BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEITH ALLEN, Claimant, vs. A & E FACTORY SERVICE, LLC, Employer, and ACE AMERICAN INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5066294 ARBITRATION DECISION Head Note Nos.: 1800, 1802, 1803, 2500, 2501, 4000, 4000.2

STATEMENT OF THE CASE

Claimant, Keith Allen, brought a claim for workers' compensation benefits against A&E Factory Service, LLC, employer, and Ace American Insurance Company, insurer, for an accepted work injury occurring on December 23, 2016.

The record in this case consists of Joint Exhibits 1-11, Claimant's Exhibits 1-16, Defendants' Exhibits A-F and the testimony of the claimant. Defendants proffered Exhibit G, but the exhibit was excluded on for lack of timeliness.

The matter was heard on November 18, 2019, and considered fully submitted on December 9, 2019, upon the simultaneous filing of briefs.

STIPULATIONS

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

The parties agree that claimant sustained a work-related injury on December 23, 2016, and that this injury was the cause of some temporary and permanent disability. Permanent disability is industrial in nature and the commencement date is November 14, 2019.

At the time of the hearing, claimant's gross earnings were $1,119.29 per week. He was single and entitled to one exemption. The weekly benefit rate is $648.97.

ISSUES

1) Whether claimant is entitled to temporary total disability benefits from May 23, 2019 to August 3, 2019 following a right hip surgery;

2) Whether claimant is entitled to permanent partial disability benefits;

3) Reimbursement of medical expenses itemized in Claimant's Exhibit 14;

4) Whether claimant is entitled to penalty benefits for the nonpayment of temporary and permanent disability.

FINDINGS OF FACT

Claimant was a 56-year-old male at the time of the hearing. He has a high school diploma as well as a journeyman and plumbing license obtained in 1983 and 1985. In 2012, he received his associate's degree in business administration with a major in management from Des Moines Area Community College. He went on to achieve a bachelor's degree in business administration from Iowa State University in December 2014. Claimant also holds certificates in electrical, conditioned air, refrigeration, boilers, and electrical, as well as a certificate for refrigerator recovery in the state of Iowa. (Transcript page 23) He previously held a second class engineer's license with the City of Des Moines.

Claimant's past work history includes owning his own HVAC plumbing and electrical business, as well as plumbing work in residences and multi-family units. His primary source of work experience is in HVAC, electrical and plumbing trades.

Claimant has sustained injuries in the past including a left foot injury in 1993 or 1994 while employed with Cook Plumbing. (Defendants' Exhibit A, 5) He tore his left rotator cuff while working for Iowa State University in 2001. (DE A, p. 4) Claimant testified that his injury subsequently required two surgical repairs of the left rotator cuff. As a result of this injury, claimant received permanent partial disability (PPD) benefits of 19.08 percent industrial disability. A subsequent claim was made for a November 13, 2002 left knee injury and claimant received PPD benefits of 2 percent for the lower left extremity.

Claimant testified that his employment with Iowa State University ended due to "an issue with one of the managers". (DE A, p. 4) He stated that he had met with Iowa State University the morning of May 5, 2004, and was informed they were going to put him on a two-year disability due to his torn left rotator cuff injury. He was purportedly informed that he could no longer work at Iowa State due to permanent work restrictions for his shoulder injury of no more than 15 pounds over shoulder height with his left extremity. (DE A, p. 4) Later that same day, claimant was involved in a serious

motorcycle accident, sustaining multiple injuries including a C-2 fracture, a left clavicle fracture and multiple rib fractures. (DE A, p. 3; Joint Exhibit 1, pp. 1-5) His blood-alcohol level exceeded the legal limit. (JE 1:5) He had multiple surgeries following this incident including repair of the right ventricle, decompressive laparotomy for abdominal compartment syndrome and a subsequent split-thickness skin graft.

According to a medical history provided to Iowa Methodist Hospital on June 11, 2004, claimant's father reported Claimant had a work-related left shoulder injury and was in the process of applying for long-term disability. (JE 1, 001) The record notes, "he used to do electrical work, heating, cooling, and plumbing, and recently had to stop working due to his work injury." (JE 1, 001)

On June 13, 2004, claimant's pelvic fracture had apparently healed to the point where he was now being allowed to get up and do at least partial weight bearing with a walker. He began physical therapy on September 9, 2004, wherein he reported numbness of his left leg from the thigh into his calf of two weeks. (JE 2, 006)

Following the motor vehicle accident, claimant applied for Social Security Disability and began receiving benefits the summer of 2007. (DE F) According to Social Security records, claimant reported that on April 12, 2005 he underwent a stomach surgery at Iowa Methodist Medical Center in Des Moines, and noted "My left leg is more disabled." (DE F, 29) He noted he was frequently depressed, could not lift, sleeps a lot, and had short-term memory loss. (DE F, 30) Claimant also reported that while he had been working part-time following the motorcycle collision, he suffered from back and neck problems, ribs popping loose and hips being out of joint. (DE F, 32; See also, Tr. 105-08) Claimant testified at hearing initially that he had no hip problems following the motorcycle collision but on cross examination agreed that he was treated regularly at the chiropractor for his hip being out of joint. (Tr. 105-106)

Prior work history included crew worker at McDonalds and a peer mentor for Iowa State University where he assisted non-traditional students in transitioning to college life.

Claimant also specifically denied having sustained any injury to his low back due to the motorcycle accident, or having any problem with his low back prior to his employment with A&E Factory Service. (Tr. 82-83) He testified that he had received prior treatment for his neck and upper back prior to his employment with A&E Factory Service (Tr. 82-83) and has been seeing Brandon Vinzant, DC, since 2012. (DE A, 7) He contends the conditions he treated for with Dr. Vinzant were mostly for his neck, and "there's one rib in between my shoulder blades, and he always adjusts my hips." (DE A, 7)

However, contrary to this testimony, medical records show that on February 8, 2016, claimant sought treatment from Dr. Vinzant for pain in the left lumbar, lumbar, right lumbar, and upper thoracic regions. (JE 3, 007) Claimant reported that the complaints had stayed the same since his last visit and rated his pain at a 5/10. Postural

analysis noted short left leg (pelvic deficiency), and high right hip. Claimant received manipulative therapy to the spine and left pelvis. (JE 3, 007)

On April 26, 2016, claimant returned for a seventh appointment with Dr. Vinzant for care to the upper thoracic and lumbar area. (JE 3, 008) His pain was a 4/10 and muscle spasms were noted to be moderate to severe in the left lumbar, right lumbar and upper thoracic areas. There were range of motion concerns for the entire lumbar and cervical spine. (JE 3, 008) On May 24, 2016, claimant returned to Dr. Vinzant with complaints of left lumbar, right lumbar, upper thoracic and left trapezius dull and aching discomfort. He reported pain at a 3/10. It was noted that he was showing improvement. (JE 3, 009) On June 21, 2016, claimant's condition was deemed to be stable. (JE 3, 010)

Since the summer of 2007, claimant has been receiving Social Security Disability (SSD). (DE A, p. 6) SSD records show that he was re-evaluated in August of 2018 due to a trial work period of less than nine months of employment, and benefits were continued. (DE F, p. 42)

Claimant testified that he had been applying for work since 2014. (Tr. 62) He stated that because of his background with facilities HVAC, plumbing, electrical and boilers, he was applying for supervisory management, assistant director and director over facilities positions in colleges, schools and corporations despite some positions advertising lifting above his restrictions. (Tr. 62) He received no job offers and claimant felt that he was being discriminated against based on his disability. (Tr. 124-25)

He began working for defendant employer in September 2016 as a refrigeration technician. At the time he was hired, claimant was receiving SSD. He did not share that he was under permanent work restrictions or that he had prior, serious injuries. He testified that at the time of his hire, he informed his employer he was not going to work on washers and dryers. It is unknown whether this self-accommodation was maintained.

On December 23, 2016, claimant was installing a freezer drawer. In the process, he felt a pull or strain in his low back and right hip. He completed his shift and visited a chiropractor, Brandon Vinzant. (JE 3:11) According to Dr. Vinzant's records, "Patient states their condition has not changed since the last visit and currently remains at MMI." (JE 3, 011) An objective examination performed noted "subluxations that are asymptomatic at this time and do not interfere with the patient's ability to perform ADL's". The assessment was well contained subluxations that were unchanged at the time since the last visit. Claimant was adjusted at C-4, T-3, and L-5 levels. A diagnosis of segmented and somatic dysfunction of the cervical, thoracic, and lumbar region was noted. (JE 3, 011) Claimant argues that this medical note is not accurate but merely a cut and paste of the visit claimant had on June 21, 2016, and used again on the following visit on January 17, 2017. (JE 3:11, 3:10-12)

He testified that he reported his injury the next day after he woke up with pain. (Tr. 38-39) He was initially directed to Concentra for medical care, and was seen on December 29, 2016 by Carlos Moe, D.O. (Tr. 40; JE 4) The medical record states he

was being seen due to an injury to his low back and right hip that occurred when he was moving a fridge. He admitted to low back and right hip pain, spasms and decreased range of motion, but denied any loss of feeling or coldness of the lower extremities. (JE 4, 013)

That same day, x-rays were obtained of the pelvis and showed multiple healed fractures from an accident over a decade ago with severe arthritis surrounding the previous areas of injury. (JE 4, 014) Dr. Moe assessed claimant with a lumbar strain and strain of the right hip. Claimant was further assessed with degenerative joint disease of the right hip and degenerative arthritis of the lumbar spine. He was instructed to return for a follow-up in three days and given work restrictions of no lifting greater than 5 pounds, no pushing or pulling greater than 5 pounds, no bending, and no kneeling. (JE 4, 14) Claimant was also given a prescription for Cyclobenzaprine and Naproxen. (JE 4, 15) Claimant attempted to return to work to perform light-duty tasks but was in great pain and opted to see his personal physician.

On December 30, 2016, claimant was seen by Rachel Overton, M.D., at UnityPoint Health. Claimant reported “pain is on th [sic] left side, having spasms. Some radiation of pain down the right buttocks and halfway to knee. Some numbness in right buttock.” (JE 5, 76) After examination of claimant’s lumbar spine, Dr. Overton diagnosed a low back strain and provided orders for Tramadol and Prednisone prescriptions. Dr. Overton had a discussion with the claimant about Tramadol as a short-term prescription and that this would not be given to him chronically. If there was no improvement, claimant was to consider physical therapy. It was also discussed that Dr. Overton’s care was not approved by workers’ compensation. Dr. Overton did not believe it was appropriate to return claimant to work and placed him on leave for 2-3 days. (JE 5, 78)

Claimant returned for his scheduled appointment with the authorized treating physician, Dr. Moe, on January 4, 2017. The record notes that he continued to have back pain with radiation down into the right hip. (JE 4, 17) During the examination, claimant was positive for pain and tenderness along the lumbar paravertebral muscles. There was decreased range of motion in flexion and extension of the lumbar spine. The assessment by Dr. Moe was degenerative arthritis of the lumbar spine, degenerative joint disease of right hip, lumbar strain, and strain of right hip. Dr. Moe prescribed Cyclobenzaprine, Hydrocodone Acetaminophen, and Naproxen, and made a referral for physical therapy. (JE 4, 17 18)

Claimant returned to Dr. Moe on January 11, 2017. (JE 4, 20) Claimant reported that he continued to have back pain, spasms and radiculitis down the right leg. A physical examination of claimant was performed of the lumbosacral spine and was positive for pain and tenderness along the lumbar paravertebral muscles. Reproducible radiculopathy down the right leg was noted on the exam. (JE 4, 20) Dr. Moe assessed Claimant with a strain of the right hip and back pain with right-sided sciatica. (JE 4, 20-21) He recommended an MRI of the spinal canal and restrictions of no lifting greater than 5 pounds, no pushing or pulling greater than 5 pounds, and no bending or kneeling. (JE 4, 21)

Claimant was seen on January 20, 2017 by Dr. Moe for a recheck of the back injury and to review the results of the MRI. The MRI showed degenerative changes to the lumbar spine, but no major disc herniation or impingement was present. A physical examination of the lumbosacral spine was again performed. Dr. Moe assessed back pain with right-sided sciatica. Claimant was given a prescription for Tramadol and a referral to an orthopedic spine specialist for the continued back pain. (JE 4, 024)

On January 24, 2017, claimant was seen for a physical therapy evaluation for pain in the lower back, right hip area, and numbness/tingling in the right lower extremity. At the time of his evaluation, claimant rated his pain at a 4/10 on the pain scale. The assessment was back pain with right-sided sciatica, degenerative arthritis of the lumbar spine, degenerative joint disease of the right hip, lumbar strain, and strain of the right hip. (JE 4, 028) Claimant continued to follow-up with physical therapy for his lower back and right hip. (JE 4, 29-41) By February 9, 2017, claimant was doing "about 50% better overall." (JE 4, 42) The record notes he was being seen by a specialist that afternoon. (JE 4, 042)

On February 9, 2017, claimant reported for an initial evaluation with orthopedic surgeon, Todd Harbach, M.D., at Iowa Ortho. (JE 6, 109) The patient history sheet provided with the intake materials notes a chief complaint of lower back pain. In the past medical history section, the motorcycle incident was documented, indicating that he was involved in a motorcycle accident on May 5, 2004 where he was "cut in half from pelvis to left shoulder plus broken neck in three places." (JE 6, 111) Other surgical history provided included left hand, 2012, left shoulder, 2004, pelvis, 2004, abdominal, 2004, left rotator cuff, 2001. (JE 6, 111) According to the record from that visit, claimant described "near 100 percent low back pain with some radiation into his RIGHT buttocks and posterior thigh." (JE 6, 112)

He rated his pain at a 5/10 and noted it was worsening and occurred persistently. (JE 6, 114) A physical examination of claimant was completed including exam of the lumbar spine, bilateral hips, bilateral knees, and bilateral ankles. Normal gait was noted. (JE 6, 115-116) Dr. Harbach reviewed the MRI and noted degenerative changes at the lowest two disc spaces with decreased signal on the T2-weight sagittal images in posterior high intensity zones but no significant disc space collapse. There was no evidence of any significant stenosis or a herniated disc. (JE 6, 112)

On that same day, x-rays of the lumbar spine showed mild SI joint arthrosis, mild degenerative changes, and normal hips. (JE 6, 116) Dr. Harbach assessed low back pain at multiple sites, dorsalgia, unspecified, and lumbar degenerative disc disease. (JE 6, 116) The record notes that claimant was slowly getting better on his own, but was asking for a refill of his Tramadol and Flexeril. Dr. Harbach stated that he would see claimant back in four weeks to check his progress. (JE 6, 117) Additional refills for medication were provided as well as a referral for additional physical therapy. (JE 6, 122) Dr. Harbach increased claimant's light-duty work to 15 pounds, but advised to avoid repetitive bending, stooping, lifting, or twisting-type activities. (JE 6, 112)

Claimant continued to follow-up with physical therapy. (JE 4, 48-68) On March 6, 2017, claimant reported to physical therapy that he had no real complaints that day. (JE 4, 69) On March 8, 2017, the physical therapy record noted that claimant stated he was doing well overall. He could perform activities of daily living independently, perform recreational activities independently, and engaged in his home exercise program. (JE 4, 72) Claimant's physical therapist recommended that claimant be discharged with a home exercise program. (JE 4, 73)

On March 10, 2017, claimant returned for a follow-up appointment with Dr. Harbach for his low back pain. Claimant was reportedly doing well and stated he felt good with his pain at a 3 on a 10 scale. Pain was radiating into the right leg. (JE 6, 125) The record notes that claimant did not want to have a fusion for his back, recently received a graduate degree and was looking for more of an office-type job. According to Dr. Harbach's record, "he has reached a medical plateau and there is nothing further I have to offer him so I am putting him at maximal medical improvement today and releasing him for full work without restrictions." (JE 6, 123) Dr. Harbach noted that he discussed with claimant that it may not be in his best interest to continue working on a job that requires as much lifting. (JE 6, 123) Claimant received refills of his prescription medications and was advised as to home exercise. (JE 6, 123)

On March 13, 2017, a telephone message within Iowa Ortho medical records indicates that Dr. Harbach's office had received a question from the insurance carrier concerning the continued use of Tramadol and Flexeril since claimant had been placed at maximum medical improvement (MMI) at the time of his last visit with Dr. Harbach. According to the system entry on March 13, 2017, Dr. Harbach confirmed that claimant was discharged from his care and if claimant would want to continue taking the medications he would need to contact his primary care provider for continued refills. (JE 6, 132)

On March 16, 2017, Dr. Harbach issued an addendum to his medical record of March 10, 2017.

The addendum provided:

> This patient has nothing further medically that I can offer him. When I stated that he can work on anti-inflammatories and other medications as well as therapy, it was always intended that these treatment modalities should be continued through his primary care physician or occupational medicine physician.

(JE 6, 130).

Claimant testified that his employment with A&E Factory Service ended in March of 2017 based in part on the recommendation of Dr. Harbach. (Tr. p. 69)

On May 25, 2017, claimant was seen for a visit by his primary care doctor, Douglas Timboe, M.D., at UnityPoint Health for blood pressure and chronic back pain.

Claimant maintained his pain was so severe, he could not function. He was only able to mow half his lawn before resting. Claimant had not returned to work. (JE 5, 82) Dr. Timboe performed a physical examination of claimant's neck, paralumbar musculature and spine and diagnosed annular tears on the lumbar spine and chronic bilateral low back pain. Dr. Timboe noted, "There is nothing overly impressive on the MRI to consider surgical intervention. I do not feel an epidural steroid would be overtly helpful either. I believe he should continue with conservative care and physical therapy and strengthening." (JE 5, 83)

Claimant was seen at Hansen Chiropractic Center by Kevin Hansen, D.C., in Des Moines, Iowa, on May 26, 2017 for low back pain, headaches, neck pain, and mid back pain with a pain rating of 4 out of 10. The record notes that claimant had neck pain with chronic headaches for the past 15 years. The conditions were noted to be acute exacerbation of the patient's chronic condition. (JE 7, 145)

On or about July 24, 2017, the Social Security Administration received paperwork for a work activity report completed by claimant which states:

> Since my injury on 12/23/16 with Sears, I was informed that I also have two torn muscles on my lower spine that had to have occurred on May 5, 2004 during my initial motorcycle accident. This was new information to me, and it adds to my disability for future jobs.
>
> After more than 18 months of interviews after graduating from college, I took this hands-on job in hopes that I could physically do the job. After this injury that I am still recovering from, I will need to look at office type work only.

(DE F, 34)

On November 21, 2017, claimant returned to Dr. Timboe for a respiratory infection. The history makes note of chronic back pain without radiation below the knee. (JE 5, 87) Dr. Timboe recommended home exercises for the ongoing degenerative condition and renewed the Tramadol pain medication. (JE 5, 88)

As of February 2, 2018, Claimant reported that he had "been very active as a kindergarten teacher in the last week. Lots of bendin [sic] and lifting." (JE 7, 151) On March 2, 2018, the claimant reported that his neck and mid to low back pain had flared up after a long road trip to Ohio the prior week. (JE 7, 153)

On May 9, 2018, claimant returned to Hansen Chiropractic and reported that he had been out walking on rough terrain the last week looking for mushrooms. He was having headaches and neck pain the last few days and neck and mid to low back pain. (JE 7, 155)

On May 23, 2018, claimant reported to Hansen Chiropractic that he was having some low back and right hip pain. Neck and upper back pain had been mild. Overall, he was doing better, but he had some increased pain after working with a lawn mower that lost its self-driving ability. (JE 7, 158)

On May 25, 2018, claimant presented to Dr. Overton for an evaluation of low back pain, primarily on the right side with no radiation which was noted to have worsened after pushing a self-propelled lawnmower. (JE 5, 91)

On June 6, 2018, claimant returned to his primary care doctor and was seen by Dr. Timboe for a follow-up of his chronic medical problems, as well as the Medicare annual wellness visit. The records note he had recently been having some low back pain. He had been trying Ibuprofen which had not been overly effective. He had some Tramadol which had helped and was seeking a refill of that. (JE 5, 97) The assessment provided by Dr. Timboe was COPD, mild, gastroesophageal reflux disease without esophagitis, acute right-sided low back pain without sciatica, and elevated blood pressure. (JE 5, 101) Dr. Timboe refilled claimant's Tramadol prescription and made a referral for physical therapy. Claimant was advised the Tramadol would not be for long-term use. (JE 5, 102)

On July 6, 2018, claimant returned to Dr. Harbach for a follow-up of back pain. (JE 6, 138) The location of the pain was described as the lower back with symptoms being aggravated by pushing and bending when mowing and trimming hedges. (JE 6, 137) Claimant also was having trouble with golfing and was concerned about trying to go skiing. He was using Tramadol and Advil for pain. (JE 6, 137)

Dr. Harbach reviewed claimant's MRI and noted that it showed posterior high intensity zones indicative of annular tears at the lowest two discs. X-rays showed lumbarization, degenerative disease and unspecified dorsalgia. (JE 6, 138) Since the Ibuprofen 800 mg claimant was taking for his neck did not alleviate back pain, Dr. Harbach prescribed Meloxicam and recommended core strengthening and aerobic conditioning. The only other treatment option was a back fusion that had a 50 percent chance of success.

Iowa Ortho records dated August 2, 2018 note that claimant had called requesting a Meloxicam refill. Claimant was again advised that as he was at MMI he would have to have his primary care physician handle prescriptions. (JE 6, 143)

On September 4, 2018, claimant was seen by his personal physician for an evaluation of anxiety and back pain. The record notes that the reason for the visit was anxiety due to a loss he was going through as well as stress. (JE 5, 103) Part of the stress was related to a work discrimination case involving him trying to obtain a job. He had some difficulty concentrating. He was not sleeping well and also continued to have chronic low back pain from degenerative disc disease and spondylosis. Claimant denied overt radicular pain down the legs. (JE 5, 104) Dr. Timboe performed a physical examination and reviewed claimant's MRI from January 2017 in the lumbar spine. A

referral was made to pain management through Central States Medicine. It was noted that claimant could continue Meloxicam as needed for now. (JE 5, 105)

On October 17, 2018, claimant was seen by Alison Weispheipl, M.D., at Central States Pain Clinic for an initial evaluation of lower back pain. It notes that the setting in which it first occurred was the motorcycle accident in 2004. "Patient reports he was in a major motorcycle accident in 2004. He states he may have re-injured his back while doing labor intensive work in December 2016. This is not WC." (JE 8, 160) A review of the symptoms was obtained at that time and noted bone deformities; muscle tenderness; back pain; neck pain; stiffness in joints; neck stiffness. (JE 8, 161) Dr. Weispheipl reviewed the claimant's MRI images and noted some mild disc protrusions at L4-5 and L5-S1. Claimant was diagnosed with intervertebral disc disorders with radiculopathy, lumbar region. Imaging and physical examinations supported the diagnosis. Dr. Weispheipl's impression was that the pain appeared to be multifactorial in etiology with radicular and mechanical components. The radiculopathy appeared to involve the L4, L5 nerve root. However, it was "difficult to tell as it does not extend beyond the buttock." (JE8-164) The axial pain appeared to be predominantly mechanical/schematic in nature and facetogenic etiology. Dr. Weispheipl recommended proceeding first with a lumbar epidural steroid injection, L4-5 interlaminar approach. (JE 8, 164)

On October 29, 2018, claimant returned to Dr. Weispheipl for a lumbar epidural steroid injection. Claimant also requested a Tramadol prescription at that time. Dr. Weispheipl declined to provide the prescription, as she wanted to see how the injection went first. (JE 8, 169)

On November 14, 2018, claimant returned to Central States Pain Management where he was seen by Christian Ledet, M.D., for follow up of low back pain. It was noted that the claimant's ESI performed by Dr. Weispheipl was still effective. Dr. Ledet recorded that the "patient was in an accident 2004 and has had hip pain left and right. He currently is having more pain in the right after doing yard work. Was told he had arthritis. Not sure when his last xrays of pelvis or hip were years ago." (JE 8, 173) Claimant was given a prescription for Cyclobenzaprine and Tramadol. (JE 8, 176) Dr. Ledet recommended AP pelvis films, as patient states it has been years since he had one. (JE 8, 177) X-rays were performed on January 16, 2018 of the pelvis and a referral was made for evaluation of the right hip. (JE 8, 180)

Claimant was seen for an evaluation of his right hip by Alexandra Munday, PA-C at DMOS on December 11, 2018. (JE 10, 259) The record states:

> He states that is (sic) been hurting for around 2 years. He states he was originally in a motorcycle accident a few years back which has caused him some constant pain. He does have past lumbar disc pathology. He at this time states that his pain is in the right gluteal area and does radiate down the leg. Occasionally will be sharp or achy depending on what he is doing. He denies any mechanical symptoms.

(JE 10, 259) No limp was observed with ambulation, and there was no fixed deformity in either hip. There was pain was in the right hip. X-rays were taken of the right hip and pelvis and showed no degeneration. An MRI was ordered. (JE 10, pp. 259-60) Claimant underwent an MRI arthrogram with steroids on December 27, 2018, which provided him with 100 percent relief for approximately 7 days. (JE 10, p. 261)

On February 6, 2019, claimant was seen by Christopher Nelson, D.O., at DMOS who reviewed the MRI of his right hip. The MRI showed a labral tear with slight areas of bone marrow edema and femoral head cartilage loss. (JE 10, p. 262) The plan was to proceed with another cortisone injection before moving forward with joint preservation surgery. (JE 10, p. 262)

Claimant returned to Central States Pain Clinic on January 10, 2019 for a follow up of low back pain where he was seen by Dr. Ledet. At that time, claimant rated his pain at 6/10 in his low back. Other important information regarding the pain included, "Patient had hip injection with MRI and believes this has helped. His last injection in Oct. also has helped and he has not had any radicular pain return." (JE 8, 186) The L4-L5 LESI relief was still lasting and claimant was informed he could repeat the injection if needed. He had also received a steroid hip injection via MRI guidance on December 27, 2018. (JE 8, 189) Dr. Ledet reported that depending on the treatment needed for the future of claimant's hip, they would consider a repeat lumbar epidural steroid injection for radicular pain, and lumbar MBBs/RFA if axial pain worsened with extension and twisting maneuvers. (JE 8, 190)

On January 30, 2019, claimant was seen by Dr. Weispheipl for lumbar epidural steroid injection at L4-5. The location of the pain was described as lumbar region bilaterally (equal on the two sides) as well as the lateral aspect of the right hip; and anterior aspect of the right thigh. The severity of the pain was a 7/10 on the pain scale on average. (JE 8, 193) Claimant was given prescriptions for Cyclobenzaprine, Gabapentin, and Tramadol. (JE 8, 199-200) Dr. Weispheipl initiated treatment with Gabapentin for claimant's neuropathic pain as tolerated. (JE 8, 201)

Claimant was seen on March 6, 2019 by Dr. Weispheipl for a follow-up of low back pain. (JE 8, 202) Claimant reported 90 percent relief lasting from L4-L5 epidural steroid injection. (JE 8, 203) He was prescribed Gabapentin and Tramadol, and instructed to continue the Tramadol and decrease usage after the hip procedure if able. (JE 8, 207) Dr. Weispheipl stated that claimant may want to address his cervical pain after his hip procedure as, "He had an MVA yrs ago and sees a chiropractor for this on a regular basis." (JE 8, 208)

On March 19, 2019, claimant was seen by Ms. Munday for evaluation of his right hip and was administered a right hip intra-articular cortisone injection. (JE 10, p. 263) On April 17, 2019, claimant underwent an L4-L5 right parasagittal epidural steroid injection. (JE 8, 209)

On April 23, 2019, claimant returned to Dr. Nelson for a discussion of treatment options. Dr. Nelson felt claimant was a better candidate for joint preservation surgery versus joint replacement surgery.

Claimant elected to proceed with joint preservation surgery. (JE 10, 264)

On May 1, 2019, claimant returned to Dr. Weispheipl, and reported 80-90 percent relief from the L4-L5 lumbar epidural steroid injection. The right hip scope procedure was scheduled for May 23, 2019, with Dr. Nelson. Claimant was to continue the Tramadol but taper usage after hip procedure if able. (JE 8, 220)

Claimant underwent right hip arthroscopy with arthroscopic labral repair, arthroscopic acetabular osteochondroplasty, and arthroscopic femoral osteochondroplasty of the right hip performed by Dr. Nelson on May 23, 2019. (JE 10, 266) Claimant treated post-operatively with physical therapy, and returned to Dr. Nelson on June 18, 2019. (JE 10, 270) At that time he reported claimant was doing well. (JE 10, 270)

Claimant again followed up on July 12, 2019 with Dr. Weispheipl and relayed that post-operative physical therapy had been going well. Claimant reported 80-90 percent relief from the L4-L5 lumbar epidural steroid injection currently lasting. He was to call for a repeat injection if radicular pain returned. (JE 8, 227)

On August 6, 2019, claimant reported to Dr. Nelson that he was doing quite well and was happy with his results. Dr. Nelson wrote:

> Keith looks great. I discussed the importance of continued strengthening with him. I discussed some activity restrictions until the 6-month mark. He is going to call us at the 6-month mark for routine phone follow-up.

(JE 10, 271)

On August 20, 2019, claimant was seen by Dr. Weispheipl for pain in the lower back. (JE 8, 228) The pain appeared to be predominantly mechanical/somatic in nature and facetogenic in etiology. (JE 8, 234) Claimant reported 60 percent relief from the L4-L5 LESI. Claimant was given prescription medications for Cyclobenzaprine, Gabapentin, and Tramadol and was instructed to call for a repeat injection if radicular pain returned. (JE 8, 230, 235)

Claimant returned to Dr. Weispheipl on September 18, 2019, and underwent a bilateral L-2, L-3, L-4 medial branch and L-5 dorsal primary ramus block (L3-4, L4-5 and L5-S1 facet joint block). He reported 80 percent pain relief following the procedure. (JE 8, 240)

Since November of 2017, claimant has continued to work as a substitute teacher for Carlisle Elementary Schools in Carlisle, Iowa. (DE A, 6) He works 4 to 5 days per month earning $130.00 per day. (DE A, 6) Claimant reported that he works 14 to 21

hours per week. (DE F, 36) He states that he enjoys teaching and does not have any present intention of leaving his employment. (DE A, 6) He is not looking for work elsewhere. (DE A, 6) At hearing, he stated that substitute teaching kindergarten is hard on him. He stated, "I am very sore for two to three days after I teach kindergarten, and my hip, because that's a lot of walking through out the school also." (Tr. 73)

In addition to his income from teaching, claimant continues to collect $1,631.00 in Social Security Disability benefits on a monthly basis. (DE A, 6) According to the Social Security paperwork completed, claimant does not receive any extra help, extra supervision, or other accommodation due to his disability. (DE F, 38)

However, in December 2017 he contracted a 14-day virus and was home all of that time, then he had Christmas vacation and had a short working month. (DE F, 39) There is no indication within the Social Security Disability paperwork filed on February 17, 2018, that claimant had any remaining issues that he related to a work-related injury. Pursuant to a continuing disability review based on information pertaining to the period of August, 2017 to August, 2018, claimant's disability was continued. It was noted that the investigation was made due to a voluntary report of return to work and that medical recovery was not expected. (DE F, 42)

Claimant alleges he has a fair amount of lower back pain whether he is sitting, standing, walking or bending. (Tr., 65) He claims that he can no longer walk long distances. (Tr., 65) He testified that he was initially able to exercise after his injury, but that "nine months ago or so I haven't exercised on my workout station in my basement." (Tr., 65) He described issues with pressure and heaviness in his lower back. (Tr. p. 65) Claimant testified that his right hip "isn't nearly as bad as it was." He stated that at this time there is little to no pain. (Tr., 66) He stated that he might have some pain if he is out walking, but it is not continuous since the surgery. (Tr., 66) He believed he could comfortably carry 20 to 30 pounds for a short distance. (Tr., 66)

Claimant's hobbies include mushroom hunting, golfing and gardening. (Tr., 68) He testified that his ability to do household activities is affected because bending over is difficult. (Tr., 68-69)

At the request of claimant's attorney, he was seen for an independent medical evaluation with Sunil Bansal, M.D., on September 3, 2019. (CE 1, 001-014) Dr. Bansal documented that "Mr. Allen reports no previous injuries or problems with his back or right hip." (CE 1, 010) There were previous reports of back and right hip problems, notably treated by claimant's long-time chiropractor.

According to the report, claimant is able to lift 40 pounds occasionally, has no difficulty with stairs or sitting, and can walk for three hours. He has more difficulty when he has to bend. He can do about 20 minutes of yard work before he has to stop to rest. (CE 1, 010) Dr. Bansal noted that claimant was a refrigeration technician for A&E Factory Service which required lifting of 100 pounds, moving washers, dryers, freezers, and refrigerators and had to pull, twist, turn and lift. (CE 1, 011) Dr. Bansal agreed with Dr. Harbach that claimant had reached maximum medical improvement on March 10,

2017 related to his back. (CE 1, 012) He assigned a 5 percent whole person impairment based on claimant's current symptomatology and physical examination under a DRE Category II impairment. (CE 1, 012) With respect to the right hip, Dr. Bansal diagnosed femoroacetabular impingement with labral tear and assigned a 4 percent whole person impairment. (CE 1, 012-13) Dr. Bansal noted that, "The mechanism of violently writhing his legs would be consistent with a labral tear," but stated "Unfortunately, an MRI has not been performed to fully elucidate." (CE 1, 013) An MRI right hip arthrogram was obtained on December 27, 2018 at Iowa Radiology and compared to pelvis radiographs taken on November 16, 2018. (JE 9, 257)

Nonetheless, Dr. Bansal also recommended permanent restrictions of no lifting over 40 pounds occasionally, 25 pounds frequently, and no frequent bending or twisting. (CL1, 14)

Claimant has not golfed since his injury. He continues to experience pain in the back and right hip during activities of daily living.

Defendants argue that claimant has a credibility issue and that his testimony regarding various things from how the motorcycle accident occurred to the injuries he maintains to have suffered (or not suffered as it relates to prior hip complaints) are not consistent. While there are some inconsistencies, they are minor. Claimant's complaints to his medical providers were mostly consistent. He was corrected on cross examination but there was no outright impeachment. There was at least one instance where claimant was told one thing by his doctor (that he had torn discs in his back due to the December 2016 injury) and relayed slightly different information to the Social Security Administration (that he had torn muscles in his back as a result of his motorcycle collision). There was nothing about his demeanor during questioning that gave rise to a finding of not credible. Taken as a whole, it is deemed that claimant was a credible witness.

REASONING AND CONCLUSIONS OF LAW?

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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" referred 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 Electric 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 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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

Claimant seeks temporary benefits from May 23, 2019 to August 3, 2019, following a right hip surgery.

An employee is entitled to appropriate temporary partial disability benefits during those periods in which the employee is temporarily, partially disabled. An employee is temporarily, partially disabled when the employee is not capable medically of returning

to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee's disability. Temporary partial benefits are not payable upon termination of temporary disability, healing period, or permanent partial disability simply because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury. Section 85.33(2).

Defendants argue that claimant's right hip pain and subsequent surgery was not related to any work injury. There is only one opinion in the record that speaks to the issue of causation as it relates to the hip injury and that is Dr. Bansal's opinion. Based on the lack of prior hip complaints and the mechanism of injury, Dr. Bansal concluded that the claimant's right hip pain and subsequent surgery was work related.

Defendants argue that Dr. Bansal's report contains a few errors and/or omissions. First, there were complaints of prior right hip pain. Claimant frequently felt that his hip was out of joint and needed treatment from a chiropractor. Dr. Bansal also was disappointed that there was no MRI of the hip, however a steroid was injected via MRI guidance and while it was not precisely the test Dr. Bansal was seeking, it did allow for visual examination of the hip joint. Dr. Bansal did not address this nor did he note the prior right hip pain.

The defendants point out that claimant had regular hip complaints prior to the work injury and received chiropractic treatment for the same. Claimant also informed the Social Security Administration that he had hip issues with his hip popping out of joint. Even pushing a lawn mower can cause a flare up.

However, at no time prior to the work injury had claimant been diagnosed with a labral tear with slight areas of bone marrow edema and femoral head cartilage loss. Claimant was able to do heavy work with refrigerators and appliances prior to the work injury.

Based on the unrebutted opinion of Dr. Bansal, the prior complaints of pain in the hip region being minor compared to post injury, and the post injury need for surgical repair, it is found that claimant's right hip pain and subsequent treatment for the same is related to the work injury of December 23, 2016.

Therefore, the claimant is entitled to temporary benefits from May 23, 2019 to August 3, 2019 following a right hip surgery.

Claimant maintains that he is entitled to reimbursement of medical bills in Exhibit 14. Defendants argue that these are not authorized and that the unauthorized bills do not meet the standard set forth in Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193 (Iowa 2010). An employer has the right to choose the medical care if they accept liability. In this case, defendants did accept liability for the low back, but in the pre-hearing discussions, defendants asserted that with respect to the hip strain claimant asserted they did not stipulate to any causation. (Tr., 6)

1. We would agree that he was placed at MMI by Dr. Harbach for the back on March 11, 2017. We have an issue with causation on the hip and with respect to any hip strain he might have sustained.

(Tr., 6) Further, in defendants' brief, they argue that when Dr. Harbach released claimant from his care, "The clear implication of his recommendation is that any ongoing management of his claimed conditions would not be related to his claimed work injury." (Def. Brief, p. 26) Curiously, the defendants argue that in the case of a denial of causation, it is the claimant's responsibility to request alternate medical care. Yet an alternate medical proceeding can only take place when the defendants have admitted liability. In this case, as to claimant's hip pain, the claim was denied.

The authorization defense is available to defendants when they accept care. Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d at 204.

> The right to control medical care emanates entirely from the duty to furnish medical care for injuries compensable under the workers' compensation laws…Without the duty to furnish care, the employer has no right to control care. Thus, if the employer contests the compensability of the injury following notice, the statutory responsibility of the employer to furnish reasonable medical care to the employee or pay other employee benefits described in the workers' compensation statute is not imposed until the issue of compensability is resolved in favor of the employee. Likewise, the employer has no right to choose the medical care when compensability is contested. Instead, the employee is left to pursue his or her own medical care for the injury at his or her own expense and is free to pursue a claim against the employer to recover the reasonable cost of medical care upon proof of compensability of the injury. If the employee establishes the compensability of the injury at a contested case hearing, then the statutory duty of the employer to furnish medical care for compensable injuries emerges to support an award of reasonable medical care the employer should have furnished from the inception of the injury had compensability been acknowledged.

Id. (citations omitted)

Any of the medical bills pertaining to claimant's hip care are not subject to any authorization defense and are therefore compensable.

The next issue is extent of claimant's PPD benefits.

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

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

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

Claimant terminated his employment with defendant employer after Dr. Harbach suggested he look for employment that did not require as much lifting. While defendants argue that the occasional plumbing work claimant performs for his family suggests that claimant can return to a plumbing position, this is only proof that claimant can do some plumbing jobs on occasion rather than a full-time position requiring him to lift heavy objects on a daily basis.

Claimant obtained a graduate degree and works as a substitute teacher, albeit not working on a regular basis.

However, defendants point out that prior to the injury, claimant was on SSD and under work restrictions that he was not observing. He was unemployed for a significant period of time following the 2004 motorcycle accident that rendered him disabled. Despite this, claimant sought out employment with defendant employer, and worked under supervision of the defendant employer from September 2016 until November 2016. In December 2016, the injury occurred. Following the motor vehicle collision, claimant worked at McDonalds and as a peer mentor at Iowa State University. The steroid injections and surgery to claimant’s hip appear to have improved his condition by up to 90 percent. His restrictions from Dr. Bansal are no lifting over 40 pounds occasionally or 25 pounds frequently and no frequent bending or twisting. Dr. Harbach released claimant to full-duty work with no restrictions but the medical notes indicate that claimant received a graduate degree and was looking for an office-type job which would be within his restrictions from Dr. Bansal as well. Later, Dr. Harbach imposed no repetitive bending or lifting. Other than the position for the defendant employer, claimant’s work has been as a peer mentor and a McDonald’s employee, both of which are jobs that he could return to. Further, he had restrictions in place prior to his injury. He was deemed fully disabled by the Social Security Administration.

Thus, his work-related industrial disability, is modest. Claimant could work a full-duty position. Dr. Bansal’s restrictions would not limit claimant from working full time in a desk position. Claimant chooses to work a job which requires him to be active even though he has the educational experience to work a job that does not require as much physical exertion. He stated repeatedly during different treatment times that he was doing well and had decreased pain. Based on claimant’s educational experience, his

mild motivation to work, his low work restrictions, and his past work experience, it is found that claimant has sustained a 10 percent disability.

Claimant also seeks a penalty award.

In Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996), and Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996), the supreme court said:

> Based on the plain language of section 86.13, we hold an employee is entitled to penalty benefits if there has been a delay in payment unless the employer proves a reasonable cause or excuse. A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits. A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable."
>
> Christensen, 554 N.W.2d at 260.

The supreme court has stated:

> (1) If the employer has a reason for the delay and conveys that reason to the employee contemporaneously with the beginning of the delay, no penalty will be imposed if the reason is of such character that a reasonable fact-finder could conclude that it is a "reasonable or probable cause or excuse" under Iowa Code section 86.13. In that case, we will defer to the decision of the commissioner. See Christensen, 554 N.W.2d at 260 (substantial evidence found to support commissioner's finding of legitimate reason for delay pending receipt of medical report); Robbennolt, 555 N.W.2d at 236.
>
> (2) If no reason is given for the delay or if the "reason" is not one that a reasonable fact-finder could accept, we will hold that no such cause or excuse exists and remand to the commissioner for the sole purpose of assessing penalties under section 86.13. See Christensen, 554 N.W.2d at 261.
>
> (3) Reasonable causes or excuses include (a) a delay for the employer to investigate the claim, Christensen, 554 N.W.2d at 260; Kiesecker v. Webster City Meats, Inc., 528 N.W.2d at 109, 111 (Iowa 1995); or (b) the employer had a reasonable basis to contest the claim—the "fairly debatable" basis for delay. See Christensen, 554 N.W.2d at 260 (holding two-month delay to obtain employer's own medical report reasonable under the circumstances).
>
> (4) For the purpose of applying section 86.13, the benefits that are underpaid as well as late-paid benefits are subject to penalties, unless the

employer establishes reasonable and probable cause or excuse. Robbennolt, 555 N.W.2d at 237 (underpayment resulting from application of wrong wage base; in absence of excuse, commissioner required to apply penalty).

> If we were to construe [section 86.13] to permit the avoidance of penalty if any amount of compensation benefits are paid, the purpose of the penalty statute would be frustrated. For these reasons, we conclude section 86.13 is applicable when payment of compensation is not timely . . . or when the full amount of compensation is not paid.

Id.

(5) For purposes of determining whether there has been a delay, payments are "made" when (a) the check addressed to a claimant is mailed (Robbennolt, 555 N.W.2d at 236; Kiesecker, 528 N.W.2d at 112), or (b) the check is delivered personally to the claimant by the employer or its workers' compensation insurer. Robbennolt, 555 N.W.2d at 235.

(6) In determining the amount of penalty, the commissioner is to consider factors such as the length of the delay, the number of delays, the information available to the employer regarding the employee's injury and wages, and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

(7) An employer's bare assertion that a claim is "fairly debatable" does not make it so. A fair reading of Christensen and Robbennolt, makes it clear that the employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." See Christensen, 554 N.W.2d at 260.

Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

Claimant's main complaint is that based on his IME opinions, defendant employer should have paid some amount of benefits. Instead, defendants followed the opinions of Dr. Harbach, the authorized treating provider and paid temporary disability benefits until Dr. Harbach released claimant to return to work without restrictions. Following this, claimant developed more pain in the back and in the hips. Defendants denied responsibility for this care and there were no medical records or opinions, until that of Dr. Bansal, that provided a causal connection between claimant's ongoing symptomatology and the work injury. Further, defendants did not rely on Dr. Bansal's report, as they deemed it to be inaccurate and incomplete. This case was fairly debatable. There is evidence to support defendants' position that the medical care post March 2017 was not related to the work injury. However, it was found that by the greater weight of the evidence, the medical care post March 2017 was related. Defendants' position was fairly debatable and no penalty is imposed for non-payment of benefits.

ORDER

THEREFORE, IT IS ORDERED:

That defendants are to pay unto claimant fifty (50) weeks of permanent partial disability benefits at the rate of six hundred forty-eight and 97/100 dollars ($648.97) per week from the stipulated commencement date of November 14, 2019.

That defendants are to pay unto claimant temporary total disability benefits from March 23, 2019, to August 3, 2019, at the rate of six hundred forty-eight and 97/100 dollars ($648.97) per week.

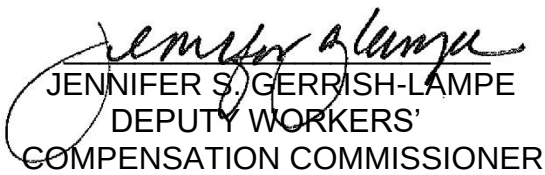
That claimant is entitled to reimbursement of medical bills in Exhibit 14;

That defendants shall pay accrued weekly benefits in a lump sum.

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

That defendants are to be given credit for benefits previously paid.

Signed and filed this __16th___ day of July, 2020.



JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Robert E. Tucker (via WCES)

Erin M. Tucker (via WCES)

Kathryn R. Johnson (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.