

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

IVAN LINN,

Claimant,

vs.

SIGNATURE REAL ESTATE d/b/a
RAMADA WORLDWIDE,

Employer,

and

TRAVELERS INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 1661463.01

ARBITRATION DECISION

Head Note Nos.: 1800, 1803, 2500

STATEMENT OF THE CASE

The claimant, Ivan Linn, filed a petition for arbitration seeking workers' compensation benefits from Signature Real Estate d/b/a Ramada Worldwide ("Ramada") and Travelers Indemnity Company of Connecticut. Greg Egbers appeared on behalf of the claimant. Julie Burger appeared on behalf of the defendant.

The matter came on for hearing on May 24, 2021, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner related to the COVID-19 pandemic, the hearing occurred via CourtCall. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-6, Claimant's Exhibits 1-8, and Defendants' Exhibits A-D. All of the proposed exhibits were received into evidence. Testimony under oath was also taken from Ivan Linn, Mike Housby, and Merlin Linn. Kira Stover was appointed the official reporter and custodian of the notes of the proceeding. The matter was fully submitted on June 7, 2021, after briefing by the parties.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

1. There was an employer-employee relationship at the time of the alleged injury.
2. The claimant sustained an injury arising out of, and in the course of, employment, on February 12, 2019.
3. That the alleged injury is a cause of temporary disability during a period of recovery.
4. That the alleged injury is a cause of permanent disability.
5. That the disability is an industrial disability.
6. That the commencement date for permanent partial disability benefits, if any are awarded, is October 9, 2019.
7. That the claimant's gross earnings were five hundred fifty-two and 00/100 dollars (\$552.00) per week, and that the claimant was single and entitled to two exemptions. This equates to a weekly compensation rate of three hundred sixty-four and 77/100 dollars (\$364.77).
8. With regard to disputed medical expenses:
 - a. That the fees or prices charged by the providers are fair and reasonable.
 - b. That the treatment was reasonable and necessary.
 - c. That although disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and defendants are not offering contrary evidence.
 - d. That the listed expenses are causally connected to the work injury.
 - e. That although the causal connection of the expenses to a work injury cannot be stipulated, the listed expenses are at least causally connected to the medical conditions upon which the claim of injury is based.
 - f. That the requested expenses were authorized by the defendants.
9. That prior to the hearing, the claimant was paid 25 weeks of compensation at the rate of three hundred sixty-four and 77/100 dollars (\$364.77) per week.
10. That the costs listed in Claimant's Exhibits 1 and 8 have been paid.

The defendants waived their affirmative defenses. Any entitlement to temporary disability and/or healing period benefits is no longer in dispute.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. The extent of permanent disability, if any is awarded.
2. Whether the claimant is entitled to a reimbursement or payment of medical expenses as listed in Claimant's Exhibit 5.
3. Whether the claimant is entitled to a specific taxation of costs.

FINDINGS OF FACT

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

Ivan Linn, the claimant, was 89 years old at the time of the hearing. (Testimony). He graduated high school in 1949. (Testimony). Upon graduation, he worked in the grocery business for a brief time. (Testimony). He then served in the United States Navy from 1950 to 1954. (Testimony). He served as an entertainer, as he was a very gifted tap dancer. (Testimony). Upon discharge from the Navy, Mr. Linn returned to the grocery business. (Testimony). He worked for a time in purchasing until 1964. (Testimony). In 1964, he bought his own grocery store which he ran until 1979, when he sold it. (Testimony). From 1980 to 1986, Mr. Linn worked at Super Foods as a buyer. (Testimony). He would select products and visit producers. (Testimony). He then moved to Camellia Foods in the same position. (Testimony). In 2004, Mr. Linn retired for a time and moved to Tennessee. (Testimony). His wife eventually became ill and passed away in 2011. (Testimony). After his wife died, he returned to Iowa. (Testimony).

Upon returning to Iowa, Mr. Linn got a job with O'Reilly Auto Parts. (Testimony). He worked there for two years delivering auto parts. (Testimony). He earned about ten and 00/100 dollars (\$10.00) per hour. (Testimony). Eventually, he was fired from this job due to receiving a speeding ticket. (Testimony).

In February of 2015, Mr. Linn began working for Ramada. (Testimony). He worked for four days per week on the morning shift as a bellman. (Testimony). He worked from 3:45 a.m. to about 12:00 p.m. (Testimony). As a bellman, he earned fourteen and 25/100 dollars (\$14.25) per hour. (Testimony). He would transport hotel guests and their luggage to and from the Des Moines International Airport. (Testimony). He also would load and unload luggage. (Testimony). Mr. Linn also had day to day duties of greeting guests upon arrival, checking schedules, monitoring flight crew arrivals to ensure timely pickups, logging pool chemical readings into a log book, ensuring that certain rooms are "clean and tidy," promoting hotel functions and facilities, documenting shuttle runs, picking up trash in public areas, assisting guests with general information, picking up trash in the parking lot, keeping sidewalks and exits free of ice

and snow in the winter, directing guests to various meeting rooms, setting up/tearing down meeting room functions according to function sheets, setting up morning coffee service, greeting each guest, and following appropriate procedures. (Claimant's Exhibit 3:1-4).

On February 12, 2019, Mr. Linn returned from a trip to the airport to a note indicating that the bellmen were to shovel the snow on the walks. (Testimony). Mr. Linn began to shovel the walk. (Testimony). The shovel broke, and Mr. Linn fell on his left hip. (Testimony). Mr. Linn filled out an incident report form for Ramada. (Claimant's Exhibit 2:1).

Mr. Linn reported to Concentra with an injury to his left hip, leg, and foot. (Joint Exhibit 1:1).

Mr. Linn also reported to UnityPoint Clinic Urgent Care, where Nicole Ness, PA-C, examined him. (JE 1:2-3). Mr. Linn complained of left hip and leg discomfort after falling while shoveling snow. (JE 1:2). Mr. Linn recounted tripping over a shovel and falling onto his left side. (JE 1:2). Mr. Linn could walk, but developed pain and tightness in his left thigh. (JE 1:2). His pain increased with weightbearing and ambulation. (JE 1:2). Ms. Ness diagnosed Mr. Linn with a contusion of the left thigh, and left hip pain. (JE 1:3). Ms. Ness ordered x-rays of the left hip, pelvis and femur, which she determined were unremarkable. (JE 1:3). The x-rays did show mild degenerative changes to the bilateral hip joints. (JE 1:4). Mr. Linn indicated that he took medication for sciatica. (JE 1:3).

On February 19, 2019, Mr. Linn returned to UnityPoint where Kaitlin Dammann, P.A., examined him. (JE 1:5). Mr. Linn complained that the pain moved to his anterior lower leg. (JE 1:5). He also had worsening swelling and bruising. (JE 1:5). Ms. Dammann noted that Mr. Linn's musculoskeletal system was positive for arthralgias, a gait problem, joint swelling, and myalgias. (JE 1:5). He had no back pain. (JE 1:5). Ms. Dammann found pitting and edema on Mr. Linn's left lower extremity. (JE 1:5). Ms. Dammann diagnosed Mr. Linn with pain of the left lower extremity, and recommended an x-ray of the left tibia and fibula, along with an examination for DVT. (JE 1:6). The x-ray showed no fracture or dislocation. (JE 1:7).

Mr. Linn had a VAS duplex of the veins of the bilateral lower extremity on February 19, 2019. (JE 6:1-3). The left leg showed no deep venous thrombosis based upon examination. (JE 6:2). The examination also revealed no superficial vein thrombophlebitis. (JE 6:3).

Mr. Linn visited the VA on February 20, 2019, where Daniel Heithoff, CPO, examined him. (JE 3:1-2). Mr. Heithoff evaluated Mr. Linn for custom foot orthotics and extra depth shoes. (JE 3:1). Mr. Linn told Mr. Heithoff that he had left leg edema due to a recent fall while shoveling snow. (JE 3:1). Mr. Linn also had leg pain that predated his work incident and was "not a result of the recent injury." (JE 3:1). Mr. Heithoff recommended a 1/4 inch right heel lift. (JE 3:1). He also recommended that Mr. Linn

perform stretching exercises. (JE 3:1). Mr. Linn reported that he started experiencing shooting left leg pain in November of 2018. (JE 3:2).

The claimant included photos of his leg that he took on February 21, 2019. (CE 2:4-6). The photos show bruising to Mr. Linn's heel. (CE 2:4-5). They also show swelling and bruising to the left foot. (CE 2:4-6).

Mr. Linn followed up with Ms. Dammann on February 22, 2019. (JE 2:6-7). Mr. Linn continued to have left foot pain and swelling. (JE 2:6). Mr. Linn reported concern, as he visited his "foot doctor" who recommended that Mr. Linn not return to work for several weeks. (JE 2:6). Ms. Dammann previously recommended that Mr. Linn return to work in one week. (JE 2:6). Mr. Linn also expressed concern over swelling, bruising and pain in his lower leg. (JE 2:6). He admitted that he was not elevating his leg because "he is unable to get stuff done when he has to keep his leg up." (JE 2:6). Ms. Dammann discussed a normal course of symptoms for an injury of this nature, and stressed the importance of keeping Mr. Linn's foot elevated to improve bruising and swelling. (JE 2:7). She recommended that Mr. Linn remain off work until his next podiatric visit. (JE 2:7).

Mr. Linn returned to Concentra on March 5, 2019, with a swollen left foot and leg. (JE 1:8-13). Richard Bratkiewicz, M.D., examined Mr. Linn. (JE 1:8-13). Mr. Linn had no evidence of DVT. (JE 1:8). Dr. Bratkiewicz recommended physical therapy. (JE 1:9). Dr. Bratkiewicz's referral was for Mr. Linn to attend physical therapy three times per week for two weeks. (JE 1:13).

On March 7, 2019, Nicholas Warnken, P.T., began physical therapy with Mr. Linn. (JE 1:14-17). Mr. Linn told Mr. Warnken that his leg pain was worse at night. (JE 1:14). He also noted that the bottom of his foot was numb. (JE 1:14).

Mr. Linn returned for additional physical therapy on March 11, 2019. (JE 1:18-20). Mr. Linn continued to have serious swelling in his left lower leg and foot. (JE 1:18). Mr. Warnken opined that Mr. Linn reached 30 percent of his goals. (JE 1:19).

On March 13, 2019, Mr. Linn returned to Concentra for physical therapy. (JE 1:21-23). Mr. Linn told the therapist that he woke up throughout the evening with throbbing in his hip and thigh. (JE 1:21). Mr. Linn opined that he felt pain of 5 out of 10. (JE 1:22). The therapist noted that the bruising was nearly resolved; however, he still had swelling into his lower leg. (JE 1:22). The swelling decreased with exercise and lymph massage. (JE 1:22). As soon as Mr. Linn moved to a gravity dependent position, his swelling returned. (JE 1:22).

Mr. Linn continued his therapy at Concentra on March 15, 2019. (JE 1:24-26). Mr. Linn was making minimal progress towards his goal, and told the therapist that his pain was 5 out of 10. (JE 1:25). The therapist diagnosed Mr. Linn with dependent edema, an accidental fall, injury to the left hip, a left ankle injury, and a left leg injury.

(JE 1:25). The therapist found significant swelling in Mr. Linn's left lower extremity. (JE 1:25).

On March 19, 2019, Mr. Linn had a follow up visit with Dr. Bratkiewicz. (JE 1:27-35). Mr. Linn continued to report significant swelling down his whole left leg. (JE 1:27). This caused him to have problems putting his shoe on his left foot. (JE 1:27). Mr. Linn also complained of significant pain at night that prevented him from sleeping. (JE 1:27). Dr. Bratkiewicz wanted to rule out DVT due to the continued swelling, so he referred Mr. Linn to the emergency room. (JE 1:27-28). Dr. Bratkiewicz opined that Mr. Linn was 25 percent of the way towards meeting the physical requirements of his job. (JE 1:28). Mr. Linn also had a session of physical therapy on March 19, 2019. (JE 1:29-32).

Mr. Linn returned to Concentra on March 22, 2019. (JE 1:37-39). Dr. Bratkiewicz indicated that Mr. Linn tested negative for a DVT at the emergency room. (JE 1:37). Dr. Bratkiewicz found persistent swelling, but noted that the swelling was less. (JE 1:37). Dr. Bratkiewicz returned Mr. Linn to physical therapy and issued a prescription for TED hose. (JE 1:37). The doctor opined that Mr. Linn was 50 percent of the way towards meeting the physical requirements of his job. (JE 1:38). Dr. Bratkiewicz allowed Mr. Linn to work his entire shift, bear weight as tolerated, and work on ground level only. (JE 1:41).

On March 25, 2019, Mr. Linn wrote a letter to Amy McAninch at Ramada. (Defendants' Exhibit C:1-2). Mr. Linn expressed a disbelief that Dr. Bratkiewicz was "able or qualified" to make the recommendation that Mr. Linn could return to work. (DE C:1). Mr. Linn felt that Dr. Bratkiewicz did not examine his injured body parts. (DE C:1). Mr. Linn asked for a second opinion from someone who would "at least look at the injured areas and inquire how the injuries were affecting me." (DE C:1).

Mr. Linn visited Dr. Bratkiewicz for an unscheduled visit on March 26, 2019. (JE 1:46-47). Mr. Linn demanded that his restrictions be adjusted. (JE 1:46). He had yet to obtain the TED hose. (JE 1:46). Mr. Linn screamed at the doctor after the doctor offered him a trial of no work for a week or two. (JE 1:26). He told the doctor that he could not come to physical therapy because the busiest part of his day was before noon. (JE 1:46). The doctor told him that he could come in the afternoon for therapy, but Mr. Linn refused. (JE 1:46). Dr. Bratkiewicz opined that Mr. Linn was "simply too difficult to please and too difficult to convince that he has received more than adequate care here, which should continue – this followed by a tirade of insults to myself." (JE 1:47). Dr. Bratkiewicz also indicated that his staff concurred as to the "abrasive and vulgar nature of this patients visit today." (JE 1:47). Dr. Bratkiewicz made no modifications to the previous restrictions noted. (JE 1:47).

On March 26, 2019, Mr. Linn continued physical therapy with Concentra. (JE 1:48-50). Mr. Linn expressed frustration with "everything going on." (JE 1:48). Mr. Linn could not understand why he still had swelling eight weeks after the incident. (JE 1:48). Mr. Linn complained that he could hardly walk due to pain and swelling, so he was

unsure of how he could be expected to return to work. (JE 1:48). The therapist noted that Mr. Linn continued to have significant lymphedema issues. (JE 1:49).

On March 28, 2019, Mr. Linn had his seventh visit of physical therapy at Concentra. (JE 1:55-56). Mr. Linn continued to express frustration, as he had not yet received his compression stocking. (JE 1:55). He also complained of itchiness and not being referred to someone "that knows what to do." (JE 1:55). Mr. Linn represented that he did exercises, but had not noticed any change in his leg or foot swelling. (JE 1:55). He complained of pain of 1 out of 10. (JE 1:55).

Mr. Linn had another physical therapy visit on April 2, 2019. (JE 1:57-58). Mr. Linn had an injury to his left hip. (JE 1:58). Mr. Linn gradually progressed, but continued to have significant lower left leg swelling, and a "thumping in his thigh" at night. (JE 1:58). The therapist opined that the feeling was most likely due to the healing and swelling moving when he lays down. (JE 1:58).

Mr. Linn's physical therapy continued on April 4, 2019. (JE 1:59-60). Mr. Linn expressed frustration with his progress. (JE 1:59). He reported pain of 1 out of 10. (JE 1:59). The therapist found less swelling of the lower extremity. (JE 1:60).

On April 5, 2019, Dr. Bratkiewicz examined Mr. Linn again. (JE 1:61-62). Mr. Linn continued to have an inconsolable attitude. (JE 1:61). Mr. Linn displayed a rash on his trunk, which Dr. Bratkiewicz indicated was not a workers' compensation issue. (JE 1:61). Dr. Bratkiewicz recommended that Mr. Linn take a week off. (JE 1:61). The doctor opined that Mr. Linn was 50 percent of the way toward meeting his goals. (JE 1:62). Mr. Linn had another round of physical therapy, as well. (JE 1:63-65). Mr. Linn indicated his pain was 6 out of 10. (JE 1:63).

Mr. Linn sent another letter to Ms. McAninch on April 5, 2019. (DE C:4). Again, Mr. Linn claimed that Dr. Bratkiewicz did not examine his injured hip or foot. (DE C:4). Mr. Linn asked for a different approach to get him back to "the good condition I was in prior to the work accident..." (DE C:4).

Ramada sent Mr. Linn a letter dated April 9, 2019. (CE 3:6). In that letter, Ms. McAninch, as the general manager of the Ramada, indicated that Ramada could provide temporary modified work within the March 22, 2019, medical restrictions issued by Dr. Bratkiewicz. (CE 3:6). Ms. McAninch indicated that Mr. Linn could take breaks as needed, work only on the ground level (with the exception of stepping into the van), and avoid climbing ladders. (CE 3:6). Ms. McAninch also indicated that Ramada could provide a modified schedule. (CE 3:6). Ms. McAninch requested that Mr. Linn return to work on April 16, 2019, at 3:45 a.m. (CE 3:6). He was then scheduled to work until 9:00 a.m. (CE 3:6).

Mr. Linn returned to Concentra on April 12, 2019. (JE 1:69-70). Wearing support hose, resting, and not working caused his left lower extremity swelling to diminish. (JE 1:69). Dr. Bratkiewicz opined that Mr. Linn was 75 percent towards meeting the physical

requirements of his job. (JE 1:70). The doctor kept Mr. Linn off work, and recommended he continue therapy. (JE 1:70). Mr. Linn also reported for physical therapy on April 12, 2019. (JE 1:71-73). Mr. Linn claimed he did not notice a change with the TED hose. (JE 1:71). He reported visiting the VA, where they recommended that he take Benadryl for his itching. (JE 1:71). The Benadryl helped his itching. (JE 1:71).

On April 15, 2019, Mr. Linn continued his physical therapy visits with Concentra. (JE 1:77-79). Mr. Linn reported feeling "about the same." (JE 1:77). He complained about a sponge feeling in his foot. (JE 1:77). The therapist opined that the swelling in Mr. Linn's leg visibly, gradually, decreased. (JE 1:77). Mr. Linn disagreed. (JE 1:77).

Ms. McAninch wrote Mr. Linn another letter on April 16, 2019. (CE 3:7). In her letter, she recounted a phone conversation of April 12, 2019. (CE 3:7). In that conversation, Mr. Linn told her that he could return to work on April 22, 2019, and not April 16, 2019. (CE 3:7). He further noted that he wanted to be placed at a full time schedule effective April 22, 2019. (CE 3:7). Ms. McAninch accommodated this request and placed Mr. Linn on the schedule effective April 23, 2019, from 3:45 a.m. to 2 p.m. (CE 3:7). Mr. Linn felt that he was being pressured to return to work. (CE 4:6).

Mr. Linn followed up with Concentra for repeat physical therapy on April 17, 2019. (JE 1:80-82). Mr. Linn reported no change in his symptoms, and significant itching throughout his body. (JE 1:80). He also complained of the spongy sensation in his foot. (JE 1:80). The therapist observed improvement in Mr. Linn's hip exercises, range of motion, and strength. (JE 1:81). Upon measurement, the therapist noted no overall change in swelling. (JE 1:81). Mr. Linn was not wearing his TED hose as he opined that they did not do anything to help him. (JE 1:82).

On April 19, 2019, Dr. Bratkiewicz saw Mr. Linn again. (JE 1:83-84). Physical therapy reported to the doctor that they felt Mr. Linn was ready for a trial of full duty work. (JE 1:83). Mr. Linn agreed. (JE 1:83). Upon examination, the doctor noted that Mr. Linn's left leg was "much less swollen." (JE 1:83). Dr. Bratkiewicz recommended a trial of full duty. (JE 1:84). If Mr. Linn's swelling worsened, then the doctor recommended that Mr. Linn be given lesser duties. (JE 1:84). Mr. Linn also had a physical therapy visit on this date. (JE 1:85-88). The therapist noted Mr. Linn's determination in wanting to return to work. (JE 1:85). Mr. Linn continued to be highly frustrated with his continued swelling and inability to work. (JE 1:85). The therapist noted, "[t]he patient continues to have confusing conversations. He reports that he does not feel that PT is the only thing that he needs and that he should be sent to someone to help get him measured for a shoe to wear and to help with his itching." (JE 1:87). The therapist indicated that he explained to Mr. Linn that a decrease in swelling would help him be able to wear his shoe, and that if he wore TED hose, it will help him. (JE 1:87). Mr. Linn complained that "it is the workman's comp's duties to get him a 100% better and return to work." (JE 1:87). However, the therapist noted that Mr. Linn

continued to be combative between trying to figure out how to get him to work and what he was willing to do. (JE 1:87).

On April 20, 2019, Mr. Linn wrote a letter to an adjuster with the defendant insurer. (DE C:5). Mr. Linn again alleged that Dr. Bratkiewicz did not examine his leg or hip. (DE C:5).

Dr. Bratkiewicz re-examined Mr. Linn on April 26, 2019. (JE 1:93-99). Mr. Linn continued to complain of swelling in his left leg and numbness in his left foot. (JE 1:93). Dr. Bratkiewicz found less swelling during his examination. (JE 1:93). He noted that Mr. Linn required better shoes and placed Mr. Linn at maximum medical improvement ("MMI"). (JE 1:93). Dr. Bratkiewicz recommended that Mr. Linn go to a sporting goods store or medical supply store and obtain better fitting shoes. (JE 1:94). Dr. Bratkiewicz released Mr. Linn from care. (JE 1:94). Mr. Linn could return to regular duty. (JE 1:99). After his appointment with Dr. Bratkiewicz, Mr. Linn again wrote a letter to the defendant insurer. (DE C:6). He indicated a displeasure with the treatment provided by Dr. Bratkiewicz. (DE C:6).

Mr. Linn reported to the VA on May 10, 2019. (JE 3:4-6). Mr. Linn complained of a worsening skin rash. (JE 3:5). Mr. Linn reported that he was working and had some stress related issues regarding his job. (JE 3:5). Dermatitis was found on Mr. Linn's skin. (JE 3:5).

On May 31, 2019, Mr. Linn returned to the VA for follow up care. (JE 3:3). Mr. Linn was frustrated due to a continued rash that would not go away. (JE 3:3). Mr. Linn requested a visit with podiatry due to his ongoing left foot pain. (JE 3:3). An x-ray showed that Mr. Linn had degenerative changes to his foot. (JE 3:3, 8-9).

Mr. Linn visited Kenneth Andersen, M.D. at MercyOne Urbandale Family Medicine Clinic on April 1, 2019. (JE 4:1-3). Mr. Linn reported the circumstances of his injury. (JE 4:1). Mr. Linn complained that his left foot remained swollen, and that he had difficulty wearing shoes. (JE 4:1). Mr. Linn also complained that he felt unsteady on his feet. (JE 4:1). Mr. Linn felt as though he could not work full time. (JE 4:1). Dr. Andersen found that Mr. Linn had a limping gait on the left. (JE 4:2). Dr. Andersen diagnosed Mr. Linn with swelling of the left lower extremity and asteatotic dermatitis. (JE 4:2). Dr. Andersen opined that Mr. Linn should remain off work for another week until he could wear his work shoes. (JE 4:2).

On June 10, 2019, Mr. Linn visited Iowa Ortho, where Joseph Galles, M.D., examined him. (JE 5:1-2). Mr. Linn complained of left foot pain that radiated to his leg. (JE 5:1). Mr. Linn also had numbness to the bottom of his foot and pain at the left thigh. (JE 5:1). He reported that he was working hard in physical therapy. (JE 5:1). Upon examination of the left lower extremity, Dr. Galles found tenderness along the mid quadriceps. (JE 5:2). Mr. Linn also displayed diminished sensation to the plantar aspect of the foot. (JE 5:2). Dr. Galles diagnosed Mr. Linn with numbness of the left foot and pain in unspecified limb. (JE 5:2). Dr. Galles recommended that Mr. Linn see

Dr. Kurt Smith for evaluation as to a possible nerve injury. (JE 5:2). Dr. Galles provided a note to return him to work full duty. (JE 5:2).

Mr. Linn saw Donald Godfree, D.P.M., at the VA on June 21, 2019. (JE 3:10-11). Mr. Linn complained of swelling to his left leg. (JE 3:10). He indicated that this problem began when he fell in February. (JE 3:10). Mr. Linn denied associated pain with his swelling. (JE 3:10). Dr. Godfree diagnosed Mr. Linn with edema of the left leg, and onychomycosis. (JE 3:11). Dr. Godfree recommended that Mr. Linn wear compression stockings and follow up with his primary care physician. (JE 3:11).

On July 19, 2019, Mr. Linn had a nerve conduction study conducted by Kurt Smith, D.O. (JE 5:3-4). The EMG showed abnormal left tibial nerve conduction, abnormal left peroneal nerve conduction, and an abnormal EMG of the left S1 innervated muscles. (JE 5:4). Dr. Smith interpreted this as showing left S1 radiculopathy with acute and chronic changes. (JE 5:4). Dr. Smith recommended follow up care with Dr. Galles. (JE 5:4).

John Rayburn, M.D., examined Mr. Linn on August 14, 2019, at Iowa Ortho. (JE 5:5-7). Mr. Linn was examined for low back pain that radiated to his left thigh. (JE 5:5). Mr. Linn relayed that he had numbness and tingling into his left foot. (JE 5:5). He also indicated that he had previous chiropractic care with minimal relief. (JE 5:5). X-rays of Mr. Linn's spine showed a straight spine on projection with large lateral lumbar spurs noted. (JE 5:7). The x-rays also showed mild bilateral facet arthrosis and normal hips. (JE 5:7). Dr. Rayburn diagnosed Mr. Linn with low back pain at multiple sites, lumbar radiculopathy, other chronic pain, left leg pain, and unspecified dorsalgia. (JE 5:7).

On August 26, 2019, Mr. Linn had an MRI of his lumbar spine at Diagnostic Imaging Associates. (JE 5:8-9). The MRI showed multilevel spondylosis at L2-3, shallow central and left paracentral disc herniation at L5-S1 with marked degenerative facet change and left lateral recess stenosis which may affect the left S1 nerve root and a moderate degree of neural foraminal narrowing, and multilevel mild to moderate spinal canal and neural foraminal narrowing. (JE 5:8-9).

Mr. Linn returned to Iowa Ortho on August 28, 2019. (JE 5:10-12). Dr. Rayburn examined Mr. Linn for a follow up of his low back pain. (JE 5:10). The pain was persistent and radiated to his left thigh. (JE 5:10). Dr. Rayburn diagnosed Mr. Linn with low back pain at multiple sites, lumbar radiculopathy, chronic pain, and left leg pain. (JE 5:12). Dr. Rayburn recommended an epidural steroid injection. (JE 5:12). Dr. Rayburn also recommended that Mr. Linn see a spine surgeon. (JE 5:12).

On September 30, 2019, Mr. Linn had a left L5-S1 and S1 transforaminal epidural steroid injection at Iowa Ortho. (JE 5:13-14).

Mr. Linn returned to Iowa Ortho on October 9, 2019, for a follow up of his left leg pain. (JE 5:15-18). He rated his pain 4 out of 10. (JE 5:15). Mr. Linn indicated that he had no back pain, and that his pain was only in his left thigh and left foot. (JE 5:15).

Trevor Schmitz, M.D., diagnosed Mr. Linn with intervertebral disc disorders with myelopathy of the lumbar region. (JE 5:16). Dr. Schmitz noted that he discussed Mr. Linn's condition with him at length. (JE 5:17). Mr. Linn had exhausted conservative treatment measures. (JE 5:17). Dr. Schmitz mentioned a left L5-S1 posterior lumbar decompression and disectomy, but Mr. Linn indicated that he was not interested in surgery. (JE 5:17). Dr. Schmitz opined that Mr. Linn reached MMI as of that date, and returned Mr. Linn to work with no restrictions. (JE 5:17-18).

On October 17, 2019, Mr. Linn had another left L5-S1, S1 transforaminal epidural steroid injection. (JE 5:19-20).

Also on October 17, 2019, Dr. Schmitz issued a letter to Travelers with a Lumbar DRE Category II rating of 5 percent of the whole person. (JE 5:21). He also confirmed that Mr. Linn's date of MMI was October 9, 2019. (JE 5:21).

Mr. Linn had another injection on October 30, 2019. (JE 5:22-24). Mr. Linn indicated that he received no relief from the previous injection. (JE 5:22-24).

In November of 2019, Mr. Linn wrote a letter to Travelers requesting payment of an invoice from October of 2019. (DE C:7). He requested additional monies, as he claimed that the defendant insurer did not satisfy the invoice and that he recalculated the amount due. (DE C:7).

Sunil Bansal, M.D., M.P.H., examined Mr. Linn on January 13, 2020. (CE 7:1-14). He authored a report dated February 14, 2020. (CE 7:1-14). Dr. Bansal is board certified in occupational medicine. (CE 7:1). Dr. Bansal began his report by reviewing Mr. Linn's medical records. (CE 7:1-10). Mr. Linn indicated to Dr. Bansal that he continued to have left leg pain including cramping and shooting pain from his back. (CE 7:11). He also complained of pain in his left hip, and noted to Dr. Bansal that he could not stand for a very long time. (CE 7:11). Mr. Linn told Dr. Bansal that he fell out of the van while working at the Ramada. (CE 7:11). Upon examination, Dr. Bansal found tenderness to palpation over the lumbar back. (CE 7:11). Mr. Linn also displayed reduced range of motion in his lower back. (CE 7:11). Mr. Linn showed tenderness to palpation over the proximal left hip. (CE 7:11). Dr. Bansal found a positive impingement test in the left hip, along with an accentuation of pain with the internal and external rotation of the left hip. (CE 7:12). Mr. Linn had no tenderness in his left foot, and displayed a full range of motion. (CE 7:12).

Dr. Bansal opined that Mr. Linn suffered a left L5-S1 disc herniation, and left hip impingement as a result of the February 12, 2019, work incident. (CE 7:13). Dr. Bansal indicated that Mr. Linn should have a hip MRI in order to determine whether or not he sustained a labral tear. (CE 7:13). Dr. Bansal noted that Mr. Linn's dermatological issues were not causally connected to the work incident. (CE 7:13). Dr. Bansal agreed with Dr. Schmitz that Mr. Linn reached MMI on October 9, 2019. (CE 7:13). Dr. Bansal opined that Mr. Linn met the DRE Category II impairment criteria. (CE 7:13). Due to his radicular complaints, loss of range of motion, and guarding, Dr. Bansal provided Mr.

Linn with a 5 percent whole person impairment rating. (CE 7:13). Dr. Bansal provided Mr. Linn with permanent restrictions of avoidance of multiple stairs, avoiding standing for greater than 30 minutes at a time, and no frequent bending or twisting. (CE 7:14).

On July 1, 2020, Mr. Linn returned to Iowa Ortho for an examination by Dr. Rayburn. (JE 5:25-27). Mr. Linn continued to report left leg pain. (JE 5:25). Mr. Linn reported several falls because he forgot that he had weakness in his leg. (JE 5:25). Dr. Rayburn noted that Mr. Linn completed conservative care, and was not interested in surgical options. (JE 5:27). Mr. Linn expressed frustration that he could not do things that he used to do and that he continued to fall. (JE 5:27). Dr. Rayburn recommended that Mr. Linn use his cane. (JE 5:27). Dr. Rayburn opined that Mr. Linn reached MMI from a pain management standpoint. (JE 5:27).

Mr. Linn returned to Iowa Ortho on October 27, 2020. (JE 5:29-31). Benjamin Beecher, M.D., examined Mr. Linn. (JE 5:29). Mr. Linn complained of left hip pain including radiation to the left thigh, lower leg, and foot. (JE 5:29). He indicated that he gets pain in his left thigh at night and has experienced a number of falls for unknown reasons. (JE 5:29). Dr. Beecher diagnosed Mr. Linn with left thigh pain. (JE 5:30). Dr. Beecher noted that Mr. Linn's hip looked normal. (JE 5:30). Dr. Beecher opined that the left thigh, foot pain, and numbness came from Mr. Linn's back. (JE 5:30-31). Dr. Beecher recommended that Mr. Linn return to Dr. Smith. (JE 5:31). Dr. Beecher recommended no restrictions with regards to the hip. (JE 5:31).

On December 23, 2020, Mr. Linn continued his care at Iowa Ortho with Dr. Smith. (JE 5:33-36). His left leg pain continued constantly. (JE 5:33). Dr. Smith diagnosed Mr. Linn with left sided sciatica, numbness of the left foot, and left leg pain. (JE 5:35). Dr. Smith recommended no change in restrictions and no further treatment. (JE 5:35).

Dr. Bansal issued an addendum to his IME report on March 15, 2021. (CE 7:15-16). He noted that Mr. Linn was not approved for the left hip MRI, as recommended in the previous IME report. (CE 7:15). Considering the lack of approval, Dr. Bansal indicated that Mr. Linn reached MMI for his left hip on January 13, 2020. (CE 7:15). Based upon a loss of hip range of motion at the time of the previous IME, Dr. Bansal opined that Mr. Linn suffered a 2 percent whole person impairment to the left hip. (CE 7:15-16).

Mr. Linn indicated that he has never had any lower back injuries, and that any medical records that indicate such are inaccurate. (Testimony). In fact, when confronted with Dr. Schmitz's IME, in which the only impairment rating was due to lower back pain, Mr. Linn testified "they are lying" (presumably referring to Dr. Schmitz). (Testimony). He also did not know that Dr. Bansal provided an impairment rating for his back. (Testimony). Again, Mr. Linn testified that he disagreed with any rating based upon an alleged back injury. (Testimony).

Mr. Linn returned to work for a brief period of time, but then had to stop. (Testimony). Mr. Linn felt that he could not perform the job at Ramada anymore. (Testimony). The Ramada was sold from one company to another. (Testimony). The other company declined to keep the former Ramada employees. (Testimony). As such, Mr. Linn filed for, and received, 26 weeks of unemployment compensation. (Testimony).

Mr. Linn indicated that he loved his job. (CE 4:3). He further noted that he wanted to work through the year 2025, and was saving the money that he earned in a 401k in order to give "something extra" to his children upon his death. (CE 4:3). Mr. Linn received an employee of the month award in November of 2017. (CE 4:11). He also received a customer compliment in May of 2017. (CE 4:11). Mr. Linn also received an exemplary performance review in April of 2018. (Defendants' Exhibit B:3-8).

Mr. Linn also had some negative incidents at work. For example, on December 16, 2016, Mr. Linn had a photo taken of him sleeping in the lobby while on the clock. (DE B:1). In March of 2018, Mr. Linn referred to a fellow bellman named Leon in stating, "I see the monkey finally left." (DE B:9). This was reported to Ramada by another employee. (DE B:9). In April of 2018, Mr. Linn backed into another vehicle while driving a Ramada vehicle. (DE B:11-13). In October of 2018, Mr. Linn had another accident while driving a Ramada vehicle. (DE B:14-16). He received a warning for this. (DE B:17). On October 24, 2018, Mr. Linn received a written warning. (DE B:18). Mr. Linn indicated that he inspected and made sure that "room 211" was clean; however, upon management inspection, the room was not clean. (DE B:18). On another, unlisted, date, a Ramada employee attempted to call Mr. Linn on several occasions. (DE B:21). The employee found Mr. Linn in the hotel restaurant doing dishes. (DE B:21). The employee told Mr. Linn that he had to make a shuttle run, and that doing dishes in the hotel restaurant was not his job. (DE B:21). Mr. Linn replied "well, I'm waiting for the truck that's why I'm over here, you dumb ass." (DE B:21).

Since his work injury, Mr. Linn has been unable to wear tied shoes. (Testimony). He wears Velcro shoes instead. (Testimony). Mr. Linn testified that he has a spongy feeling in the bottom of his feet. (Testimony). Mr. Linn was provided orthotics, but he testified that they were ineffective. (Testimony). Mr. Linn also testified that he has fallen almost 30 times since the work incident. (Testimony). As a result, he used a cane. (Testimony).

Mike Housby of West Des Moines, Iowa, testified on behalf of the claimant. (Testimony). Mr. Housby owns the Cottontail Lounge, where Mr. Linn is a routine patron. (Testimony). Mr. Housby indicated that Mr. Linn was spunky and "full of vinegar" prior to the work incident. (Testimony). After the work incident, Mr. Linn uses a cane to help him walk, and has days where his mood is different. (Testimony).

Mr. Linn's brother, Merlin Linn, also testified on behalf of the claimant. (Testimony). Merlin is 86 years old and saw his brother several times per week. (Testimony). Prior to the work incident, Merlin testified that his brother was in "good condition." (Testimony). After the work incident, Merlin observed that the claimant could hardly walk, and had serious bruising. (Testimony).

Mr. Linn admitted that he has not looked for work since his injury. (Testimony). He testified that this was due to his perceived inability to do any jobs. (Testimony). He indicated that he has a cramping pain in his legs, and an unexplained rash all over his body. (Testimony). He felt as though he was "100 percent damaged" as a result of this work injury. (Testimony). Mr. Linn testified that his daily routine included going to the cemetery and playing the card game Pitch at the bar. (Testimony).

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. 6.904(3).

Permanent Disability

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss of use of a scheduled member under Iowa Code 85.34(2)(a)-(u) or for loss of earning capacity under Iowa Code 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in Iowa Code 85.34(a) – (u) are applied. Lauhoff Grain v. MacIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

The claimant described an injury to his left hip, left leg, and left foot. Medical professionals diagnosed the claimant with lower back injuries attributable to the work incident. The claimant vehemently disputes that he injured his back. Based upon the medical evidence in the record, and regardless of the claimant's opinions, I conclude that the claimant established by the preponderance of the evidence that his injury extends into the body as a whole and should be compensated pursuant to Iowa Code section 85.34(2)(v). Iowa Code section 85.34(2)(v) provides:

In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs 'a' through 'u' hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred. A determination of the reduction in the employee's earning capacity caused by the disability shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury. If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity.

The defendants claim that the claimant should be compensated for his functional impairment only, based upon the second half of Iowa Code section 85.34(2)(v).

In this case, Mr. Linn was initially released to modified duty by Dr. Bratkiewicz on March 22, 2019. Ramada contacted him on April 9, 2019, and indicated that they could return him to his previous position in a modified capacity effective April 16, 2019. After a discussion with Mr. Linn, Ramada agreed to return him to work on a full time basis on April 23, 2019. He subsequently returned for a brief period before stopping due to his perceived inability to do his job. Eventually, all of the employees were laid off when the hotel was sold to a new owner. The new owner chose not to retain the staff, and Mr. Linn's employment with Ramada ceased. At that time, he applied for, and received, unemployment through August 30, 2020.

While Ramada offered to return Mr. Linn to full time employment in April of 2019, the record is silent as to the rate of pay offered to Mr. Linn. Therefore, there is no proof in the record that Mr. Linn would receive the same wages or earnings as he received at the time of the injury. See e.g. McCoy v. Menard, Inc., File No. 1651840.01 (App. Apr. 9, 2021). Without that evidence, I cannot find that the applicable provisions of Iowa Code section 85.34(2)(v) provide for compensation at the claimant's functional impairment.

Since the claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "[i]t 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.S.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. Iowa Code 85.34.

At the time of the hearing, Mr. Linn was 89 years old. He was a high school graduate. He had a long career in the grocery industry. This included being a buyer for several large grocery stores. He also owned a grocery store. He certainly would be qualified to continue grocery work, but has not worked in that industry for several decades. Ramada attempted to bring Mr. Linn back to work, but the hotel was sold, and the new ownership released prior employees from their employment. As noted above, Mr. Linn claimed unemployment for a period of time.

I am concerned by Mr. Linn's motivation to return to work. While he testified that he wanted to return to working, and that working provided him purpose, he has sought no employment since his unemployment payments ended in August of 2020. Mr. Linn was clearly winding down his working career. He was caught sleeping on the job on one occasion, and had several other disciplinary issues. He also indicated that he only wished to work through 2025.

Dr. Schmitz released Mr. Linn to work with no restrictions as of October 9, 2019. He opined that the claimant reached MMI on this date. He diagnosed Mr. Linn with intervertebral disc disorders and myelopathy of the lumbar region. Eventually, Dr. Schmitz opined that Mr. Linn sustained a 5 percent whole person impairment due to his back issues. Dr. Bansal agreed that Mr. Linn had a 5 percent whole person impairment due to back issues. He also opined that Mr. Linn suffered a 2 percent whole person impairment due to his left hip issues. Dr. Bansal issued permanent restrictions of avoiding multiple stairs, avoiding standing for greater than 30 minutes at a time, and no frequent bending or twisting.

Mr. Linn continued to complain of left leg pain and swelling. He also complained of issues with his hip. He adamantly declared during the hearing that he had no back issues, and that his issues were related entirely to his hips. This followed a pattern displayed in a review of the record that the claimant wished to diagnose himself and direct his own treatment. The medical records noted several occasions where the claimant berated the treating doctors. Mr. Linn appeared to have pain, and the photos in the record showed swelling and bruising to his left hip and leg. However, doctors seemed to find no objective evidence of ongoing hip issues based upon the records.

Iowa Code section 85.34(2)(v) notes that a reduction in earning capacity shall take into account the number of years that it was reasonably anticipated that the employee would work at the time of the injury. Mr. Linn was 89 at the time of the hearing in May of 2021. He was injured in February of 2019. At the time of his injury, he would have been 87 years old. Based upon Social Security Administration figures, Mr. Linn's remaining life expectancy at age 87 was 5.08 years. See ssa.gov/oact/STATS/table4c6.html (last viewed June 8, 2021). Mr. Linn was already beyond average retirement age, and retired for a period of time before working at O'Reilly and Ramada. It is possible that he would have worked until 2025, as he claimed; however, it is not reasonable to anticipate that Mr. Linn would work until he was 93 years old.

Based upon the foregoing, I find that Mr. Linn sustained a 15 percent industrial disability. This represents 75 weeks (15 percent x 500 weeks = 75 weeks). His benefits commence on October 9, 2019, at the rate of three hundred sixty-four and 77/100 dollars (\$364.77) per week.

Payment of Medical Expenses

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 1975).

Pursuant to Iowa Code 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Claimant is entitled to an order of reimbursement if he/she has paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

In cases where the employer's medical plan covers the medical expenses, claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, the defendants are ordered to make payments directly to the provider. See Krohn, 420 N.W.2d at 463. Where medical payments are made from a plan to which the employer did not contribute, the claimant is entitled to a direct payment. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 867-68 (Iowa 2008) ("We therefore hold that the commissioner did not err in ordering direct payment to the claimant for past medical expenses paid through insurance coverage obtained by the claimant independent of any employer contribution."). See also Carl A. Nelson & Co. v. Sloan, 873 N.W.2d 552 (Iowa App. 2015)(Table) 2015 WL 7574232 15-0323.

The employee has the burden of proof to show medical charges are reasonable and necessary, and must produce evidence to that effect. Poindexter v. Grant's Carpet Service, Iowa Industrial Commissioner Decisions, No. 1, at 195 (1984); McClellan v. Iowa S. Util., 91-92, IAWC, 266-272 (App. 1992).

The employee has the burden of proof in showing that treatment is related to the injury. Auxier v. Woodard State Hospital School, 266 N.W.2d 139 (Iowa 1978), Watson v. Hanes Border Company, No. 1 Industrial Comm'r report 356, 358 (1980) (claimant failed to prove medical charges were related to the injury where medical records contained nothing related to that injury) See also Bass v Vieth Construction Corp., File No 5044430 (App. May 27, 2016)(Claimant failed to prove causal connection between injury and claimed medical expenses); Becirevic v Trinity Health, File No. 5063498 (Arb. December 28, 2018) (Claimant failed to recover on unsupported medical bills)

Iowa Code section 85.27(4) provides that the employee may choose their own care at the employer's expense in an emergency, if the employer's agent cannot be immediately reached. However, the duty of an employer to furnish reasonable medical care supports all claims for care by an employee that are reasonable under the totality of the circumstances, "even when the employee obtains unauthorized care." Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010). The employee must still prove by a preponderance of the evidence that unauthorized care was reasonable and beneficial. Id. The Court in Bell Bros. concluded that unauthorized medical care is beneficial if it provides a "more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id.

In this case, RMP Services LLC asserted a lien for sixty-three and 89/100 dollars (\$63.89) for treatment provided at Mercy Medical Center on May 19, 2019. (Cl. Ex. 5). There are no corresponding medical records for the DVT examination, but Dr. Bratkiewicz ordered this examination. The defendants are ordered to reimburse the medical provider sixty-three and 89/100 dollars (\$63.89) for the outstanding lien.

Costs

Claimant seeks the award of costs for the filing fee, as well as those outlined in Claimant's Exhibit 8. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code 86.40. 876 Iowa Administrative Code 4.33(6) provides:

[c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the

reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

The filing fee claimed is one hundred and 00/100 dollars (\$100.00), and the cost in Claimant Exhibit 8 is a ninety and 00/100 dollars (\$90.00) fee for the deposition transcript. In my discretion, I award the claimant one hundred ninety and 00/100 dollars (\$190.00) for costs incurred.

ORDER

THEREFORE, IT IS ORDERED:

That the defendants are to pay unto claimant seventy-five weeks of permanent partial disability benefits at the rate of three hundred sixty-four and 77/100 dollars (\$364.77) per week from the commencement date of October 9, 2019.

That the defendants shall be given credit for benefits previously paid, as stipulated.

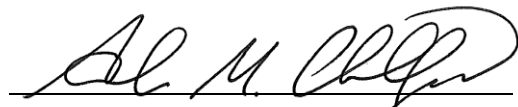
That the defendants shall satisfy the outstanding medical billing of sixty-three and 89/100 dollars (\$63.89).

That the defendants shall reimburse the claimant one hundred ninety and 00/100 dollars (\$190.00) for costs.

That the defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the move 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 the defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 17th day of August, 2021.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Greg Egbers (via WCES)

Julie Burger (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.