BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID A. DICKEY, Claimant, vs. CORE-MARK MIDCONTINENT, INC., d/b/a FARNER-BOCKEN COMPANY, Employer, and AMERICAN ZURICH INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5064165 ARBITRATION DECISION Head Note Nos.: 1402.40, 1801, 1803, 2501, 2502, 2907

STATEMENT OF THE CASE

David Dickey, claimant, filed a petition for arbitration against Farner-Bocken Company, as the employer, and American Zurich Insurance Company, as the insurance carrier. This case came before the undersigned for an arbitration hearing on September 27, 2021.

Pursuant to an order from the Iowa Workers' Compensation Commissioner, this case was heard via videoconference using CourtCall. All participants in the hearing appeared remotely via CourtCall.

The parties filed a hearing report prior to the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 7, Claimant's Exhibits 13 through 22, as well as Defendants Exhibits 1 through 3. All exhibits were received without objection. Defendants' Exhibit 3 was offered during testimony at the time of hearing. However, Defendants' Exhibit 3 was not part of the initial exhibit set filed by defendants in advance of hearing. Therefore, the evidentiary record was suspended at the conclusion of the arbitration hearing pending receipt of Defendants' Exhibit 3, which was timely filed and is received into the evidentiary record.

Claimant testified on his own behalf. No other witnesses testified live at the hearing. The testimonial record closed at the conclusion of the arbitration hearing and the evidentiary record closed completely once defense Exhibit 3 was filed.

However, defense counsel for the parties requested an opportunity to file post-hearing briefs. This request was granted. Claimant filed a hearing brief prior to the commencement of hearing. Defendants filed their post-hearing brief on November 1, 2021. The case was considered fully submitted to the undersigned on that date.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the December 20, 2016 work injury caused temporary disability and, if so, whether claimant is entitled to temporary disability, or healing period, benefits from November 14, 2019 through February 7, 2020.

2. Whether the work injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent partial disability benefits.

3. The proper commencement date for permanent partial disability benefits, if any.

4. Whether claimant is entitled to payment or reimbursement for past medical expenses contained in Claimant's Exhibit 20.

5. Whether claimant is entitled to reimbursement of his independent medical evaluation fees.

6. Whether costs should be assessed against either party and, if so, in what amount.

FINDINGS OF FACT

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

David Dickey, claimant, is a 61-year-old gentleman, who resides in Dubuque, Iowa. Mr. Dickey is a high school graduate. He possesses no further education. (Transcript, pages 14-15) He worked for Walgreens from 1978 through the late 1990s or possibly into 2001. He also operated a bar for one year after his employment with Walgreens ended. He then started working for Farner-Bocken. He testified that he started for Farner-Bocken in May 2000 as a district sales representative, though his timeline of employment does not perfectly align with his deposition testimony. (Tr, p. 15; Defendants' Ex. A, pp. 11, 18-19)

In his position as a district sales representative, Mr. Dickey worked on a commission basis and was responsible for securing new sales accounts, servicing existing accounts, generating required paper reports, setting up and preparing sales shelving and sets. He traveled a great deal, servicing Dubuque, Northwestern Illinois

and Southwestern Wisconsin. Mr. Dickey worked out of his car, in stores of his customers, and maintained a home office. He was required to carry a laptop, printers, as well as cases of product for his stores. (Tr., pp. 15-18)

On December 20, 2016, Mr. Dickey was performing his typical job duties and was headed back to his residence after completing his sales work for the day. He was stopped at a stoplight in Dubuque, Iowa when he was struck from behind by another vehicle. The collision was sufficient that it bent his car frame and totaled his vehicle. (Tr., p. 19)

Mr. Dickey described pain in his neck and right shoulder on the date of the accident. (Tr., p. 23) He testified he had no prior or pre-existing problems or symptoms in his neck or right shoulder. (Tr., p. 27) Mr. Dickey recalls seeing the ceiling of his vehicle after impact but was dazed after the collision. He was able to drive himself home.

Claimant reported the accident to his supervisor, Randy Barkema, the next day. Mr. Barkema instructed that he seek medical care with his personal physician. (Tr., pp. 24-27) Mr. Dickey followed the instructions of his supervisor and sought evaluation with his personal physician, Lawrence R. Hutchison, M.D., on December 21, 2016. Mr. Dickey reported neck and shoulder discomfort at the initial evaluation. However, his physician noted that he did not appear uncomfortable and moved without significant difficulty. (Claimant's Ex. 13, p. 1) By March 1, 2017, claimant's physical therapist documented that claimant had achieved 100 percent of his goals and that he was, "Doing well and has returned to prior level of function." (Joint Ex. 1, p. 2) The physical therapist recommended discharge at that time with claimant to continue his home exercise program. (Joint Ex. 1, p. 2) Dr. Hutchison's records demonstrate that claimant's symptoms began increasing about five weeks after the motor vehicle accident and became progressively worse thereafter. (Claimant's Ex. 13, p. 5)

Dr. Hutchison made a referral for claimant to be evaluated by a pain specialist, Timothy J. Miller, D.O. Dr. Miller evaluated claimant on April 20, 2017. Dr. Miller opined that claimant's neck MRI was normal. Dr. Miller diagnosed claimant with whiplash and opined that claimant would "not need any long term treatments." (Joint Ex. 7, p. 3)

From May 2017 through April 2018, Mr. Dickey elected to pursue chiropractic evaluation and treatment, which did not prove significantly beneficial to claimant. (Claimant's Ex. 16) Mr. Dickey sought chiropractic treatment on his own referral and it was not authorized by defendants. (Tr., p. 50) Nor did the chiropractic care provide significant and beneficial treatment. As claimant's symptoms continued, Dr. Hutchison referred him for evaluation by a neurosurgeon, Hiroyuki Oya, M.D., at the University of Iowa Hospitals and Clinics. Dr. Oya evaluated claimant on July 19, 2018. Dr. Oya opined that claimant's condition was not surgical. (Joint Ex. 5, p. 15)

At that point, claimant obtained pain management treatment at the University of Iowa Hospitals and Clinics with Amy C. Pearson, M.D. Dr. Pearson performed some trigger point injections. Claimant testified that the injections were helpful on a temporary

basis, but ultimately, the treatment offered by Dr. Pearson was unsuccessful in resolving claimant's neck and right shoulder symptoms over the long term. (Joint Ex. 5)

Dr. Hutchison evaluated claimant on February 21, 2019. That evaluation was for an annual well visit. However, during that evaluation, claimant related to Dr. Hutchison that he injured his left shoulder while shoveling approximately six weeks prior. (Joint Ex. 3, p. 2) Given this specific reference to a left shoulder injury in January 2019, I find that any left shoulder symptoms are not related to the work injury. Interestingly, there is no mention of right shoulder symptoms during the February 21, 2019 evaluation.

Mr. Dickey obtained an independent medical evaluation performed by Mark Taylor, M.D., on May 21, 2019. Dr. Taylor opined that the pain in claimant's neck and right shoulder are causally related to the December 20, 2016 motor vehicle accident. He further opined that claimant achieved maximum medical improvement (MMI) for these injuries on May 9, 2019. (Claimant's Ex. 19, p. 8) Dr. Taylor opined that claimant sustained a 7 percent permanent impairment of the whole person as a result of the injuries, all of which is attributable to the neck injury. In other words, Dr. Taylor assigned no permanent impairment specific to claimant's right arm or shoulder. Dr. Taylor also opined that claimant should follow a series of restrictions that includes: rarely lifting 15-20 pounds above shoulder height, only rare to occasional overhead reaching with the right arm, limiting lifting to 30 pounds between knee and chest on an occasional basis, changing positions as needed, rarely crawling, rare to occasional stepladder use, no leaving claimant's head in one position for a prolonged time, and getting out of a vehicle whenever needed for symptoms. (Claimant's Ex. 19, p. 9)

Claimant sought additional treatment after Dr. Taylor's IME. He submitted to a repeat cervical MRI on June 18, 2019 and was re-evaluated by Dr. Oya on June 20, 2019. Once again, Dr. Oya opined that claimant's neck condition was not surgical. (Joint Ex. 5, pp. 2, 6)

Defendants referred claimant for evaluation by Chad Abernathey, M.D., a neurosurgeon in Cedar Rapids. Dr. Abernathey evaluated claimant on September 25, 2019. Dr. Abernathey concurred with Dr. Oya and recommended against any surgical intervention on claimant's neck. (Joint Ex. 2)

On December 9, 2019, claimant submitted to a right shoulder MRI ordered by Dr. Hutchison. That MRI demonstrated osteoarthritis and bursitis in claimant's right shoulder. (Joint Ex. 6, p. 2) Claimant received no significant additional treatment for the right shoulder after the MRI. Dr. Hutchison has not opined whether the right shoulder condition, if any, is attributable to, or materially worsened by, the December 20, 2016 work injury.

However, Dr. Hutchison took claimant off work on November 14, 2019 as a result of his bilateral shoulder symptoms. (Claimant's Ex. 13, p. 14) Mr. Dickey remained off work for 12 weeks, being released by Dr. Hutchison to return to work on February 8, 2020 (Claimant's Ex. 13, p. 15). Although claimant testified he could not perform his job duties with Farner Bocken within the restrictions offered by his independent medical evaluator, Dr. Taylor, Dr. Hutchison released him back to full duty work and he returned to work for Farner Bocken's successor in 2020 in the same position he worked prior to

the injury date. Claimant earned approximately $72,000 in 2016 and saw his earnings increase to $81,000 in 2017. (Tr., pp. 69-70) Claimant's earnings for tax years 2018 to the present are not in evidence.

Defendants obtained an independent medical evaluation performed by Peter G. Matos, D.O., a board certified occupational medicine physician on May 27, 2021. Dr. Matos diagnosed claimant with a neck sprain and opined that it should have resolved and been at MMI within 90 days of the injury occurring. Dr. Matos opined that any ongoing symptoms in claimant's neck are due to the aging process. Dr. Matos also opined that claimant's right shoulder, right arm, and right hand pain, numbness and tingling are not causally related to the work injury on December 20, 2016. Dr. Matos further opined that claimant sustained no permanent impairment as a result of the work injury on December 20, 2016 and that claimant requires no further treatment or restrictions related to that motor vehicle accident. (Defendants' Ex. 2, pp. 25-26)

Claimant acknowledged during his testimony that he does not have any work restrictions from any of the treating physicians. (Tr., pp. 64-66) At the time of the arbitration hearing, claimant continued to work for the successor of Farner Bocken and had no plans to leave that employment or retire.

I ponder claimant's right shoulder injury claim initially. He clearly reported some right shoulder symptoms the day after the motor vehicle accident. However, records from Dr. Hutchison also demonstrate no reports of right shoulder pain as of February 2019.

I acknowledge the opinion of Dr. Taylor causally relating the right shoulder condition to the work injury. The one difficulty I have with Dr. Taylor's analysis is that he offers no definitive diagnosis for the right shoulder, he evaluated claimant prior to the right shoulder MRI, and offers no opinions after the right shoulder MRI was performed. In this sense, Dr. Taylor's opinions about the right shoulder appear speculative.

By contrast, Dr. Matos evaluated claimant after the right shoulder MRI occurred. His evaluation documented normal range of motion, as well as negative testing of the right shoulder. (Defendants' Ex. 2, p. 24) Dr. Matos specifically reviewed and referenced the December 9, 2019 right shoulder MRI as part of his record review and opinions. (Defendants' Ex. 2, p. 51)

Given that Dr. Matos had additional diagnostic testing available to him and that the right shoulder MRI did not bear out the speculation by Dr. Taylor that claimant may have rotator cuff pathology in his right shoulder, I find the opinions of Dr. Matos to be most convincing on the issue of the right shoulder. Therefore, while I find that claimant experienced symptoms into his right shoulder immediately after the work injury, I find that claimant failed to prove that the symptoms he experienced in November 2019 (and beyond) in his right shoulder are causally related to the December 20, 2016 work injury. Accordingly, I also find that the time off work from November 14, 2019 through February 7 20202 for shoulder symptoms is not causally related to the work injury. Claimant failed to prove loss of time from work or temporary disability related to the December 20, 2016 work injury.

With respect to his claim for a neck injury, I again find that claimant experienced and reported neck symptoms immediately after the work injury occurred. Claimant underwent medical treatment as outlined above, including pain management, physical therapy, and evaluation by surgeons for his neck. Ultimately, he was able to return to work for the employer and continued working his same job for the employer's successor.

Again, I acknowledge Dr. Taylor's independent medical evaluation and opinions. However, I discount those opinions in this situation because they include recommendations for work restrictions that were not imposed or deemed necessary by any of claimant's treating medical providers, including his personal physician, pain specialists, and two spine surgeons. In fact, claimant returned to work without restrictions and continued working at his job through the date of this hearing. Dr. Taylor's opinions appear overly restrictive and inaccurate based on this evidence and reality.

Instead, I accept the full duty release by Dr. Hutchison, as well as the fact that claimant actually returned to work and performed his job duties without formal restriction for years between the injury date and the hearing date as most accurate and convincing. In this sense, the opinions of Dr. Matos again correspond most closely with reality as it has developed. Therefore, I again accept Dr. Matos' opinions pertaining to the neck injury.

Having accepted Dr. Matos' opinions as most credible and convincing, I also find that claimant failed to prove the need for permanent restrictions, any permanent impairment related to the work injury, or that his ongoing symptoms are causally related to the work injury. Similarly, I find that claimant failed to prove he sustained permanent disability related to the neck injury or any loss of future earning capacity as a result of the December 20, 2016 work injury.

Although I accept Dr. Matos' opinions related to the neck and acknowledge that he believes claimant achieved maximum medical improvement for the neck 90 days after the injury, I find that claimant continued to obtain medical care and that additional examinations, evaluation, treatment, and diagnostic testing was appropriate, reasonable, and necessary to rule out more serious injury resulting from the December 20, 2016 work injury. In fact, surgery was not definitively ruled out until claimant as evaluated by Dr. Abernathey on September 25, 2019. Accordingly, I find that claimant's neck treatment remained causally related through September 25, 2019. At that point, it became obvious that surgical intervention and other significant interventions were not necessary and claimant cannot prove ongoing causal connection for treatment of the neck to the work injury.

Mr. Dickey requests that numerous past medical expenses be awarded as part of his claim. He includes those requests and medical expenses in Claimant's Exhibit 20. I will address each provider listed in Claimant's Exhibit 20 in turn to determine causal connection and relevant facts necessary to determine whether those expenses should be awarded.

The initial medical provider identified in Claimant's Exhibit 20 is Dr. Hutchison. As previously noted, the employer instructed claimant to seek medical care through his personal physician. Accordingly, the employer authorized care through Dr. Hutchison. Reviewing the listed medical expenses and dates of service, I note that the treatment provided by Dr. Hutchison from December 21, 2016 through April 18, 2019 is all causally related to the work injury, reasonable care, and appears to include reasonable charges.

However, the office notes for November 14, 2019 demonstrate that date of service was an annual well-check. Defendants are not a health insurance provider and are not obligated to pay for annual well-check expenses. Thereafter, Dr. Hutchison's care appears directed toward claimant's shoulders, which were determined to be not related to the work injury. Accordingly, defendants are not obligated to pay for expenses incurring on or after November 14, 2019. The mileage claims asserted on Claimant's Exhibit 20 from December 21, 2016 through April 18, 2019 appear appropriate, reasonable, and for necessary medical care related to the work injury.

The next medical provider listed in Claimant's Exhibit 20 is Medical Associates for a date of service of March 20, 2017. This expense correlates to a cervical MRI performed on that date. This expenses is causally related to the work injury, appropriate medical care, and the charges appear reasonable. Similarly, mileage to and from this MRI is appropriate and necessary medical mileage.

Next are charges for Mercy Radiologists of Dubuque. The date of service for these charges is also March 20, 2017. These are radiology charges to read and interpret the cervical MRI. Again, these are causally related to the work injury, reasonable medical expenses, and reasonable treatment.

The next charges listed in Claimant's Exhibit 20 include chiropractic charges from Timmerman, D.C. Claimant selected this provider. He did not request the chiropractic care be authorized and defendants did not authorize chiropractic care. Accordingly, I find the chiropractic care with Dr. Timmerman was unauthorized care. It did not provide significant benefit for claimant's injuries or symptoms. I find that claimant failed to prove this was reasonable and beneficial care.

Claimant next asserts entitlement to reimbursement for a medication provided by Sam's Pharmacy on December 21, 2021. Review of Dr. Hutchison's December 21, 2021 medical record demonstrates that he prescribed Cyclobenzaprine on that date. (Claimant's Ex. 13, p. 1) This is reasonable and appropriate medical care for the work injury. The charges listed for this medication in Claimant's Exhibit 20 are fair and reasonable.

Following the medication charge in Exhibit 20 are charges from the University of Iowa Hospitals and Clinics. These include charges from Dr. Oya and Dr. Pearson for neurosurgical evaluation and pain management evaluation. Both were reasonable and appropriate treatment options for claimant's neck injury.

The medical records in evidence document medical care at the University of Iowa through August 10, 2018. Although the charges listed in Claimant's Exhibit 20 extend

beyond August 10, 2018, I am unable to determine what that additional care is for or whether it relates to claimant's neck, right shoulder, left shoulder, or some other condition. I find that claimant failed to prove any treatment or charges incurred at the University of Iowa Hospitals and Clinics is causally related to the work injury or that the charges were incurred for reasonable and necessary treatment.

Mr. Dickey also seeks award of medical expenses from Unity Point Health—Finley Hospital. Claimant has established that the physical therapy provided through September 6, 2018 was causally related to the work injury, reasonable care, and reasonable expenses. However, all dates of service listed after September 6, 2018 on Claimant's Exhibit 20 have no corresponding records. Some of those charges are from a Dr. Humes and a Dr. Currie. I am unable to determine what care was rendered, whether it was for the neck, shoulders, or some other condition(s). Claimant failed to prove entitlement to reimbursement or payment of expenses incurred at Finley Hospital after September 6, 2018, including any mileage after that date.

The next provider listed on Claimant's Exhibit 20 is Dr. Mark Taylor for his independent medical evaluation. This is not a charge for medical treatment and will be considered as part of claimant's request for reimbursement as an independent medical evaluation. However, claimant has not proven this is medical care or that it should be paid or reimbursed as medical care.

Claimant also lists charges from Dr. Abernathey for his evaluation on September 25, 2019. The evidence demonstrates this evaluation was requested by defendants. Defendants should pay or reimburse this expenses, though it appears it has already been paid by defendants. Defendants should likewise pay all medical mileage for claimant to attend this appointment.

Next on claimant's requested medical expenses are charges from Dubuque Physical Therapy from November 18, 2019 through October 13, 2020. This charges appear related to treatment of claimant's shoulders. Having found that claimant failed to prove the right shoulder care is causally related to the injury, I find these charges (including the mileage claims) are not related to the injury or payable by defendants.

Mr. Dickey next lists charges from Mississippi Valley Anesthesiology and Advanced Radiology. Both of these sets of charges appear related to treatment of claimant's shoulder issues. Having found the shoulder injuries or symptoms are not proven related to the work injury, I similarly find the charges from both of these providers are not causally related to the work injury.

CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" refer to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the

injury and the employment. Miedema, 551 N.W.2d 309. 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 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

In this case, I found the opinions of Dr. Matos to be most convincing and credible with respect to the claimant's neck injury and claim for permanent disability. While there was competing medical evidence, I found Dr. Matos' opinions to be most consistent with the other evidence in this record. Accordingly, I conclude that claimant failed to prove by a preponderance of the evidence that he sustained permanent disability as a result of the December 20, 2016 work injury. This conclusion renders any further findings and conclusions pertaining to the extent of permanent disability or the commencement date for permanent disability moot.

Mr. Dickey asserted a claim for temporary disability, or healing period, benefits. This claim for temporary disability revolved around time off work for treatment of claimant's right shoulder. However, I found that Dr. Matos' opinion was the most well-

founded and credible opinion in this evidentiary record. Therefore, I found that claimant failed to prove the time off work from November 14, 2019 through February 7, 2020 was causally related to the December 20, 2016 work injury at Farner Bocken. Having concluded that claimant failed to prove permanent disability, I analyze claimant's claims as claims for temporary disability benefits pursuant to Iowa Code section 85.33(1). When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

I found that claimant was off work under restrictions imposed by his personal physician, Dr. Hutchison. Those restrictions were imposed for treatment of and as a result of right shoulder symptoms. However, in this case, I found that claimant failed to prove the right shoulder treatment or time off work are causally related to the work injury. Accordingly, I conclude that claimant failed to prove entitlement to temporary disability benefits from November 14, 2019 through February 7, 2020.

Claimant seeks award of past medical expenses in this case. Claimant details the past medical expenses sought in Claimant's Exhibit 20.

Under Iowa's worker's compensation scheme, the employer has the right to select the authorized medical provider. Iowa Code section 85.27. The injured worker is never required to submit to the authorized medical care. Moreover, the system provides a mechanism in which the claimant can seek an order redirecting the authorized medical care to a different provider if the employer fails to provide reasonable medical care. Iowa Code section 85.27(4).

In this case, the employer directed medical care through claimant's personal physician. All causally related medical care through Dr. Hutchison or through referrals made by Dr. Hutchison, as well as the emergency room care, are all authorized and the responsibility of defendants.

However, Mr. Dickey also sought unauthorized chiropractic care. He selected his own chiropractor without requesting additional medical care from the employer or authorization of chiropractic care. Similarly, claimant did not seek an order of this agency authorizing alternate medical care. Instead, claimant selected his own medical care and abandoned the statutory scheme that permits the employer to select care. In so doing, claimant assumes a higher burden of proof to establish liability for unauthorized medical care. Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

If the claimant elects to pursue unauthorized medical care, he can still recover the expenses of that unauthorized care if he proves by a preponderance of the evidence that such care was reasonable and beneficial. Id. at 206. However, there are often times multiple reasonable courses of treatment. Therefore, to recover the cost of unauthorized care, claimant must prove that the unauthorized care was beneficial in that

it "provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id.

In this case, claimant did not request chiropractic care from the employer. Therefore, the employer did not select or authorize any chiropractic care. Mr. Dickey testified that the chiropractic care did not provide long-lasting relief of his symptoms and he offered no evidence that the chiropractic care he sought provided a more favorable outcome than would likely have been achieved by the care authorized by the employer. In fact, this would essentially be impossible because claimant never gave the employer the opportunity to exercise its statutory right to select the care to be provided. I conclude claimant failed to overcome his burden to establish that the chiropractic care was reasonable, beneficial, and provided a more favorable medical outcome than would likely have been achieved through authorized care that could have been offered by the employer. Accordingly, I conclude the employer's authorization defense prevails and claimant is precluded from recovery of any chiropractic expenses.

As detailed thoroughly in the findings of fact, I found the following medical expenses causally related, reasonable, and appropriate medical care:

Dr. Hutchison through 4/18/19

Medical Associates

Mercy Radiologists of Dubuque

Sam's Pharmacy

University of Iowa Hospitals and Clinics through 8/10/18

Unity Point Health—Finley Hospital through 9/6/18

Dr. Chad Abernathey

I further found that each of the above expenses, including medical mileage listed in Claimants' Exhibit 20 were appropriate and reasonable. I conclude all of the above summarized medical expenses, including medical mileage, are payable or reimbursable by defendants. Iowa Code section 85.27.

Mr. Dickey also seeks reimbursement of the independent medical evaluation charges from Dr. Taylor. 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).

The requirements of Iowa Code section 85.39 are construed strictly and claimant must establish that the pre-requisites are met before obtaining his evaluation to qualify for reimbursement. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 843 (Iowa 2015). In this case, claimant selected the initial medical provider and referrals were from claimant's personal physician to other providers. None of the medical providers rendered a permanent impairment rating or disability determination prior to claimant obtaining an independent medical evaluation with Dr. Taylor in May 2019.

In fact, defendants did not secure a competing evaluation, impairment rating, and medical opinion until they had claimant evaluated by Dr. Matos in May 2021. Accordingly, I conclude that the requirements of Iowa Code section 85.39 were not met. Claimant failed to establish entitlement to reimbursement under Iowa Code section 85.39. Id.

The final disputed issue is whether costs should be assessed against either party. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. In this case, claimant recovers some medical expenses but failed to prove entitlement to other medical expenses, his claim for temporary disability benefits, or his claim for permanent disability benefits. Exercising the agency's discretion, I conclude that it is appropriate to assess claimants' filing fee of $100.00, but no other costs as part of this decision.

ORDER

THEREFORE, IT IS ORDERED:

Claimant takes no weekly benefits.

Defendants shall pay claimant's medical expenses, reimburse those expenses to a third-party payor, or reimburse claimant for his out-of-pocket expenditures, as the case may be, for all medical expenses found to be causally related and as detailed more thoroughly in the body of this decision.

Defendants shall reimburse claimant's medical mileage for all medical treatment found to be causally related to the work injury at the applicable mileage rate applicable pursuant to 876 IAC 8.1(2).

If the parties cannot agree as to the amount of medical expenses owed or the amount of medical mileage owed under this award, the parties shall file a timely request for rehearing, along with a brief setting forth each parties' calculations, for a specific and detailed entry of the amount of medical expenses and medical mileage owed.

Defendants shall reimburse claimant's costs in the amount of one hundred and 00/100 dollars ($100.00).

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

Signed and filed this __14th__ day of February, 2022.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

R. Pogge (via WCES)

Robin Maxon (via WCES)

Adam Bates (via WCES)

Tyler Smith via (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.