BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARK DOWELL, Claimant, vs. STANDARD FORWARDING/ DPWN INC., Employer, and NEW HAMPSHIRE INSURANCE COMPANY, Insurance Carrier, Defendants.	:	File Nos. 5067102, 5067103, 5067104 A R B I T R A T I O N D E C I S I O N Head Note No.: 1803

STATEMENT OF THE CASE

Mark Dowell, claimant, filed petitions in arbitration seeking workers' compensation benefits against Standard Forwarding/DPWN Inc., employer, and New Hampshire Insurance Company, insurer, for accepted work injuries dated March 15, 2017, July 10, 2017, and May 23, 2018.

This case was heard on January 29, 2020, in Des Moines, Iowa. The case was considered fully submitted on February 19, 2020, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-9; Claimant's Exhibits 1-5; Defendants' Exhibits A-E, and the testimony of claimant.

ISSUES

1. The extent of claimant's disability;
2. Taxation of costs

STIPULATIONS

The parties agreed that the claimant sustained injuries on March 15, 2017, July 10, 2017 and May 23, 2018, which arose out of and in the course of his employment. Although there are three dates of injury, the latter two are considered temporary

aggravations of the first. The injuries were the cause of some temporary disability, entitlement to which is no longer in dispute.

The parties agree that the claimant sustained some amount of permanent industrial disability and that the commencement date for permanent partial disability benefits is August 15, 2018.

At the time of the primary injury of March 15, 2017, the claimant's gross earnings were $1,010.03 per week. The claimant was married and entitled to two exemptions. Based on the foregoing, the weekly benefit rate is $639.96.

The defendants waive all affirmative defenses. There are no medical benefits in dispute. Prior to the hearing the claimant was paid 60.143 weeks of compensation at the rate of $639.96. The defendants would be entitled to a credit of that amount against any award of permanent partial disability benefits.

FINDINGS OF FACT

Claimant, Mark Dowell, was a 63-year-old person at the time of the hearing. At all times relevant hereto, he was married and entitled to two exemptions.

Claimant's educational history consists of a high school diploma, two courses at a community college, courses associated with the Air Force. He also has a commercial driver's license.

While in the Air Force, he worked on a flight line assisting 20 to 22 trainer jets departing every hour or two. He would assist the pilots and help maintain the planes. After his honorable discharge from the Air Force, he worked at a warehouse and as a manager of a pizza restaurant. He then started driving locally for PolyAmerica. During his employment with PolyAmerica, he sustained a crush injury to the ankle.

He began working for defendant employer as a local pickup and delivery driver. He worked approximately 10 hours a day and was paid $20.04 per hour. This position was labor-intensive and required significant amounts of hands-on work, as freight is constantly shifted all day in the back of the truck. Claimant performed this job for approximately 24 years, but as a result of being on light duty for an extended period of time, claimant was terminated in July 2018 per the terms of his union contract.

His past medical history is significant for the crush injury to the ankle.

On or about March 15, 2017, claimant sustained an injury to his thoracic spine when he was lifting the roll-up door at a customer's dock while making a delivery. (Ex. A6) His primary pain complaints were in his upper back between the shoulder blades. He was evaluated at Occupational Health on March 16, 2017, where he was diagnosed with back pain. He was taken off of work for a few weeks then returned to light duty for another three weeks while he underwent physical therapy. (Ex. A6) He was returned to full duty work but testified that he still had symptoms of pain related to his mid to upper back.

On July 10, 2017, claimant was moving freight at work when he experienced pain at the base of his neck down to his lumbosacral region. (JE 2:5, 3:28) He was seen at Occupational Health and diagnosed with low back pain. (JE 2:5) Claimant was issued restrictions of 5 pounds lifting at work, limited bending at the waist, stooping, twisting, walking, standing or climbing stairs with the ability to frequently change positions. (JE 2:4-5) Claimant was directed to physical therapy. (JE 2:5)

In a follow up visit to Occupational Health on July 26, 2017, he reported a decline of pain from 6-7 on a 10 scale to 2-3 on a 10 scale. (JE 2:7) On August 2, 2017, his work restrictions were increased from 10 pounds to 15 pounds and Wellbutrin 50 mg daily was added as a prescription. (JE 2:8) During examination, he was able to get off the exam chair without difficulty but showed some difficulty walking although the nurse practitioner could not tell which side he favored. (JE 2:8)

On August 16, 2017, claimant returned to Occupational Health and rated his pain as a 2 on a 10 scale. (JE 2:9) His individual foot balance was poor and he was unsteady on his feet walking on his toes. (JE 2:9) Work restrictions were continued to include no lifting over 20 pounds and no carrying over 25 pounds. (JE 2:9)

In August 2017, claimant was referred to David Field, M.D., an orthopedic surgeon, for evaluation. A subsequent MRI revealed no disc herniation but was suggestive of possible facet arthropathy. (JE 8:61-8:63)

Claimant was referred to Finley Pain Clinic where he underwent epidural steroid injections. (JE 8:74) Those were not successful and due to arthritic changes seen in the lumbar facet joints, claimant was referred to Timothy Miller, M.D., who performed facet joint injections. (JE 7:55) The injections did not provide relief and alternate therapies were attempted including chiropractic care, aquatic therapy, and TENS unit. (JE 8:75) Unfortunately, these therapies did not help. Claimant was referred to Patrick Hitchon, M.D., a neurosurgeon at the University of Iowa Hospitals and Clinics. (JE 4) Dr. Hitchon evaluated claimant on January 27, 2018, and noted mild degenerative changes in the lumbar spine as well as small disc bulges in the thoracic spine. (JE 4:37) On examination, claimant had leg guarding and decreased range of motion due to tenderness; however, no focal deficits were identified during the muscle testing. Dr. Hitchon opined that no neurological issues were present and recommended conservative management.

On February 9, 2018, claimant was evaluated by Jill Hunt, M.D. (JE 2:15) Claimant expressed discomfort after standing, walking, or sitting for any extended period of time. (JE 2:15) He did not want to return to physical therapy, as it aggravated his pain, and he did not want to return to the pain clinic, as the injections were ineffective. (JE 2:15) Dr. Hunt encouraged claimant to increase his activities at home and recommended a TENS unit and aquatic therapy. (JE 2:15)

At a follow-up appointment on February 22, 2018 with Dr. Hunt claimant reported that having to work four hours three times a week was aggravating his pain. (JE2:17) The most he could tolerate was approximately 2 1/2 hours. (JE 2:17) His pain had

increased to 7 or 8 on the 10 scale. (JE 2:17) He was offered the possibility of working 2 to 2 ½ hours every day but preferred to be off work completely. (JE 2:17)

His work restrictions were unchanged and remained with no lifting or carrying pushing or pulling over 25 pounds along with limited bending, stooping, or twisting. (JE 2:17) On March 1, 2018, claimant returned to Dr. Hunt after his first aquatic therapy appointment. (JE 2:18) Claimant complained of soreness. During his examination, his neurovascular exam was within normal limits, he could flex the waist 85° and extend 15°. (JE 2:18)

After four to five aquatic therapy appointments, claimant checked in with Dr. Hunt again. (JE 2:19) Claimant did not feel that the aquatic therapy was useful nor was the TENS unit, as it did not cover his entire back. (JE 2:19) He complained of unsteadiness on his feet while in the shower, which Dr. Hunt told him was not likely attributable to his back injury and that he should seek out care with his private physician. (JE 2:19) Dr. Hunt noted that claimant's gait was slow and stiff in the exam room but that he seemed to loosen up as he walked out of the clinic to his car in the parking lot. (JE 2:19)

On March 27, 2018, claimant's physical examination showed decreased flexibility and range of motion. (JE 2:20) He could flex at the waist to 50° and extend to 20°. The straight leg raise test was negative bilaterally and there was no spinal tenderness and minimal paraspinal thoracic muscle tenderness without spasm. There was no sciatic notch tenderness and the neurovascular examination was within normal limits. (JE 2:20)

Dr. Hunt felt the claimant was at maximum medical improvement but unable to function without restrictions. The aquatic physical therapy left him less flexible to flexion at the waist than prior. She encouraged him to continue with his home exercises, kept his work restrictions in place, and continued work on only Monday, Wednesday and Friday. (JE 2:20)

Claimant began chiropractic treatment and complained that during the first visit, the chiropractor slammed him in the middle of his back and increased his pain. (JE 2:21) Dr. Hunt encouraged him to follow through and complete the chiropractic care. (JE 2:21) (JE 6:44) During the initial assessment on April 10, 2018 with Josh Nagle, DC, Dr. Nagle noted claimant was in poor health and was expected to make little progress. Further, any recovery would be with significant residuals. (JE 6:45) This assessment did not change throughout claimant's treatment with Dr. Nagle. (JE 6:54) Dr. Nagle also diagnosed claimant with radiculopathy which was not present in other records. (JE 6:54)

May 3, 2018, claimant reported that the chiropractic care only increased claimant's pain. (JE 2:22) During this visit, claimant reported that his pain was 4 to 5/10 and that working his four hours a day three days a week was too aggravating for his back condition. (JE 2:22)

On May 28, 2018, claimant was struck in his back between the shoulder blades by a forklift. (Ex. A9) Claimant testified that this incident did not change his condition nor did he receive any medical treatment for the injury.

On June 19, 2018, claimant underwent a functional capacity evaluation (FCE). (JE 5) The results of the FCE placed claimant in the heavy demand vocation for material handling. (JE 5:42)

Claimant returned to Dr. Field on August 14, 2018, reported continued thoracic pain but no lumbar pain. Dr. Field noted the claimant had undergone an FCE and that after this testing, claimant was sore for three to four days. (JE 8:73)

On August 16, 2018, claimant presented to Robert Rondinelli, M.D., for an independent medical examination (IME). (JE 3:28) At the examination, claimant maintained that his primary complaint was centralized to his axial spine and predominantly between his shoulder blades. He characterized the quality as sharp as though he were receiving a knuckle punch in the middle of his spine. The severity was five to six but could increase to seven and eight with activity. He had no numbness, tingling or sensory changes, and no focal weakness in his lower extremities. He had no loss of bladder or bowel control.

For treatment, claimant took Aleve every other day and used a heating pad occasionally. All other forms of treatment failed him including ice, heat, TENS unit, medications, and therapy. (JE 3:28) Dr. Rondinelli diagnosed claimant with multilevel spondylitis with degenerative disk disease, facet arthropathy, and neural foraminal encroachment of the thoracic and lumbar spine. (JE 3:33) Diagnostic exams showed moderate paracentral herniated disk at T8-9 to the left with smaller paracentral disk herniations at T9-10 and T10-11 respectively. The disk desiccation was consistent with chronic injury and/or degeneration. (JE 3:33) Contributors to his back pain included forward flexed posture, reduction in the lumbar lordosis, reduced flexibility of his lumbopelvic region, and smoking history. (JE 3:33) Dr. Rondinelli concluded that claimant's multilevel paracentral disk herniations were materially aggravated by the physical demands of his usual and customary work activities. (JE 3:33) Using category II-C which is for "unoperated on, stable, with medically documented injury, pain and rigidity associated with moderate-to-severe degenerative changes on structural tests; includes herniated nucleus pulpous with or without radiculopathy", Dr. Rondinelli determined claimant had sustained 11 percent impairment as a result of the initial back injury and subsequent aggravations. (JE 3:34) While Dr. Rondinelli did review the functional capacity evaluation, after his interview with the claimant, Dr. Rondinelli felt that the more appropriate category of manual labor that was appropriate for the claimant was light duty. (JE 3:35)

6. Do you believe that Mr. Dowell's condition warrants permanent work restrictions? If so, please advise.

ANSWER: Within medical probability, yes. Mr. Dowell is a credible claimant with two previous claims of back injury which resolved

> uneventfully after which he continued working in the same job and with the same employer in an unrestricted capacity. This is, in part due to his solid work ethic and motivation to return to work in his former capacity. A short while after he returned to work following the second injury he experienced a third event resulting in this present claim. He presents himself with ongoing symptoms which are believable and commensurate with the degree of demonstrable pathology alluded to above. His physical examination is essentially devoid of histrionic or dysfunctional behavior; he gave good effort and was consistent and reproducible with respect to my physical findings as well. He had a functional capacity evaluation earlier this year, during which he showed consistency of presentation with reliable and reproducible results which were considered a valid indication of his maximal work tolerance on day of testing. I asked him about his performance and he claims he did well, and according to that report, was capable of working at the material handling level of his former occupation; however, he immediate [sic] suffered 5 days of agonizing pain and would therefore be unable to sustain that level of activity in any meaningful and gainful context over time. Within medical probability Mr. Dowell will suffer re-injury to his spine if compelled to return to his former occupation full duty and with no restrictions. I feel that the FCE results over estimate his safe limits in his particular case and would recommend that he be permanently restricted to “Light” work (occasional lifting of no more than 20 lbs and frequent lifting of up to 10 lbs) according to the USDOL *Dictionary of Occupational Titles*. This recommendation is supported by table II (industrial back injury Work Restriction Classification) which appeared in *Industrial Low Back Pain. A Comprehensive Approach,* S. Wiesel, MD et al, The Michie Company Law Publishers, Charlottesville, VA, 1985, pp.662-3.

(JE 3:35)

Dr. Field authored an opinion on September 4, 2018, noting that there were no objective findings to support the claimant’s subjective complaints. (JE 8:75)

> On examination he could stand erect. He could heel and toe-up without difficulty. He has some slight tightness on forward flexion in the lumbar spine, but he can get his fingertips about 1 foot from the floor. He has complaints of palpable tenderness in the lower thoracic area, near to the shoulder blade level. He has no pain with rib compression, rotation, or extension. Neurologically he was intact. He has no limited straight leg raising. He had excellent strength to all muscle groups tested in the lower extremities. He has no sciatic notch tenderness.
>
> In summary, in terms of the onset of pain and pattern of pain, we did not find any findings to suggest disc herniation. We did find evidence of some preexisting facet arthritis of his back. There were abnormalities also seen on the MRI of the thoracic area with disc wear with a mild amount of disc

> bulging. As emphasized above in the letter, we did not gain any treatment benefits from treating the facet joints with injection or doing epidural steroid injections for the apparent thoracic disc syndrome.

(JE 8:75)

Based upon the examination, Dr. Field concluded the claimant had a pattern of myofascial pain in the spine and that the pain seemed to be localized in the thoracic area. Dr. Field assessed a 5 percent impairment due to abnormalities in the MRI of the spine along with loss of range of motion and localization of pain without radicular symptoms. (JE 8:75)

On September 27, 2019, claimant underwent an IME with Sunil Bansal, M.D. (Ex. 1) During the examination, claimant exhibited guarding and tenderness. (Ex. 1:11-12) Dr. Bansal opined the claimant sustained a 15 percent impairment of the whole person based upon the claimant's current symptomatology, the results of the physical examination, and a documented disc herniation. (Ex. 1:14)

Claimant consulted with Iowa Vocational Rehabilitation Services for assistance with job placement on May 13, 2019. (JE 1) In case history, it includes arthritis and chronic low back pain per Dr. Miller. (JE 1:2) Claimant's work tolerance was limited to a 20-pound lifting restriction. (JE 1:2) He marked that sitting, standing, bending, crouching and crawling were difficult. (JE 1:2) The vocational intake noted that sitting and standing were typical to most work and that the inability to do either would be a significant barrier to employment. (JE 1:2) He was observed to walk gingerly without a cane or assistive device. (JE 1:1)

Following the evaluation, claimant obtained an opportunity with the AARP for part-time job experience in an office setting. (JE 1:3) Claimant worked four hours a day for three days answering phone calls. He ultimately left the position because of increased complaints of pain. (JE 1:4) The counselor believed that claimant was sincere in his desire to work but that claimant's desire to be active and engaged in his community would likely have to take the form of volunteer roles. (JE 1:4) Claimant also expressed that he could do work that would allow him flexibility in sitting and standing, perhaps a part-time, work-at-home position. (JE 1:4)

Claimant was evaluated by two vocational experts for the present case. David Patsavas, MA was retained by the claimant who noted that while the claimant can utilize the Internet, email, smart phone and that his literacy level was very good, that claimant would be restricted in the types of labor he could perform due to his physical restrictions. (Ex. 2:20-21)

Claimant reported to Mr. Patsavas that his overall capabilities and restrictions included, "lift up to 20-25 lb. on an occasional basis, he can walk 1-2 miles at a slow pace, sitting is between 1-1/2 and 2 hours, and driving is approximately the same, 1-1/2 to 2 hours. Mr. Dowell can climb stairs on a repeated basis. He has two steps going into his home and 15 steps leading from the first floor down stairs. Mr. Dowell stated that he

does not attempt to climb ladders. Reaching activities above shoulder cause him pain and soreness. Bending activities cause pain and soreness as well." (Ex. 2-20)

Mr. Patsavas opined that claimant's age is a barrier to him returning to the work force with claimant's limited computer skills and self-imposed sitting restriction. (Ex. 2-22, 25) The labor market survey prepared by Mr. Patsavas resulted in Mr. Patsavas forming an opinion that it is unlikely that claimant will be able to obtain or sustain competitive employment. (Ex. 3-38)

Tom Karrow issued a vocational report regarding the claimant on December 23, 2019. (Ex. D) Mr. Karrow interviewed claimant via telephone on December 13, 2019, reviewed the medical records, interrogatory answers, depositions and related labor research materials. (Ex. D:28) Mr. Karrow itemized claimant's transferable skills as follows:

1. The ability to operate a semi-tractor-trailer safely.
2. The ability to manage time appropriately.
3. The ability to understand entry-level math.
4. The ability to adhere to safety regulations.
5. The ability to understand written instructions.
6. The ability to move hands and eyes in coordination to complete tasks.
7. The ability to perform work that is routine or organized.
8. The ability to work with all types of people.

(Ex. D:1) Based on the work restrictions of no lifting more than 20 pounds and no prolonged standing for greater than one hour at a time as well as the claimant's transferable skills, Mr. Karrow felt that claimant had sustained a 61 percent wage loss if claimant could not return to commercial truck driving. (Ex. D:36) If claimant passed a DOT physical and obtained a multi-state CDL, claimant would suffer no wage loss. (Ex. D:36) Mr. Karrow further concluded that the claimant was employable in some type of entry-level, unskilled and semiskilled, sedentary to light duty occupation in his labor market including no-touch driving. (Ex. D:36) Outside of driving, Mr. Karrow identified multiple other opportunities available in the Dubuque area, including customer service representative, host, greeter, surveillance monitor, counter clerk, check-cashing clerk, and change-maker. (Ex. D36)

Claimant testified that he is still working with Iowa Vocational Rehabilitation services but there appear to be no plans to place claimant into a workplace. He does not believe he could drive due to the bouncing in a truck. He does not believe he could stock shelves. He did try to obtain employment at Caribou Coffee, Farm and Fleet and City of Dubuque as a bus driver, but received no response to his job inquiry. There was the possibility of obtaining a job at the airport but after learning more about the duties, he was of the opinion he could not do the work. He testified that the pain in his back has gradually worsened despite not working for a significant period of time.

His own professed limitations do not match with the IME opinions of even the medical examiner he retained.

Claimant performs nearly all of the household activities including shopping, cleaning, laundry, cooking and vacuuming. Claimant also walks on his treadmill every day for approximately ten minutes. He is interested in volunteer work.

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).

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 R. 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 the 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).

This case involves a question of extent. The parties agree the claimant sustained a work-related injury arising out of and in the course of his employment. That injury has resulted in some impairment for the claimant.

Claimant proposes he is fully disabled under the odd-lot theory, however that legal theory was not raised in the hearing report and therefore the odd-lot[1] analysis will not be applied in this case. See Michael Eberhart Const. v. Curtin, 674 N.W.2d 123, 128 (Iowa 2004) (citing with approval Weishaar, 506 N.W.2d at 790–91 which held that allowing a claimant to amend the petition to include odd-lot claim after the hearing was an abuse of discretion).

Dr. Hunt, the claimant's treating physician imposed a 25-pound weight restriction while Dr. Rondinelli, a physician retained by the defendants and Dr. Bansal, the physician retained by the claimant, both recommended a 20-pound weight restriction. There are no restrictions against sitting or standing. He showed a high aptitude for retraining in an office setting. While it is true that defendants have not offered any vocational assistance, retraining, or guidance for future work for the claimant, this lack of vocational assistance does not mean that no other employer in the driving or delivery industry would be able to meet the claimant's work restrictions.

Claimant maintains that he is not capable of any meaningful work, both full and part-time. His one return to work at four hours a day for three days a week ended abruptly due to claimant's pain. Yet, there are no restrictions from any medical professional that would prohibit claimant from sitting for an extended period of time nor

[1] A cursory application of the facts of the law would not support an odd-lot claim even if the issue were preserved. The odd-lot category exists for those persons who are so injured as to be unable to perform services other than "those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist."
Michael Eberhart Const. v. Curtin, 674 N.W.2d 123, 126 (Iowa 2004) Claimant's primary work experience is driving and delivery which is not a service so limited in quality, dependability or quantity that a reasonably stable market does not exist for him.

are there any restrictions on driving. Mr. Karrow suggested claimant could do no-touch load hauling but claimant believes the bouncing would be too onerous for him. While claimant is deemed credible, his self-assessment is not aligned with the multiple doctor's opinions. Further, claimant's self-assessment is merely one factor amongst many others to consider when assessing industrial disability.

Defendants point out that Dr. Bansal's impairment rating is based on the DRE Category III which is implicated when there is an ongoing neurological impairment or clinically significant radiculopathy or fractures while Dr. Rondinelli's is based on moderate to severe symptoms with or without radiculopathy. The AMA Guides are merely a guide and are not binding. However, even at the high end, Dr. Bansal assessed at 15 percent impairment rating and his restrictions placed claimant in the light duty work category.

Dr. Rondinelli found no evidence of exaggeration or malingering. In this case, the claimant would like for the undersigned to take his testimony of being unable to return to work over that of three medical professionals who have opined, to varying degrees, that claimant should be able to perform sedentary to light duty work. Based on the greater weight of the evidence, the undersigned chooses to rely on the expert opinions. In doing so, the vocational report of Mr. Patsavas is given lower weight, as Mr. Patsavas' opinions rest on the assumption claimant is incapable of sitting. In giving some deference to the claimant's testimony, Dr. Bansal's more limited work restrictions and greater impairment rating of 15 percent is given more weight.

Based on Dr. Bansal's opinion along with Mr. Karrow's vocational report along with the claimant's need to alternate between sitting and standing, lifting only up to 20-25 pounds on an occasional basis, walking 1-2 miles at a slow pace, claimant's age, his high school education, his ability to retrain, it is determined claimant's industrial disability is 70 percent.

Using the discretion afforded in decision-making, costs are assessed in favor of the claimant. 876 IAC 4.33.

ORDER

THEREFORE, it is ordered:

That defendants are to pay unto claimant three hundred fifty (350) weeks of permanent partial disability benefits at the rate of six hundred thirty-nine and 96/100 dollars ($639.96) per week from August 15, 2018.

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

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most

recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

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

That defendants shall pay the costs of this matter pursuant to rule 876 IAC 4.33.

Signed and filed this 13th day of April, 2020.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:
Lara Plaisance (via WCES)
Nick Avgerinos (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.