BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FLORIBERTO DECIGA SANCHEZ,		
Claimant,	FILED	File No. 5052008
vs.	AUG 19 2016	ARBITRATION
TYSON FRESH MEATS, INC.,	WORKERS COMPENSATION	DECISION
Employer, Self-Insured, Defendant.		Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Floriberto Deciga Sanchez, filed a petition in arbitration seeking workers' compensation benefits from Tyson Fresh Meats, Inc., self-insured employer, as defendant, as a result of a stipulated injury sustained on March 6, 2014. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on January 28, 2016, in Sioux City, Iowa. The proceedings were translated by Frank Gonzalez. The record in this case consists of claimant's exhibits 1 through 26, defendant's exhibits A through G, and the testimony of the claimant, Adan Deciga Sanchez, and William Sager, II. The parties submitted post-hearing briefs, the matter being fully submitted on February 29, 2016.

ISSUES

The parties submitted the following issues for determination:

1. Whether the injury of March 6, 2014 is a cause of permanent disability;
2. The extent of claimant's industrial disability;
3. Whether defendant is responsible for medical expenses detailed in Exhibit 26;
4. Whether claimant is entitled to reimbursement of an independent medical evaluation under Iowa Code section 85.39; and
5. Specific taxation of costs.

STIPULATIONS

The stipulations of the parties in the hearing report are incorporated by reference in this decision and are restated as follows:

1. The existence of an employer-employee relationship at the time of the alleged work injury.

2. Claimant sustained an injury on March 6, 2014 which arose out of and in the course of employment.

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

4. The commencement date for permanent partial disability benefits, if any are awarded, is October 14, 2014.

5. At the time of the alleged injury, claimant's gross earnings were $675.00 per week, claimant was single, and claimant was entitled to one exemption.

6. Affirmative defenses were waived.

7. With reference to the itemized list of disputed medical expenses: the fees or prices charged by providers are fair and reasonable; the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and defendant did not offer contrary evidence; and although causal connection of the expenses to the work injury could not be stipulated, the listed expenses are at least causally connected to the medical condition(s) upon which the claim of injury is based.

FINDINGS OF FACT

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

Claimant's testimony was consistent as compared to the evidentiary record and his deposition testimony. His presentation at the time of evidentiary hearing was consistent with that noted in the medical records and in claimant's own complaints. Claimant was very quiet and appeared sad, demonstrating no eye contact with any person in the room and maintaining a downward gaze throughout the hearing. A very noticeable scar was visible on claimant's forehead above his left eye, extending vertically through his forehead and diagonally through the eye brow. His demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

Claimant was 36 years of age at the time of hearing. He is single, with no children, and resides in Storm Lake, Iowa. Claimant attended 9 years of formal schooling in his native Mexico. He has received no other formal education, with the exception of a 6-month English language course. During this course, claimant learned a small amount of English. He is able to speak a small amount of English; he also understands some spoken words. Claimant is able to read and write a limited amount of English; however, he requires assistance with understanding the entirety of documents. He utilizes a computer to watch videos and listen to music, but has not learned to type. (Claimant's testimony; Exhibit 16, page 220)

While he resided in Mexico, claimant did not work. Claimant arrived in the United States in 1996. Upon arrival in the United States, claimant worked in the state of California performing farm labor and packaging produce. This work required the ability to lift bags of product weighing 50 pounds. Claimant performed agricultural labor for 6 years; he earned $8.50 per hour. Claimant next spent 6 years working as an industrial glass cutter, work which required claimant to lift and carry boxes of glass weighing 50 to 60 pounds. Claimant earned $9.00 per hour. Next, claimant worked as a laborer tasked with cleaning airplane parts. The work required him to lift and carry 50-to 60-pound airplane parts. He performed these duties for 1 year and earned $9.00 per hour. (Claimant's testimony; Ex. 16, p. 221)

Claimant denied sustaining any injuries to his head or neck and testified he had no physical restrictions on his head or neck prior to beginning work at defendant. Claimant also denied any treatment for any mental condition and denied problems with anxiety or depression prior to commencing work at defendant. (Claimant's testimony)

Since March 2009, claimant has worked as a production employee for defendant. Prior to commencing employment, claimant passed a pre-employment physical. (Claimant's testimony; Ex. 16, p. 221) Initially, claimant worked in a position requiring him to cut meat with a knife. In 2013, claimant moved into a janitorial position. (Claimant's testimony; Ex. A, p. 10) In the janitorial position, claimant was required to sweep, clean, and wash the area, push pig carcasses if they became stuck, and pick up meat and carcasses which fell onto the floor of the production area. Claimant testified he could be required to lift 50 to 60 pounds if pieces of meat fell onto the ground. (Claimant's testimony) Defendant's job description for the janitor position notes a requirement of lifting 5 to 10 pounds, but the ability to use force and move hog carcasses weighing approximately 290 pounds. (Ex. 19, p. 236; Ex. B) Claimant ultimately earned $14.00 per hour. (Ex. 16, p. 221) Claimant testified he considered himself a good worker for defendant and cited his receipt of an acknowledgement for preventing an injury to a coworker. (Claimant's testimony)

Claimant testified he was at work on March 6, 2014, pushing a hog carcass which had become stuck on an overhead rail. While he was pushing, a carcass fell onto claimant, striking him on the back of his head and neck. The force knocked claimant forward and to the ground. During the fall, claimant struck his face, arm and chest on a

metal object. He suffered a laceration to his head and face, extending from near his left eye, up through the forehead and past his hair line. Claimant testified he was uncertain if he truly lost consciousness, but explained that for a time he was only able to see black. He testified he was scared and in shock, as his forehead was lying open and bleeding, and he felt pain throughout his body. Claimant testified he feared he was going to die. (Claimant's testimony)

A coworker, Ramiro Zavala, witnessed the accident. He indicated claimant never lost consciousness, as Mr. Zavala spoke with claimant from the time of the injury until claimant was taken away by nursing staff. (Ex. C)

A record from the plant nursing department notes a nurse was called to the production floor, where claimant was found lying on the floor with a wide laceration above he left eye. The record states claimant was weak and unable to sit on his own; an ambulance was called. (Ex. 1, p. 38) An ambulance transported claimant to Buena Vista Regional Medical Center (BVRMC). (Ex. 2, pp. 59-60)

At the BVRMC emergency room, claimant was treated for complaints of a large laceration of his left forehead and face, with accompanying pain, as well as pain of the left elbow. The large laceration on his head was repaired. However, when claimant was readying to leave, he suffered a syncopal spell and as a result, was admitted to the hospital for neurological observation and placed on Telemetry. (Ex. 3, pp. 61-67)

While hospitalized, claimant was examined by David Crippin, M.D. Dr. Crippin opined claimant suffered a 12 centimeter laceration and left elbow contusion. He opined x-rays of the left elbow were normal and CTs of the head and cervical spine were negative. Dr. Crippin assessed a syncopal spell and large left forehead and frontal laceration. He removed claimant from work and prescribed Vicodin for pain relief. (Ex. 3, pp. 61-68) Claimant testified he was released from the hospital after approximately 16 hours. (Claimant's testimony)

Defendant referred claimant for care with David Archer, M.D. On March 10, 2014, Dr. Archer examined claimant and assessed a laceration of the face, neck strain, conjunctival hemorrhage, elbow contusion, and chest wall contusion. He ordered physical therapy and recommended claimant utilize Trazadone, tramadol, and ibuprofen. Dr. Archer released claimant to return to work under restrictions, specifically alternating between sitting and standing as needed and keeping the laceration clean and dry. (Ex. 4, pp. 97-98)

Claimant returned to Dr. Archer on March 13, 2014. Dr. Archer removed 50 sutures and opined the incision appeared well healed. He recommended continued conservative measures of work restrictions, pain medication, and physical therapy. Dr. Archer also recommended an evaluation of claimant's left eye vision by an optometrist. (Ex. 4, pp. 101-102)

That same date, March 13, 2014, claimant was evaluated by Craig Crouch, O.D. Dr. Crouch assessed enophthalmos due to trauma and referred claimant for further evaluation of the left eye. (Ex. 5, pp. 124-130)

Claimant remained off work from March 6 through March 13, 2014. (Ex. 1, pp. 2, 21) He thereafter returned to work for defendant in a light duty capacity, performing seated duties in the cafeteria. Claimant testified the light duty assignment was bothersome, as he continued to suffer with pain of his head, neck, shoulder and elbow. He also experienced difficulty with the noisy environment, leading him to feel stress and anxiety. Claimant testified he continued to treat with Dr. Archer, but missed work on occasion due to mental issues, headaches, or pain of his chest, elbow, and neck. (Claimant's testimony)

On March 17, 2014, claimant presented to Dr. Crippin with complaints of some anxiety and occasional dizziness. Dr. Crippin assessed a contusion of the chest wall, left frontal contusion and large laceration, left shoulder contusion, dizziness, and "work anxiety ? ptsd." (Ex. 4, p. 104) Dr. Crippin noted he and claimant discussed a possible concussion and post-concussion balance issues, as well the importance of an attempt to work. He advised claimant to follow up with Dr. Archer in one week. (Ex. 4, p. 105)

The following day, March 18, 2014, claimant presented to Jones Eye Clinic Oculoplastics Service and was evaluated by Yian Jones, M.D. Dr. Jones assessed neurogenic brow apraxia; she indicated claimant's brow ptosis was likely to recover with time. (Ex. 6, p. 131)

On March 26, 2014, claimant returned to Dr. Archer. Dr. Archer described claimant's forehead laceration as "healing nicely." (Ex. 4, p. 106) He discontinued use of hydrocodone, but issued prescriptions for gabapentin and Trazadone. Dr. Archer cleared claimant to resume full duty work, but indicated claimant should be reintroduced to the environment "very slowly due to anxiety" regarding reinjury. Dr. Archer raised the possibility of nursing staff at the plant walking claimant through the area in order "to help him deal w[ith] the anxiety of being on the floor again." (Ex. 4, p. 108) Shortly thereafter, Dr. Archer ordered consultations with an ENT for claimant's reports of ear pain and with neurology for headache complaints. (Ex. 4, pp. 109-110)

Claimant continued to perform light duty, clerical duties in the cafeteria and then took vacation for two weeks in early April 2016. (Ex. 1, p. 21)

On April 2, 2014, claimant presented to CNOS for evaluation by Michael Nguyen, M.D. Dr. Nguyen described a history of a head injury, with claimant being referred for concussion evaluation and any recommendations which could increase claimant's response to treatment. Dr. Nguyen indicated defendant's records denoted no loss of consciousness with the accident, but the CNOS form indicated claimant had been rendered unconscious for 10 minutes. As a result, Dr. Nguyen indicated he was uncertain which account was accurate. (Ex. 8, p. 114) Dr. Nguyen detailed the

ophthalmologist's diagnosis of brow ptosis secondary to seventh cranial nerve damage which was likely to recover with time. (Ex. 8, p. 144)

Dr. Nguyen noted claimant sat hunched over, made no eye contact, and whispered during the course of examination. He also noted claimant demonstrated flat affect and psychomotor retardation. Dr. Nguyen indicated claimant displayed a "vacant look" and required significant prompting to answer questions. (Ex. 8, p. 144) Dr. Nguyen noted an observable scar extending across claimant's forehead and through his eyebrow to the corner of the eye. He indicated claimant seemed self-conscious of the scar and attempted to hide it under a knit cap. (Ex. 8, p. 146) Claimant described experiencing headaches at the location he struck his head, but Dr. Nguyen opined the headaches appeared more diffuse. (Ex. 8, p. 144)

Following examination, Dr. Nguyen assessed a mood disorder/adjustment disorder. Dr. Nguyen opined the condition might be related to the work injury in that claimant appeared fixated upon and self-conscious regarding the scar. While Dr. Nguyen acknowledged he was unclear if claimant had any such symptoms preinjury, but opined the current flare of the mood disorder was impacting claimant's ability to recover from a likely concussion. Accordingly, he recommended treatment of the mood disorder. He further opined desensitization treatment was appropriate and would likely assist claimant in returning to work. (Ex. 8, p. 146)

Dr. Nguyen assessed a concussion, as claimant's Standardized Assessment of Concussion (SAC) score showed some impairment, including issues with concentration. He opined if claimant had lost consciousness, the mechanism of injury fit the profile of a concussion. He opined the concussion should resolve on its own, but was being confounded by the mood disorder. Dr. Nguyen, accordingly, recommended claimant follow with Dr. Archer regarding treatment of the mood disorder and expressed agreement with Dr. Archer's recommendations for restrictions and desensitization. (Ex. 8, pp. 146, 148)

On April 10, 2014, claimant returned to Dr. Archer. Dr. Archer noted claimant had been performing clerical work for defendant and was afraid of returning to the production floor. (Ex. 4, p. 111) He continued orders for physical therapy and prescriptions for gabapentin and Trazadone. Dr. Archer opined claimant should begin a progressive desensitization to his work area and return to work full duty, assuming claimant was cleared by Tracey Wellendorf, M.D. (Ex. 4, p. 113)

On April 15, 2014, claimant presented for evaluation with board certified otolaryngologist, Dr. Wellendorf. Claimant complained of ear pain, pressure, tinnitus, and decreased hearing. Dr. Wellendorf assessed otalgia; sensorineural hearing loss, asymmetrical; tinnitus; and hearing loss. She opined claimant's complaints of decreased hearing, pain, and ringing were consistent with sensorineural hearing loss. Accordingly, she recommended an audiogram. (Ex. 9, pp. 149, 151) Claimant

underwent the recommended audiogram on April 17, 2014, which revealed bilateral mild sensorineural hearing loss. (Ex. 10, p. 157)

When claimant returned to work following his vacation, he was assigned to a gradual return to work program of 2, 4, 6, and then 8 hours, as tolerated. (Ex. 1, pp. 14, 113)

On April 20, 2014, claimant had been drinking and went onto a property in an attempt to speak with a relative. The owner of the property called the police and claimant was arrested. At the time of evidentiary hearing, claimant testified he had been drinking because of his anxiety, stress, and depression which he related to the work injury. (Claimant's testimony)

On April 22, 2014, claimant presented to the emergency room of BVRMC and was examined by Terezia Matasovic, M.D. Claimant indicated he was unable to walk that day due to numbness of his arms and legs. He also complained of a headache and chest pain off and on for one month, dating to the work injury. (Ex. 3, p. 80) Dr. Matasovic assessed a suspected seizure secondary to head trauma, chronic headaches, and chronic right chest pain. (Ex. 3, p. 86) Claimant received an injection of Dilaudid and prescriptions for gabapentin and Trazadone. (Ex. 3, p. 91) Dr. Matasovic released claimant to return to full duty work the following day, but recommended he seek an EEG. (Ex. 3, pp. 86, 95)

Claimant returned to Dr. Archer on April 24, 2014. Dr. Arched noted claimant had previously presented to the emergency room because claimant believed he was "going to have an epileptic attack." Claimant related the event to his work injury, citing a feeling of worthlessness due to the scar and a fear or returning to the plant "because he almost died in there." (Ex. 4, p. 114) Dr. Archer opined it appeared claimant suffered a hyperventilation spell, as there was no actual observed seizure activity. Rather, Dr. Archer described the event as an anxiety reaction with hyperventilation. Accordingly, he opined claimant did not require an EEG. (Ex. 4, p. 116)

Dr. Archer noted claimant blamed the work injury for the event, but Dr. Archer noted claimant admitted he had been arrested and this may have contributed to claimant's heightened stress level. Claimant reiterated his feelings of worthlessness as a result of the scar and his fear of entering the plant, but Dr. Archer noted claimant did not explain why he held such feelings and refused to answer Dr. Archer's questions regarding a fear of reinjury versus fearing his scar would be viewed as unattractive. (Ex. 4, p. 116) Dr. Archer recommended evaluation by a neuropsychologist, as he believed claimant's symptoms were beginning to sound like a post-traumatic stress reaction "out of proportion to the actual severity of the scar and of the physical trauma." Dr. Archer noted he, Dr. Wellendorf, and Dr. Nguyen had discussed claimant's ability to work and agreed claimant could participate in a very gradual return to work period with "lots of time to adjust." (Ex. 4, p. 116) Dr. Archer subsequently agreed evaluation by Amy Mooney, Ph.D., would be acceptable. (Ex. 1, p. 17)

On April 29, 2014, claimant returned to Dr. Wellendorf, who reviewed claimant's audiogram and opined it revealed slight hearing loss at one frequency. As she did not possess claimant's preinjury audiograms for comparison, those were requested from defendant. Pending receipt, Dr. Wellendorf issued diagnoses of unspecified otalgia, headache, and mild sensorineural hearing loss, asymmetrical. (Ex. 9, p. 155)

Dr. Wellendorf subsequently received claimant's preinjury audiogram records. Dr. Wellendorf indicated she had been asked to opine as to whether claimant's tinnitus and hearing loss were a result of the work injury. She opined:

> It would be difficult to show the cause effect relationship at [*sic*] the patient has had some fluctuating thresholds in the ear but most are likely related also to a wax impaction. At this point I do not believe this should be a factor in regards to his ability for gainful work.

(Ex. 9, p. 156)

On April 30, 2014, claimant spent approximately 1 ½ hours on the plant floor in an attempt to reintroduce him to the production area. He completed the remainder of his shift in the cafeteria. (Ex. 1, pp. 21, 53)

On May 1, 2014, claimant presented to Dr. Archer, wearing a stocking cap covering his forehead. Dr. Archer noted claimant had gained 9 pounds and demonstrated worried affect. He noted Dr. Wellendorf had cleared claimant to return to work and recommended a slow return to work effort. (Ex. 4, pp. 117, 119)

Claimant returned to work on May 1, 2014 and spent approximately one hour performing janitorial work on the production floor. At that point, claimant stated he was unable to continue. (Ex. 1, pp. 19, 54)

Claimant testified he attempted to work, but continued to experience difficulty with anxiety, stress, depression, the noisy environment, and constant preoccupation with the work injury. Claimant testified he discussed his concerns with a representative at defendant and was advised he could take leave, but it would be without pay. He was told to return when he felt capable. (Claimant's testimony) As of May 2, 2014, claimant was placed out of the plant on bid walk as a result of his reported inability to return to the production floor. (Ex. 1, pp. 20, 22, 54)

At the referral of defendant, on June 2, 2014, claimant presented to Ames Therapy and Consulting. On that date, he underwent mental health and psychiatric evaluation with psychologist, Amy Mooney, Ph.D., and board certified psychiatrist, Terrence Augspurger, M.D. The providers issued a report containing their findings and opinions dated July 11, 2014. The evaluation included a history, records review, interview of claimant, phone interview with claimant's supervisor, and mental status examination and testing. (Ex. 11, p. 159) Claimant's supervisor, Randy Story,

described claimant as a good worker who kept to himself and only communicated with his brothers. (Ex. 11, p. 160)

The supplied report detailed the work injury and indicated claimant claimed an inability to remember the events immediately following the incident, stating he was unconscious and only later awoke in the hospital. However, it was also noted that a witness to the event denied any loss of consciousness by claimant. The providers noted claimant tended to amplify what may have happened to him in the accident, indicating he "nearly died." (Ex. 11, p. 160)

The providers noted claimant suffered with recurrent involuntary and intrusive memories of the accident, distressing dreams, psychological distress, and physiologic reactions to cues that reminded him of the accident. Claimant expressed belief he was ugly and would not be able to find a wife and have a family as a result of the scarring. Claimant also described persistent feelings of sadness and depression, with diminished interest in activities and people. He also described irritability, anger, an exaggerated startle response, concentration difficulties, and sleep disruption. (Ex. 11, pp. 160-161) The providers noted claimant seemed to exhibit some dissociative symptoms with a sense of depersonalization and derealization at times. They noted claimant felt he was seriously injured, although the laceration had healed nicely and he did not sustain serious injury to any other body part. However, claimant described exaggerated feelings of worthlessness as a result of the scarring on his face. (Ex. 11, p. 161)

During the course of examination, claimant was described as looking at the ground and only making eye contact on one occasion, at which time he smiled. Claimant was described as appearing somewhat scared and depressed. He was noted to display unspontaneous speech, providing delayed and short answers. Claimant's mood was described as anxious and depressed, with almost flat affect, and an appearance of being almost disassociated. The providers found claimant's memory was difficult to assess and opined claimant's insight and judgment seemed poor. (Ex. 11, p. 162) However, claimant's overall level of functioning was described as good. (Ex. 11, p. 163) Claimant also participated in mental status testing, including a valid MMPI-2 test and cognitive testing. (Ex. 11, pp. 163-164)

Following interview, records review, testing and examination, Dr. Mooney and Dr. Augspurger issued diagnostic impressions. The first diagnosis was of unspecified anxiety disorder. The providers explained that claimant demonstrated sufficient symptoms for a diagnosis of post-traumatic stress disorder (PTSD); however, they felt the trauma claimant experienced was not severe enough to qualify for a PTSD diagnosis. They also opined claimant's testing and interview suggested claimant suffered with chronic anxiety of a diffuse nature, with components unexplainable by sudden onset PTSD. The second diagnosis was of other specified personality disorder with dependent and compulsive traits indicative of a significant, longstanding mental health disturbance. The third and final diagnosis pertained to a need to rule out an autism spectrum disorder with intellectual impairment. The providers noted claimant

possessed the capacity to function independently but demonstrated poor social skills. (Ex. 11, pp. 164-165)

Dr. Mooney and Dr. Augspurger opined claimant would benefit from symptomatic relief of anxiety and depression by way of psychotropic medication. While they noted psychotherapy might also be beneficial, the providers indicated claimant's personality style might result in low potential for change. (Ex. 11, p. 165) The providers opined claimant had a history of chronic anxiety and depression symptoms predating the work injury, as well as personality traits which contributed to his psychological pattern. While they opined the mental condition preexisted the work injury, they opined claimant's work injury intensified the preexisting anxiety disorder and claimant's response to stress. Dr. Mooney and Dr. Augspurger further opined claimant's increased anxiety at least moderately impaired claimant's ability to work. Therefore, they recommended medication management to treat depression and anxiety, with the belief such medication would assist with stabilization of claimant's behaviors and allow for a return to baseline levels of functioning. The providers opined claimant demonstrated no objective findings of permanent impairment as a result of the psychological components of his injury. (Ex. 11, pp. 165-166)

Following the evaluation, Dr. Mooney authored a letter to defendant's claims administrator. By this letter, Dr. Mooney opined claimant demonstrated moderate mental limitation with respect to interacting appropriately with others, but expressed belief this limitation was not specifically related to the work injury. She opined the work injury had temporarily increased claimant's anxiety. Dr. Mooney accordingly recommended medication management through another provider, as she had a conflict of interest due to performance of an independent evaluation. She opined with appropriate medication, claimant would return to his previous level of functioning. In addition to medication management, Dr. Mooney recommended a return to work with gradual exposure to the prior work environment. (Ex. 11, p. 158; Ex. E, p. 2)

Defendant arranged for Dr. Archer to manage claimant's mental health medications. (Ex. G) Claimant returned to Dr. Archer on June 3, 2014. Dr. Archer assessed anxiety, with a history of resolved earache, headaches, and neck strain. Dr. Archer noted he was awaiting notes from a psychologist regarding claimant's anxiety syndrome. Dr. Archer opined claimant achieved maximum medical improvement (MMI) from a medical standpoint with only occasional continued headaches. Dr. Archer opined claimant suffered from no physical injury which prevented him from working full duty. He also opined claimant sustained no permanent impairment. (Ex. 1, p. 23; Ex. 4, pp. 120-122)

On June 11, 2014, claimant returned to Dr. Jones for evaluation. Dr. Jones diagnosed traumatic neurogenic brow ptosis. She opined claimant currently demonstrated no visual impairment due to the brow ptosis and accordingly, released claimant to regular duty work, without restrictions. (Ex. 1, p. 35)

On September 5, 2014, claimant contacted defendant and despite continued headache complaints, requested to attempt a return to work. Defendant complied and returned claimant to his preinjury janitor position. (Ex. 1, p. 55) Claimant testified he was initially provided a helper to assist with physical tasks. After a short period with a helper, claimant worked alone, but received assistance from coworkers when needed. Upon returning to the plant environment, claimant testified his depression, anxiety and stress levels increased as a result of seeing the site of the work injury and reliving those moments. (Claimant's testimony)

Defendant authored a fill-in-the-blanks letter to Dr. Archer requesting his opinions. By this letter, completed September 19, 2014, Dr. Archer opined claimant had achieved "baseline for pre-existing depression" and opined the prescribed citalopram was designed to treat a preexisting condition. (Ex. 1, p. 29)

On September 22, 2014, claimant presented to Dr. Archer in treatment of his depression and anxiety. Dr. Archer assessed depression, gradually improving. He prescribed Celexa/citalopram and recommended claimant consider counseling with the defendant's plant chaplain. Dr. Archer opined claimant's depression preexisted the work injury and was not work-related. (Ex. 1, p. 30; Ex. 12, pp. 167-168)

Claimant returned to Dr. Archer on October 13, 2014 for evaluation regarding headache complaints. Claimant also reported he had received some relief of his mental health complaints with speaking to the plant chaplain. Dr. Archer assessed subjective headaches and substantial social anxiety. He added tramadol to claimant's medication regimen due to headache complaints, but expressed belief the headaches were a vegetative sign of claimant's anxiety disorder. He recommended continued counseling with the chaplain and following with Dr. Mooney for anxiety symptoms. (Ex. 4, p. 123; Ex. 12, pp. 169-170)

At the arranging of claimant's counsel, on November 7, 2014, claimant presented for an independent medical evaluation (IME) with board certified occupational medicine physician, Sunil Bansal, M.D. Dr. Bansal issued a report of his findings and opinions dated December 1, 2014. As an element of his IME, Dr. Bansal performed a medical records review. (Ex. 13, pp. 171-177) Dr. Bansal also interviewed claimant, who reported he did not lose consciousness following the injury, but was dazed. (Ex. 13, p. 178)

Claimant complained of numbness from his left forehead and cheek area radiating to his left occipital area. He also complained of headaches, neck pain with rotation, impaired concentration, lack of focus, ringing of the left ear with some hearing loss, blurred vision of the left eye, low back pain, pain and numbness of the left elbow and forearm, significant anxiety since the accident, frequent crying spells, and difficulty sleeping. (Ex. 13, pp. 178-179) Claimant reported he was working full duty in his preinjury job, but remained "very fearful at work," with it being very difficult for claimant to work in that environment. (Ex. 13, p. 178) Claimant relayed an ability to lift 30 to

40 pounds occasionally and 10 to 20 pounds more frequently. (Ex. 13, p. 179) Dr. Bansal also performed a physical examination of claimant. (Ex. 13, pp. 179-181)

Following records review, interview and examination, Dr. Bansal made the following diagnoses. With respect to claimant's head, neurological, and psychological conditions, he assessed post-concussive syndrome, PTSD, left ear tinnitus, headaches, and concentration impairment. He also assessed a facial laceration, myofascial pain syndrome of the neck, chest wall contusion, and left elbow sprain. (Ex. 13, pp. 181-182) Dr. Bansal opined claimant only sustained temporary strains to his back and elbow. (Ex. 13, p. 184) Dr. Bansal opined claimant achieved MMI as of June 3, 2014. (Ex. 13, p. 182)

Dr. Bansal opined the mechanism of claimant's work injury was consistent with the head, neck, and mental health pathology he diagnosed. He opined claimant developed "traumatic brain injury sequela" from the head injury. (Ex. 13, p. 182) Dr. Bansal noted conditions of post-traumatic migraines, tinnitus, dizziness, and cognitive impairments have been linked to head trauma in medical literature. (Ex. 13, p. 182-183) With respect to claimant's neck, Dr. Bansal opined the work injury could explain the clinical findings of the trigger points, with claimant complaining of muscle tightness. (Ex. 13, p. 183)

Dr. Bansal opined claimant sustained permanent impairment as a result of the work injury. As a result of the conditions which Dr. Bansal grouped as related to claimant's head, Dr. Bansal opined claimant sustained a 6 percent whole person impairment. Specifically, he opined claimant demonstrated a constellation of neurological impairments classified under the description of a traumatic brain injury; he identified complaints of dizziness, headaches, tinnitus and concentration difficulties, as well as development of PTSD. Dr. Bansal also opined claimant sustained permanent impairments of 3 percent whole person due to guarding and decreased range of motion of the neck, and 2 percent whole person as a result of the disfiguring facial scar, per the AMA Guides to the Evaluation of Permanent Impairment, on skin disorders. He opined claimant sustained no permanent impairment as a result of the chest and elbow injuries. (Ex. 13, p. 184-185)

Dr. Bansal recommended permanent restrictions of a maximum lift of 40 pounds occasionally or 20 pounds frequently. He also advised use of caution with returning claimant to work in an environment which aggravated his PTSD. Dr. Bansal opined claimant should receive care of his mental health complaints, at a minimum, regular evaluations by a specialist and appropriate medications. He also opined claimant's neck complaints might warrant trigger point injections, a TENS unit, and a home exercise program. (Ex. 13, pp. 185-186)

On December 11, 2014, Dr. Jones completed a fill-in-the-blanks questionnaire and thereby opined claimant had attained MMI from an ocular standpoint. Dr. Jones opined claimant continued to demonstrate brow apraxia medially, which had improved

and which she anticipated would continue to improve. Dr. Jones opined the brow apraxia did not affect claimant's vision, but might be of cosmetic concern. She opined claimant sustained no functional impairment and released claimant to full duty, without further treatment indicated. However, she recommended claimant follow up in six months. (Ex. 1, pp. 33-34, 36)

At the referral of his attorney, on February 20, 2015, claimant presented to Plains Area Mental Health Center and was evaluated by Christel Rinehart, ARNP. Ms. Rinehart's notes indicate claimant reported he had previously done well on medication for his mental health complaints, but these medications had been stopped in November 2014. Claimant expressed a need to return to use of medications. (Ex. 14, p. 192) Ms. Rinehart assessed PTSD, a history of traumatic brain injury, and occupational concerns. She issued prescriptions restarting Celexa and Trazadone; she also added prazosin for nightmares. Ms. Rinehart recommended claimant participate in psychotherapy. (Ex. 14, p. 194)

On March 19, 2015, claimant presented to Plains Area Mental Health Center for psychotherapy with Jessica Mendel, LMSW. (Ex. 14, pp. 195-196)

In March 2015, defendant terminated claimant's employment. Claimant related his termination to absences attributable to the work injury. He acknowledged over half of the accumulated points which led to his termination resulted from no-call/no-shows; however, claimant testified he was unaware that 6 of the 11 points he accumulated were related to no-call/no-shows contemporaneous with his April 2014 arrest. (Claimant's testimony)

William Sager, II, human resources manager for defendant, testified at evidentiary hearing. Mr. Sager confirmed claimant was terminated for accumulation of points due to attendance issues. He explained an employee is terminated for accumulating 10 points within a 12-month period. Mr. Sager indicated that different numerical values of points are assigned to different absences: 1 point for calling in on time for non-work related illness; 2 points for calling in sick on the first or last day of a work week; and 3 points for a no-call/no-show. Mr. Sager testified claimant accumulated 6 points for no-call/no-shows on April 21 and April 22, 2014. He was then a no-call/co-show on January 12, 2015, bringing his total to 9 points. On March 9, 2015, claimant called in for a non-work related illness, but as it was at the beginning or end of his work week, he accumulated 2 additional points. As a result of accumulating 11 points, defendant terminated claimant's employment. (Mr. Sager's testimony)

Mr. Sager's testimony was clear and professional. He was personable and his demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt his veracity. Mr. Sager is found credible.

Following his termination, claimant applied for and was determined eligible to receive unemployment insurance benefits. (Ex. 20, p. 239) IowaWorks offered

claimant services through Iowa's Re-Employment Services Program. (Ex. 20, p. 242) During April 2015, claimant made contact with four potential employers inquiring of employment opportunities. (Ex. 2, p. 245) Claimant testified he sought work at large employers and small Mexican stores, but never received an offer of employment. Claimant expressed doubt as to his ability to work, but indicated he attempted to find a job within his abilities and due to his lack of income. (Claimant's testimony)

At the referral of claimant's attorney, on July 10, 2015, claimant presented for an independent mental health evaluation with psychologist, Catalina Ressler, Ph.D. The evaluation was conducted in Spanish. Dr. Ressler issued a psychological report dated July 18, 2015. (Ex. 15, p. 203)

By her report, Dr. Ressler noted claimant's preinjury life did not include many stressors; however, she noted claimant suffered with mild anxiety with transitions. For example, claimant described difficulty upon moving to the United States and experiencing cultural differences. Dr. Ressler opined claimant never "really fully accultured" to life in the United States, with claimant feeling anxious with scenarios in which he "feels like an outsider." Dr. Ressler also described mild preinjury symptoms of worry and social anxiety. (Ex. 15, p. 204)

Claimant described the work injury for Dr. Ressler. He indicated he did not lose consciousness as a result of the fall, but reported he did not recall a great deal prior to his hospitalization. He described experiencing a great deal of bleeding and feeling quite scared following the injury. (Ex. 15, p. 204)

Claimant informed Dr. Ressler that when he returned to work following the work injury, he was placed in the cafeteria. In this light duty role, claimant reported feeling bored, exhausted, trapped, useless, and annoyed. He also reported overhearing gossip from coworkers, including "how they though he had died or that he would be paralytic." Claimant reported the gossip affected him personally, and he became progressively depressed and developed increased concern about the injury. (Ex. 15, p. 204)

When claimant was subsequently asked about returning to his preinjury job, claimant indicated he informed defendant he was fearful of returning to the location of the accident. Claimant reported he was told to try to return and attempt to deal with his fear. (Ex. 15, p. 204) Claimant represented he attempted to return to work in the area, but his fear and the noise levels were intolerable. As a result, claimant ceased working until September, when he began performing small increments of work and was assigned a coworker to assist. After this helper was no longer assigned to him, claimant indicated his coworkers offered him assistance, but as a result, he felt like a burden. Thereafter, his anxiety and depression increased and he began missing work. Dr. Ressler noted claimant was subsequently terminated in March 2015 for absenteeism. (Ex. 15, p. 205)

Claimant described living in a constant state of fear of reinjury, lack of ability, continued symptoms, and people's reaction to his scar. Claimant admitted to feeling lonely, but expressed a desire not to be a burden on those around him. He admitted to being an introvert prior to the injury, but represented he no longer desired to be around family. His social isolation reportedly worsened his symptoms. He was also bored, which resulted in increased anxiety. Claimant indicated that in social scenarios and louder environments, he becomes irritable and anxious. (Ex. 15, p. 205)

Claimant participated in a two-hour interview and mental status exam. Dr. Ressler also reviewed claimant's medical records. (Ex. 15, p. 205) Dr. Ressler described claimant as cooperative and open in his response style during interview and indicated she was able to easily establish rapport with claimant. She noted claimant avoided eye contact and kept his face pointed downwards, with his hat sitting low into his eyebrows. She also described claimant as presenting with flat affect and a depressed and anxious mood. Dr. Ressler opined she found no indication claimant was malingering. (Ex. 15, pp. 206-207) Dr. Ressler opined claimant's valid MMPI results demonstrated a tendency to be overly self-critical and a pattern of symptomatic depression. She opined claimant's depression and anxiety were partly situational in nature and might diminish over time, with treatment or dissipation of stress. (Ex. 15, p. 207)

Utilizing the DSM-V reference, Dr. Ressler assessed PTSD with dissociative symptoms. She opined she was "certain" claimant suffered from PTSD with dissociative symptoms. (Ex. 15, p 207) Dr. Ressler opined claimant re-experienced the trauma in the form of nightmares, flashbacks, and continuous dissociative reactions of depersonalization and derealization. Dr. Ressler noted claimant demonstrated avoidance and displayed a constant preoccupation with distressing memories or reminders of the trauma. She also noted claimant suffered from alterations in arousal, including sleep disturbances and hypervigilance, as well as negative alterations of his cognition and mood. (Ex. 15, p. 208) Dr. Ressler again opined she lacked reason to believe claimant was malingering and further opined claimant's experience of pain was genuine. (Ex. 15, p. 208)

Dr. Ressler opined she was certain there was a direct relationship between the work injury and claimant's current PTSD. She opined claimant likely had a history of anxious symptoms; however, she opined for this reason, claimant "was more prone to developing full PTSD symptomatology." (Ex. 15, p. 209)

In respect to claimant's ability to work, Dr. Ressler opined claimant was not currently capable of sustaining full time employment in the competitive labor market. (Ex. 15, p. 209) She opined claimant's symptoms prevented him from effectively functioning in many aspects of his life. She also noted a primary concern of safety in the workplace. Dr. Ressler explained claimant's dissociative symptoms could result in claimant experiencing another work injury. She explained claimant's difficulty with concentration and attention would impact claimant's level of alertness to danger.

Further, she expressed concern regarding claimant's ability to interact with others, including claimant's inability to react predictably and her fear claimant could react aggressively in stressful situations. Due to these issues, Dr. Ressler opined claimant would likely have difficulty with attendance and absenteeism. (Ex. 15, pp. 208-209) Simply put, Dr. Ressler opined:

> I do not believe that [claimant] is capable of performing his job at this time.

(Ex. 15, p. 208)

Dr. Ressler further opined claimant would remain incapable of working for so long as his symptoms remained unchanged. She therefore recommended treatment consisting of psychiatric evaluation for medication management and psychotherapy with a psychologist specializing in treatment of trauma. Dr. Ressler opined it was difficult to predict if claimant's condition would result in permanent impairment, noting claimant had not received sufficient treatment to date. (Ex. 15, pp. 209-210)

On September 11, 2015, Dr. Bansal provided deposition testimony. Dr. Bansal testified he reviewed various records produced after his IME of claimant, including Dr. Ressler's report, claimant's deposition, and various medical records. After this review, Dr. Bansal stood by his opinions as expressed in the IME report. (Ex. 22, p. 248)

Dr. Bansal opined claimant suffered from myofascial pain syndrome of his neck, a soft tissue injury. (Ex. 22, pp. 252-253) Dr. Bansal explained he diagnosed post-concussive syndrome on the basis of claimant sustaining a blow to the head without a loss of consciousness, but with resultant change in cognition and mood. He acknowledged this diagnosis was based upon reported symptoms and not upon performance of testing. (Ex. 22, p. 254) He opined the diagnosis of PTSD was made in accordance with the DSM-V, based upon claimant's subjective reports. (Ex. 22, p. 254) Dr. Bansal opined PTSD can be triggered by a traumatic event. (Ex. 22, p. 263) Also based upon subjective reports were his diagnoses of concentration impairment and headaches. (Ex. 22, p. 255)

Finally, the diagnosis of left ear tinnitus was based upon claimant's report of a ringing sound in his ear; Dr. Bansal indicated tinnitus would not be a finding recorded on a hearing test. (Ex. 22, p. 255) Dr. Bansal initially expressed disagreement with Dr. Wellendorf's opinions on causation of tinnitus; he based the disagreement upon claimant's subjective report of greater intensity symptoms following the work injury. (Ex. 22, p. 257) However, following review of medical records which predated the work injury and noting a complaint of ringing of the ears, Dr. Bansal opined he was unable to causally relate the diagnosed tinnitus to the work related head injury within a degree of medical certainty. (Ex. 22, p. 257)

Dr. Bansal addressed the basis of his permanent impairment ratings, as well. Dr. Bansal opined claimant sustained a 6 percent whole person impairment as a result of the head injury, specifically utilizing the mental status and cognitive impairment section of the AMA Guides. He explained he reached this rating using generally the history provided by claimant; he also noted he did not rate claimant for permanent impairment based on tinnitus. (Ex. 22, pp. 259, 262) With respect to claimant's facial scarring, Dr. Bansal opined claimant sustained permanent impairment, but acknowledged the scarring did not impact claimant's function. (Ex. 22, p. 260) Dr. Bansal also noted claimant sustained permanent impairment as a result of his neck condition, explaining claimant fell between DRE Cervical Categories I and II. (Ex. 22, p. 260-261) Dr. Bansal expanded upon his recommended restrictions of maximum lifts of 40 pounds occasionally and 20 pounds frequently, to state that lifting was to be performed from floor to table level. (Ex. 22, p. 261)

Dr. Bansal testified the majority of his time in professional practice is spent in treatment of patients for employers. (Ex. 22, p. 261) Dr. Bansal testified he also performs IMEs almost exclusively for claimants, for which he earns approximately $1.3 million dollars annually. (Ex. 22, p. 248)

On October 5, 2015, claimant returned to Ms. Rinehart at Plains Area Mental Health Center. Ms. Rinehart noted she had not evaluated claimant since February 2015 and claimant returned as his prescriptions for medications had lapsed. Claimant reported that while he had utilized his medications, he experienced some improvement in symptoms. Ms. Rinehart resumed claimant's medication regimen and recommended follow up in two months. (Ex. 14, pp. 197, 199) Claimant testified his break in seeking mental health treatment was due to his lack of health insurance. (Claimant's testimony)

On October 30, 2015, Dr. Ressler provided deposition testimony. Following her July 2015 evaluation of claimant, Dr. Ressler reviewed the depositions of both claimant and Dr. Bansal, as well as additional mental health records. After doing so, Dr. Ressler stood by the opinions she rendered in her July 2015 report. (Ex. 23, p. 300)

Dr. Ressler opined claimant suffered from PTSD by the DSM-V. Dr. Ressler opined her diagnosis was based upon a precipitating event of the experience of trauma and not upon suffering a brain injury. Under the DSM-V, Dr. Ressler explained that an event can qualify as traumatic if it leads to serious injury, a standard which is subjective to an individual's perception. (Ex. 23, pp. 303-304) Dr. Ressler opined claimant's injury "absolutely" qualified as a serious injury. (Ex. 23, p. 304) She further opined claimant would have qualified for the PTSD diagnosis under the DSM-IV. Dr. Ressler explained that under the DSM-IV, the definition of trauma was more narrowly construed than under the DSM-V. She explained that trauma is subjective by nature and the event experienced by claimant was serious enough in nature to qualify as a traumatic event under the DSM-IV. (Ex. 23, pp. 303-304) By the AMA Guides, Dr. Ressler opined claimant fell within Class 4, indicative of marked impairment. (Ex. 23, p. 314)

Dr. Ressler noted that the report issued by Drs. Mooney and Augspurger described symptoms consistent with a PTSD diagnosis and they simply objected to a PTSD diagnosis on the belief the trauma claimant suffered was not severe enough to support the diagnosis. (Ex. 23, p. 315) Dr. Ressler expressed disagreement with the opinion rendered by Drs. Mooney and Augspurger that medication would return claimant to a baseline level of functioning. She opined there was no evidence that medication alone would resolve PTSD symptoms. She explained that medication is unable to improve symptoms of dissociation, symptoms of arousal, or symptoms of erratic cognitive and mood changes. (Ex. 23, p. 311)

With respect to claimant's treatment, Dr. Ressler opined claimant became "retraumatized" when he attempted to reenter his prior work environment. She explained that desensitization techniques are useful in treating phobias, but not in treating PTSD. (Ex. 23, p. 315) Dr. Ressler similarly opined that counseling with a chaplain was insufficient treatment, as chaplains lack the training possessed by a psychotherapist. (Ex. 23, p. 313)

Dr. Ressler opined claimant was unable to work as a result of his PTSD. (Ex. 23, pp. 306-307) She further opined she was uncertain if claimant would ever return to work. (Ex. 23, p. 311) Dr. Ressler opined claimant was likely incapable of long term employment given his lack of treatment and the fact he did not represent a good candidate for treatment due to his education level and lack of insight. (Ex. 23, p. 315)

Dr. Ressler testified approximately 95 percent of her professional practice consists of treating patients. (Ex. 23, p. 314) In addition to treating patients, she performs 15 to 20 independent evaluations per year, all for claimants and the majority of which for claimant's counsel in particular. (Ex. 23, pp. 299-300)

On December 4, 2015, claimant presented to Ms. Rinehart. He described his condition as "so-so," better since returning to his medication regimen. Ms. Rinehart recommended continued medication use, with claimant to return in one month. (Ex. 14, pp. 202A, 202C) Claimant followed up with Ms. Rinehart on January 4, 2016. At that time, Ms. Rinehart increased claimant's Celexa dosage and recommended he seek to help another person each day, in order to give himself a sense of purpose. (Ex. 14, p. 202J)

Claimant testified he continues to suffer with headaches, as well as neck pain, especially with rotation of his head to the left or with exertion of force. He utilizes over-the-counter Tylenol and Advil to help reduce the pain. Claimant also continues to experience a great deal of anxiety, stress, and depression, which he relates to reliving the work injury on a daily basis. He utilizes the prescribed medications for his mental conditions, which he indicated provide a little relief and allow him to sleep. (Claimant's testimony)

Claimant remains unemployed, but testified he has continued to seek employment. He testified he last applied for work at a turkey production facility approximately three weeks prior to evidentiary hearing. Despite applying for a production position, claimant does not believe he is capable of performing the work. Claimant also does not believe he is capable of returning to preinjury employment in agriculture, industrial glass, or airplane parts. He attributes this inability to his physical restrictions as well as his anxiety, depression, stress levels, and inability to tolerate noisy environments. Claimant believes he would be physically capable of performing his preinjury position of cutting meat for defendant, but his mental conditions and the noisy environment would prevent him from performing the job. Claimant does not believe he is physically or mentally capable of performing his preinjury janitorial position for defendant. Claimant represented he is willing to attempt to work if someone offers him a job. (Claimant's testimony)

Claimant's younger brother, Adan Deciga Sanchez, testified at evidentiary hearing. Adan resided with claimant in Storm Lake, Iowa from 2009 through the date of the work injury. Adan eventually moved to another residence with his family, but has remained in close contact with claimant. He testified claimant did not have any mental problems prior to the work injury and since the work injury, he has noticed a change in claimant. Adan described claimant as very anxious, desperate, and depressed. He further testified claimant is less communicative, more withdrawn from social interaction, and does not remember conversations. (Mr. Deciga Sanchez's testimony)

Mr. Deciga Sanchez's testimony was clear, well-delivered and consistent with the remainder of the evidentiary record. His demeanor provided the undersigned no reason to doubt his veracity. Mr. Deciga Sanchez is found credible

CONCLUSIONS OF LAW

The first issue for determination is whether the injury of March 6, 2014 is a cause of permanent disability.

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 Rule of Appellate Procedure 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 Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

The 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).

Claimant sustained a stipulated work injury on March 6, 2014. Defendant provided care and evaluation with a number of medical providers and specialists. Claimant contends he sustained significant permanent disability as a result of the injury, while defendant argues claimant's conditions resolved or returned to baseline levels.

Among claimant's physical injuries were a left elbow contusion/sprain, chest wall contusion, left shoulder contusion, and brow ptosis. No physician opined any of these conditions resulted in permanent impairment or required permanent restrictions. Therefore, it is determined these injurious conditions did not result in permanent disability.

Claimant also claimed injury in the form of tinnitus, ear pain, and hearing loss. Dr. Wellendorf opined it was difficult to establish a cause and effect relationship between the conditions and the work injury. While Dr. Bansal initially opined claimant's tinnitus was work related, he subsequently changed this opinion and indicated he was unable to relate the condition to claimant's work injury. Dr. Bansal did not opine claimant sustained permanent impairment as a result of the tinnitus condition.

Therefore, it is determined claimant failed to prove the work injury was a cause of any permanent disability to claimant's ears.

In evaluation of claimant's head injury, Dr. Nguyen opined claimant likely sustained a concussion, although there was lack of clarity on his part as to whether or not claimant lost consciousness. Dr. Bansal opined claimant suffered from post-concussive syndrome. He also opined claimant suffered from what he deemed to be traumatic brain injury sequela, including complaints of dizziness, headaches, concentration difficulties, and tinnitus, as well as PTSD. The impairment rating assigned by Dr. Bansal with respect to these conditions was based upon claimant's mental status and cognitive impairments; it was not parceled out between the conditions. It, therefore, is unclear what portion of the 6 percent whole person impairment rating is attributable to either the concussion, post-concussive syndrome, or headaches. Dr. Archer expressed belief claimant's headaches actually represented a vegetative symptom of claimant's mental health condition. Given that I am unable to attribute any specific percentage of permanent impairment or need for work restrictions to claimant's potential concussion syndrome or headaches, I am unable to find these conditions resulted in permanent impairment. Furthermore, I have reservations regarding Dr. Bansal's methodology for rating claimant's permanent disability as a result of the head injury, concerns which will be addressed in greater detail *infra*.

Claimant credibly testified he continues to suffer with symptomatology of his neck, as claimant develops pain with rotation of the head to the left side and with exertion of force. Dr. Archer made a blanket statement that claimant did not sustain permanent disability as a result of his physical conditions, while Dr. Bansal opined claimant suffered from myofascial pain syndrome of the neck. Dr. Bansal opined claimant demonstrated guarding and decreased range of motion of the neck on examination, findings consistent with claimant's credible testimony. Dr. Bansal causally related these complaints to the work injury and opined claimant fell in a range between DRE Cervical Category I and II, warranting a permanent impairment of 3 percent whole person. Dr. Bansal also recommended permanent physical restrictions attributable to the neck condition. There is no convincing evidence in the record that claimant is malingering or that his complaints are not credible. It is accordingly determined that the consistent opinion of Dr. Bansal is entitled to greater weight and further determined claimant's neck injury resulted in permanent disability.

As a result of the work injury, claimant suffered a significant facial laceration. Despite healthy healing of the laceration, claimant has been left with a quite noticeable scar on the left side of his forehead. The undersigned readily noticed the scar and easily observed the scar extending from his hairline, across the forehead, and into the left eyebrow. Dr. Archer provided a blanket opinion that claimant had not sustained any permanent impairment as a result of his physical injuries; this is presumed to include the scarring. Dr. Bansal acknowledged the scarring did not impact claimant's functionality, but opined claimant sustained permanent impairment for the disfiguring scar based upon the AMA Guides' discussion of skin disorders. Dr. Jones opined claimant suffered

from brow ptosis related to this area and opined it did not impact his function; however, she did acknowledge a potential cosmetic concern. As a result of the work injury, claimant sustained scarring which, although it does not impact the function of claimant's forehead, it does impact claimant's functioning in social situations and in his attempts to cover the region. It is therefore determined that the forehead laceration and scarring resulted in permanent disability.

Finally, and most considerably, claimant claims he suffered permanent mental injury as a result of the work injury of March 6, 2014. Defendant argues claimant's mental health condition returned to its baseline, preinjury level. Review of claimant's medical records reveals that shortly after the work injury, claimant began to suffer with mental health complaints such as anxiety, stress, and depression. Also repeatedly noted in the medical records is an impact of these symptoms upon claimant's ability to recover from his physical injury and return to work.

Defendant provided claimant with evaluation by Drs. Mooney and Augspurger. In a lengthy report, these providers opined claimant suffered with an unspecified anxiety disorder. The providers opined claimant demonstrated sufficient symptomatology to warrant a PTSD diagnosis, but opined the precipitating event was not severe enough to support a true PTSD diagnosis. Drs. Mooney and Augspurger also noted claimant likely had a history of chronic anxiety and traits of a longstanding personality disorder. Additionally, they raised the need to rule out a diagnosis of an autism spectrum disorder with intellectual impairment. In summary, the providers opined claimant suffered from chronic anxiety and depression which predated the work injury, but those conditions had been intensified by the event and now impacted claimant's ability to work. Accordingly, the providers opined claimant required medication management of his conditions in order to stabilize claimant's conditions and allow for a return to baseline. Drs. Mooney and Augspurger also raised the possibility of claimant receiving benefit from psychotherapy; however, they cautioned claimant's personality traits might indicate low potential for change.

Thereafter, claimant received medication management of his mental health conditions from Dr. Archer. Within approximately 3 ½ months of the evaluation of Drs. Mooney and Augspurger, Dr. Archer opined claimant had returned to a baseline level of depression and related medication management to a preexisting condition. At that time, claimant had recently returned to work following a 4-month leave of absence.

Claimant then underwent IME with Dr. Bansal, who opined claimant suffered from PTSD. In his report, Dr. Bansal seemingly lumps the PTSD diagnosis in with an injury to claimant's head and sequela of a traumatic brain injury. He opined these combined conditions warranted a permanent impairment rating of 6 percent whole person and he urged caution in returning claimant to a work environment which aggravated his PTSD. Claimant also sought treatment with Ms. Rinehart, who assessed PTSD, a history of traumatic brain injury, and occupational concerns. She recommended medication management and therapy.

At the referral of claimant's counsel, claimant presented to Dr. Ressler for evaluation. Following examination, Dr. Ressler opined she was certain claimant suffered from PTSD with dissociative symptoms. The diagnosis was based on a precipitating trauma and not upon a traumatic brain injury. She opined claimant met the standard for a PTSD diagnosis under either the DSM-IV or DSM-V. She opined claimant likely suffered from preexisting anxiety and worry; Dr. Ressler indicated this status made claimant more prone to development of PTSD. Dr. Ressler opined claimant was not currently capable of maintaining full time employment, based primarily upon safety concerns, doubts regarding claimant's ability to appropriately and predictably react to others, and likely attendance issues. She opined when claimant attempted to return to work at defendant, he became retraumatized. Dr. Ressler opined claimant would not be capable of returning to work without appropriate treatment, including a medication regimen and psychotherapy with a qualified psychotherapist. Even with such treatment, she expressed hesitation regarding claimant's ability to return to work, as she opined claimant did not represent a good candidate for therapy.

Following review of all of the expert opinions regarding claimant's mental status, I find the opinion of Dr. Ressler entitled to the greatest weight. Given the complexity of claimant's mental health condition, I find the opinions of dedicated mental health professionals to be entitled to greater weight than the opinions of occupational physicians. I therefore find Dr. Archer's opinion entitled to little weight, especially as it seems to be premised in large part upon the report of Drs. Mooney and Augspurger and claimant's return to work. I also find Dr. Bansal's opinion on claimant's mental health condition entitled to little weight, particularly as it confusingly conflates a PTSD diagnosis with the physical injury to claimant's head and brain, as opposed to the triggering traumatic event cited by Dr. Ressler, Dr. Mooney, and Dr. Augspurger.

In reviewing the two reports authored by Dr. Ressler and Drs. Mooney and Augspurger, many similarities are revealed. All the providers indicated it was likely claimant suffered from some preexisting mental health concerns, notably anxiety. All the providers also agreed claimant met the symptomatology requirements for a PTSD diagnosis; however, they disagreed regarding whether the traumatic event experienced was severe enough in nature to support a true PTSD diagnosis. To the undersigned, this distinction seems hollow; the diagnosis assigned to claimant's condition does not change the symptomatology he experiences. The providers all recommend generally the same treatment, notably medication management and potentially psychotherapy. They all even agree that claimant may not be a good candidate for psychotherapy, bringing the efficacy of that treatment into question.

Drs. Mooney and Augspurger opined with medication management, claimant's condition would stabilize and allow a return to work. Although claimant did return to work, he was ultimately terminated due to attendance issues. While a majority of claimant's attendance points were accumulated as a result of his arrest, claimant subsequently missed work for personal reasons. He credibly attributed these absences to his mental health conditions. Prior to the work injury, there is no evidence claimant

was disciplined for attendance or performance concerns; therefore, his ability to maintain his employment long-term is speculative. These concerns are precisely those identified by Dr. Ressler in her discussion of claimant's employability and need for dedicated treatment.

Additionally, there is no evidence in the record which indicates claimant suffered from pre-injury mental health conditions which impacted his ability to successfully maintain consistent employment. Following the work injury, claimant's employment has been intermittent, spotty, or non-existent. Claimant credibly testified to impacts of his mental health conditions upon his ability to function in life and employment situations, testimony which is consistent with the lay testimony of his brother.

For these reasons, it is determined the opinions of Dr. Ressler are entitled to the greatest weight as to the matter of claimant's mental health. Dr. Ressler opined claimant sustained marked impairment per the AMA Guides and was currently unemployable. It is therefore determined claimant's current mental health conditions are causally related to the work injury of March 6, 2014 and have resulted in permanent disability.

The next issue for determination is the extent of claimant's industrial disability.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The parties have stipulated claimant's disability shall be evaluated industrially.

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).

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.

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 29, 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. 1982).

Claimant was 36 years of age at the time of evidentiary hearing. His formal education is limited to 9 years of schooling in his native Mexico and a 6-month English course. His English skills are limited and would not allow claimant to maintain employment which required an ability to communicate fluently in English; as such, claimant would most generally be limited to labor-type jobs.

As a result of the stipulated work injury, the undersigned determined claimant sustained permanent disability as a result of facial scarring, myofascial pain syndrome of the neck, and mental health conditions. As a result of scarring, Dr. Bansal opined claimant sustained a 2 percent whole person impairment. I adopt this rating regarding the extent of claimant's permanent impairment attributable to the facial laceration and scarring. Dr. Bansal also opined claimant sustained a 3 percent whole person impairment as a result of guarding and range of motion of the neck. I adopt this rating regarding the extent of claimant's functional impairment to his neck. Dr. Bansal also recommended physical work restrictions of maximum floor-to-table lifts of 40 pounds occasionally and 20 pounds frequently. These restrictions are consistent with claimant's credible testimony and representations in the medical records regarding his physical capabilities. I, therefore, adopt these restrictions in consideration of the extent of claimant's industrial disability.

The most relevant factor in determining the extent of claimant's industrial disability is claimant's mental health status and the impact of his mental health conditions upon his ability to attain and retain employment in the competitive labor market. As set forth *supra*, the undersigned finds Dr. Ressler's opinions on claimant's

mental health to be entitled to the greatest probative weight. Dr. Ressler opined claimant is currently not employable on a sustained, full time basis. This opinion is consistent with claimant's difficulty and ultimate inability to maintain his employment at defendant. Defendant, to its credit, demonstrated commitment to returning claimant to gainful employment; however, this attempt was unsuccessful. Since his termination, claimant has attempted to locate employment, but has not been offered any position. His mental conditions result in difficulty in noisy or populous environments. As identified by Dr. Ressler, claimant's symptomatology also raises safety concerns for claimant and others, causes difficulty in interacting and reacting to others, and is likely to result in absenteeism.

Dr. Ressler opined claimant's condition and ability to work are unlikely to change without appropriate treatment, including psychiatric evaluation, medications, and sessions with an appropriately trained psychotherapist. Even under this treatment plan, Dr. Ressler expressed concern regarding claimant's ability to successfully engage in therapy, a concern also noted by Drs. Mooney and Augspurger.

Having considered the above and all other relevant factors of industrial disability, it is determined that claimant is currently permanently and totally disabled as a result of the injury of March 6, 2014. Such an award entitles claimant to permanent total disability benefits, commencing March 7, 2014, the day after claimant sustained the work-related injury, and continuing during the period claimant remains permanently and totally disabled. The parties stipulated at the time of the work injury, claimant's gross weekly earnings were $675.00, and claimant was single and entitled to 1 exemption. The proper rate of compensation is therefore, $416.00. Defendant is entitled to credit for benefits paid.

The next issue for determination is whether defendant is responsible for medical expenses detailed in Exhibit 26.

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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

Claimant seeks an order finding defendant responsible for the BVRMC emergency room expense incurred on April 22, 2014. (Ex. 26, p. 366, 369) The emergency room physician assessed suspected seizure secondary to head trauma, chronic headaches, and chronic right chest pain. It is notable that the condition which brought claimant to the emergency department was specifically an inability to walk due to numbness of his arms and legs. After further evaluation, Dr. Archer opined claimant

likely suffered from an anxiety reaction with hyperventilation. Claimant attributed the condition to his work injury, but also acknowledged his recent arrest played a role in his heightened stress level. This event led Dr. Archer to recommend psychological evaluation and led to the referral to Dr. Mooney.

However, the record lacks clarity regarding the precise basis for the emergency room visit and no physician has specifically causally related the emergency room visit to the work injury. For these reasons, it is determined claimant has failed to prove by a preponderance of the evidence that the care was rendered on a compensable claim. Therefore, defendant is not found responsible for the claimed expense.

The next issue for determination is whether claimant is entitled to reimbursement of an independent medical evaluation under Iowa Code section 85.39.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Previous agency decisions have supported awarding reimbursement for IME expenses in circumstances where claimant is released from medical care or returned to work without opinions on permanent impairment or permanent restrictions, where defendant delayed in securing such opinions from employer-retained physicians, or where the physician otherwise implied an evaluation of permanent impairment had been made. (See Flynn v. John Deere Davenport Works, File Nos. 5030928, 5030940 (App. November 21, 2011); Kuntz v. Clear Lake Bakery, File No. 1283423 (App. July 12, 2004); Barnett v. Altoona Manor, File No. 1036926 (Arb. May 12, 1994); Anderson v. GKN Armstrong Wheels, Inc., File No. 5003600 (Arb. September 7, 2004)). In such cases, it was determined the conduct of the employer-retained physician was sufficient to trigger claimant's entitlement to a section 85.39 evaluation.

Claimant seeks reimbursement of Dr. Bansal's IME in the amount of $2,975.00. (Ex. 13, p. 187) At the time of Dr. Bansal's IME on November 7, 2014, Dr. Archer had previously opined claimant had achieved MMI from a medical standpoint and had sustained no permanent impairment. Dr. Jones had opined claimant demonstrated no

visual impairment and released claimant without restrictions. Drs. Mooney and Augspurger had opined claimant demonstrated no objective findings of permanent impairment as a result of the psychological components of his injury and Dr. Archer had opined claimant had returned to baseline with respect to his depression. These opinions triggered claimant's right to a section 85.39 independent medical evaluation. There is no evidence Dr. Bansal's IME charge was unreasonable. Defendant shall reimburse claimant for Dr. Bansal's IME in the amount of $2,975.00.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33.

Iowa Code section 86.40 states:

> Costs. All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> Costs. Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report

or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. Dec. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. Dec. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to rule 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. Dec. July 21, 2009).

Claimant requests taxation of the costs of: interpretation fees for Dr. Bansal's IME ($75.00); filing fee ($100.00); service fees ($12.96); and the psychological report of Dr. Ressler ($1,200.00). (Ex. 24, pp. 343-352) These are allowable costs and are taxed to defendant. Claimant also requested taxation of Dr. Bansal's IME expense. The cost of Dr. Bansal's IME was found reimbursable pursuant to Iowa Code section 85.39 and therefore, need not be taxed as a cost.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay unto claimant permanent total disability benefits at the weekly rate of four hundred sixteen and 00/100 dollars ($416.00), commencing March 7, 2014 and continuing during the period claimant remains permanently and totally disabled.

Defendant shall pay accrued weekly benefits in a lump sum.

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

Defendant shall receive credit for benefits paid.

Defendant shall reimburse claimant for Dr. Bansal's IME in the amount of two thousand nine hundred seventy-five and 00/100 dollars ($2,975.00).

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

Costs are taxed to defendant pursuant to rule 876 IAC 4.33 as set forth in the decision.

Signed and filed this 19th day of August, 2016.

ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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EJF/srs

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