lumbar radiculopathy, sciatica, or lower extremity condition.

2. Mental Health Condition

Three psychologists, one physician, and one physician's assistant have provided opinions on Allen's psychological condition, Dr. Arias, a psychologist who examined Allen before he complained of lumbar spine problems, lumbar radiculopathy, sciatica, and lower extremity problems, Dr. Guck, a psychologist who treated Allen before and after he complained of lumbar spine problems, lumbar radiculopathy, sciatica, and lower extremity problems, Dr. Mathisen, a psychologist who examined Allen for the Social Security Administration after he applied for Social Security Disability Insurance benefits after he complained of the lumbar spine problems, lumbar radiculopathy, sciatica, and lower extremity problems, and Dr. Rennels, a treating pain specialist who has treated

Allen over a period of several years, before and after he complained of lumbar spine problems, lumbar radiculopathy, sciatica, and lower extremity problems, and Lookian, a physician's assistant who examined Allen after he complained of lumbar spine problems, lumbar radiculopathy, sciatica, and lower extremity problems. I find the opinion of Dr. Rennels to be the most persuasive.

In December 2015, Dr. Arias examined Allen to help determine whether he would be an appropriate candidate for a spinal cord stimulator. (JE 15-a, p. 1) Allen informed Dr. Arias he had been hospitalized for one week in 2006 for major depression at the time of his divorce, and that he received additional treatment for the condition. (JE 15-a, p. 2) This occurred before the May 2007 work injury.

During his examination, Dr. Arias noted testing indicated Allen had tendencies to displace psychological stress into physical symptoms, with symptoms of elevated anxiety and depression, and his testing revealed significant defensiveness, suggesting difficulty with self-disclosure and potential resistance to psychological treatment to address his emotional difficulty. (JE 15-a, p. 1) Dr. Arias recommended weekly cognitive behavioral psychotherapy throughout the spinal cord stimulator implantation process, and noted he did not expect the mild cognitive difficulties to persist. (JE 15-a, p. 1) Dr. Arias did not opine the original work injury caused a permanent aggravation, acceleration, worsening, or lighting up of the Allen's depression, or that the original work injury caused Allen to develop a temporary or permanent anxiety disorder; he opined he did not expect Allen's mild cognitive difficulties to persist.

In March 2017 before Allen received the trial spinal cord stimulator, Dr. Guck diagnosed Allen with a pain disorder associated with psychological factors and medical condition, and major depression, recurrent, chronic. (JE 16-d) Dr. Guck did not opine Allen's depression was caused by the original work injury. He did not diagnose Allen with an anxiety disorder. Dr. Guck noted Allen "has shut down quite extensively in regard to social and recreational activities" and recommended Allen become more active. (JE 16-b, p. 1) After Allen received the trial stimulator Dr. Guck documented Allen reported his pain had decreased twenty to thirty percent, but his pain was still significant, he was stressed because his bills were adding up, and he had limited social interactions. (JE 16-c, p. 1)

Allen's last appointment with Dr. Guck was on November 30, 2018. (JE 16-e) Dr. Guck again diagnosed Allen with a pain disorder associated with psychological factors and medical condition, and major depression, recurrent, chronic. (JE 16-e, p. 1) Dr. Guck recommended Allen participate in a four week comprehensive pain program to address issues related to reactivation and treatment of depression related to his pain problems. (JE 16-e, p. 1)

Dr. Mathisen conducted an evaluation of Allen for the Social Security Administration in July 2018, after Allen complained of lumbar spine, lumbar radiculopathy, sciatica, and lower extremity problems. (Ex. 4-a) Dr. Mathisen diagnosed Allen with a pain disorder with medical condition and psychological factors and depressive disorder due to general medical condition. (Ex. 4-a, pp. 4-5) Based on

his examination of Allen, Dr. Mathisen noted Allen has restrictions for activities of daily living, difficulty maintaining social functioning, he cannot sustain concentration and attention needed for tasks, he cannot relate appropriately to coworkers and supervisors, and he cannot adapt to changes in the environment. (Ex. 4-1, p. 6) Dr. Mathisen did not identify whether Allen's restrictions and difficulties are due to his original work injury or his alleged lumbar conditions. Dr. Mathisen's examination occurred more than two and a half years after Dr. Arias opined he did not think Allen's cognitive difficulties to persist.

In August 2018, Dr. Rennels, a treating pain specialist, responded to a letter from Allen's counsel and opined Allen has "severe psychological stressors due to his work related injury. His physical and mental conditions are directly interrelated. He has significant depression likely exacerbated by his injury and need for management of his ongoing pain." (Ex. 6-a, p. 3) Dr. Rennels further opined "[t]he ongoing nature of his pain certainly contributes to his depression, frustration, and exhaustion." (Ex. 6-a, pp. 4)

In late December 2018, Lookian, a physician's assistant specializing in psychiatry selected by Allen diagnosed Allen with a cervicalgia, Crohn's disease, generalized anxiety disorder, lumbar back pain with radiculopathy affecting the left lower extremity, major depressive disorder, recurrent episode, severe, and osteoarthritis of the spine with radiculopathy in the lumbar region. (JE 21-a, p. 2) Lookian scheduled a return visit with Allen for January 17, 2019. (JE 21-a, p. 1) Lookian prescribed Effexor, recommended therapy, and lifestyle changes to include diet changes, sleep changes, and increased activity, but she did not offer any causation opinions, specific therapy recommendations, or address what treatment other than Effexor Allen would require or for what duration. (JE 21-a) I do not find her opinions persuasive on the issue of causation.

While Dr. Rennels did not offer opinions on Allen's depression until after Allen developed his lumbar condition, lumbar radiculopathy, sciatica, and lower extremity complaints, Dr. Guck diagnosed Allen with a pain disorder associated with psychological factors and medical condition, and major depression, recurrent, chronic, before these conditions and complaints developed. The record supports Allen's social interactions and activity have decreased due to his pain, as documented by Dr. Guck. Allen has established his preexisting depression was exacerbated by the pain he developed from his work injury.

B. Cervical Radiculopathy, Neck Pain, and Upper Extremities

Allen alleges his left cervical radiculopathy, neck pain, and upper extremity pain and conditions have become worse over time since the original arbitration hearing. The record supports Allen's pain decreased some after he received the trial and permanent stimulators. No expert has assigned Allen any additional permanent partial impairment for his cervical radiculopathy, neck pain, or upper extremities since the original arbitration hearing. While functional capacity evaluations conducted of Allen for both parties show a change in condition in his functional capabilities, no opinion was

produced at hearing showing the change of condition is related to his cervical radiculopathy, neck pain, or upper extremities and unrelated to his lumbar spine, lumbar radiculopathy, sciatica, or lower extremity conditions. Allen has not proven he has sustained a change of condition with respect to his left cervical radiculopathy, neck pain, and upper extremities conditions and complaints.

C. Financial Condition

Allen also avers he has sustained a change of financial condition due to his original work injury. Allen did not return to work at Linder Tire after he received the permanent stimulator.

Allen received additional restrictions after he developed problems associated with his lumbar spine, lumbar radiculopathy, sciatica, and lower extremities. During an appointment on December 21, 2017, Dr. Treves assigned no additional permanent restrictions for his stimulator related to his cervical radiculopathy, but found Allen could not work due to his lumbar radiculopathy. (JE 13-r, p. 2) As analyzed above, I did not find Allen's lumbar spine, lumbar radiculopathy, sciatica, or lower extremity conditions or complaints are causally related to the original work injury. No expert has assigned Allen any restrictions related to his depression. Allen has not established he has sustained a change of financial condition caused by the original work injury.

II. Extent of Disability

As discussed above, I found Allen has established he sustained a change of condition concerning the exacerbation of his preexisting depression. Given Allen has met his burden of proving a change in condition, it is necessary to consider the extent of his disability. "Industrial disability is determined by an evaluation of the employee's earning capacity." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 852 (Iowa 2011). In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee's "ability to be gainfully employed." Id. at 138.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(u).

Allen alleges he is permanently and totally disabled under the statute and common law odd-lot doctrine. Ag Processing rejects his assertion. In Iowa, a claimant may establish permanent total disability under the statute, or through the common law odd-lot doctrine. Michael Eberhart Constr. v. Curtin, 674 N.W.2d 123, 126 (Iowa 2004) (discussing both theories of permanent total disability under Idaho law and concluding

the deputy's ruling was not based on both theories, rather, it was only based on the odd-lot doctrine). Under the statute, the claimant may establish the claimant is totally and permanently disabled if the claimant's medical impairment together with nonmedical factors totals 100 percent. Id. The odd-lot doctrine applies when the claimant has established the claimant has sustained something less than 100 percent disability, but is so injured that the claimant is "unable to perform services other than 'those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist.'" Id. (quoting Boley v. Indus. Special Indem. Fund, 130 Idaho 278, 281, 939 P.2d 854, 857 (1997)).

"Total disability does not mean a state of absolute helplessness." Walmart Stores, Inc. v. Caselman, 657 N.W.2d 493, 501 (Iowa 2003) (quoting IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 633 (Iowa 2000)). Total disability "occurs when the injury wholly disables the employee from performing work that the employee's experience, training, intelligence, and physical capacities would otherwise permit the employee to perform." IBP, Inc., 604 N.W.2d at 633.

Commissioner Godfrey determined Allen had sustained a forty percent industrial disability. Before Allen received the trial stimulator Dr. Guck noted Allen "has shut down quite extensively in regard to social and recreational activities" and recommended Allen become more active. (JE 16-b, p. 1) Dr. Mathisen also agreed Allen has difficulty maintaining social functioning and relating appropriately with coworkers and supervisors. (Ex. 4-1, p. 6) Allen does not have any additional appointments scheduled with Dr. Guck. Allen treated with Lookian, a physician's assistant specializing in psychiatry once in December 2018, and his records note he had an appointment scheduled for January 2019. (JE 21) No additional treatment records were produced at hearing.

At the time of the review-reopening hearing Allen was forty-four years old. (Tr., p. 25) Allen graduated from high school and he received a diploma in auto body repair from Northwest Iowa Community College in 1993. (App. Dec., p. 2) Allen has experience working as a meat packager, palletizer, machine operator, kettle cooker, and five to six years of experience as a supervisor of forty individuals. (App. Dec., p. 2) Allen worked as a bean dryer operator, operated a Bobcat, and worked in the scale house for Ag Processing. (App. Dec., p. 2; JE 1) After Ag Processing terminated Allen's employment, he worked briefly as a contractor for Cox Cable upgrading the cable system, and later he accepted a position with Linder Tire as an auto and light truck mechanic. (App. Dec., p. 2; JE 1) Allen worked for Linder Tire from June 2009 through August 9, 2017, when Dr. Treves installed the permanent spinal cord stimulator. Allen has not worked since that time. Allen has difficulties with social interaction and motivation caused by depression identified by Drs. Guck and Mathisen. Allen's situation is complicated because his unrelated lumbar spine, lumbar radiculopathy, sciatica, and lower extremity complaints preclude him from working. Considering all of the factors of industrial disability, I find Allen has sustained an additional fifteen percent industrial disability caused by the exacerbation of his depression. This finding precludes an award of permanent total disability benefits under the statute.

Allen further contends he is permanently and totally disabled under the odd-lot doctrine. Allen has developed lumbar spine, lumbar radiculopathy, sciatica, and lower extremity complaints and conditions unrelated to his work injury. While Allen may be precluded from working due to these conditions, Allen has not established his sequela depression has caused him to be "unable to perform services other than 'those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist.'" Michael Eberhart Constr., 674 N.W.2d at 126. Allen is entitled to an additional seventy-five weeks of permanent partial disability benefits, at the stipulated rate of $347.40 per week, commencing on January 3, 2017, the date the review-reopening petition was filed. Verizon Bus. Network Servs., Inc. v. McKenzie, No. 11–1845, 2012 WL 4899244, at *10 (Iowa Ct. App. Oct. 17, 2012).

III. Temporary Disability Benefits

Allen seeks additional temporary disability benefits from March 28, 2018, through January 6, 2019. Ag Processing contends Allen is not entitled to additional 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.

On December 21, 2017, Dr. Treves opined Allen did not need any new work restrictions for his stimulator, but he could not work at that time due to his radiculopathy. (JE 13-r, p. 2) No expert restricted Allen from working as a result of his sequela depression. Given my finding Allen has not established his work injury caused him to develop lumbar spine, lumbar radiculopathy, sciatica, or lower extremity conditions, his lack of restrictions for his sequela depression, and Dr. Treves's opinion Allen did not need any new restrictions for his cervical radiculopathy as of December 21, 2017, I find

Allen is not entitled to temporary disability benefits from March 28, 2018, through January 6, 2019.

IV. Alternate Medical Care

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).

Allen seeks continued medical treatment for his work-related cervical injury, including pain management from Dr. Rennels. As discussed above, Allen has not proven he developed lumbar spine, lumbar radiculopathy, sciatica, or lower extremity conditions caused by the original work injury, and thus Ag Processing is not responsible for the cost of medical care related to these conditions. Ag Processing remains responsible for the treatment of Allen's work-related injury, including Allen's sequela depression. Allen has not established Ag Processing has abandoned care in this case. Ag Processing retains the right to direct Allen's care for his work-related injury.

V. Costs

Allen seeks to recover $100.00 for the filing fee, $14.72 for service, $1,033.00 for Alverio's functional capacity evaluation, and $5,605.88 for Green's vocational evaluation. (Ex. 13) 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.

Allen was partially successful in proving his claim and he was awarded an additional fifteen percent industrial disability. The vocational expert report secured by Allen was not beneficial. I find the $5,605.88 cost is excessive. Using my discretion I decline to award the entire $5,605.88 cost of the report. Allen is entitled to recover the $100.00 for the filing fee, $14.72 for service, $1,033.00 for Alverio's functional capacity evaluation, and $1,000.00 for Green's vocational evaluation.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendants shall pay the claimant an additional seventy-five (75) weeks of permanent partial disability benefits at the stipulated weekly rate of three hundred forty-seven and 40/100 dollars ($347.40), commencing on January 3, 2017.

Defendants 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. Sanchez v. Tyson, File No. 5052008 (Apr. 23, 2018 Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue).

Defendants remain responsible for all medical care causally connected to the work injury.

Defendants shall reimburse claimant one hundred and 00/100 dollars ($100.00) for the filing fee, fourteen and 72/100 dollars ($14.72) for cost of service, one thousand thirty-three and 00/100 dollars ($1,033.00) for Alverio's functional capacity evaluation, and one thousand and 00/100 dollars ($1,000.00) for the cost of Green's vocational evaluation.

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

Signed and filed this 3rd day of May, 2019.

HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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