BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOHN WILTON GRIM,	:	
Claimant,	:	File No. 5066443
vs.	:	A R B I T R A T I O N
DEXTER LAUNDRY,	:	D E C I S I O N
Employer, Self-Insured, Defendant.	:	Head Note Nos.: 1803.1, 2901

STATEMENT OF THE CASE

Claimant, John Wilton Grim, brought a claim for workers' compensation benefits against Dexter Laundry, a self-insured employer for a disputed work injury.

The hearing was held on October 14, 2019 in Des Moines, Iowa, and considered fully submitted on November 4, 2019, upon the simultaneous filing of briefs.

The record consists of JE 1-3, Claimant's Exhibits 1-3 and 5-9, Defendant's Exhibits A-I, and the testimony of the claimant and Katie Six.

STIPULATIONS

The parties agree claimant sustained an injury arising out of and in the course of his employment on January 26, 2017. They agree that the injury was the cause of temporary disability entitlement to which is no longer in dispute.

The parties disagree as to the nature and extent of the injury but agree that the commencement date for permanent partial disability benefits, if any are awarded, would be December 17, 2018.

At the time of the injury, claimant was married and entitled to two exemptions. His gross earnings were $1,171.80. Based on those numbers the weekly benefit rate is $731.48.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration

decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

Whether claimant sustained injuries which arose out of and in the course of his employment on February 21, 2018; February 22, 2018; and/or March 5, 2018;

Whether claimant is entitled to temporary disability benefits during a period of recovery;

Whether claimant's alleged injuries are a cause of permanent disability;

Whether claimant's alleged injuries have resulted in industrial disability;

Whether claimant's claim is barred by a lack of timely notice pursuant to Iowa code section 85.23;

Whether claimants claim is barred as an untimely claim pursuant to Iowa code section 85.26; and

Whether claimant is entitled to payment of medical expenses.

FINDINGS OF FACT

Claimant was a 55-year-old person at the time of hearing. He graduated from high school and has some vocational training including a two-week welding course.

After high school, claimant went to work for a farmer as a general laborer. He fed animals, ran machines, and other work around the farm. He worked there for approximately one year. Following that position, he moved to a wood shop where he did sandblasting for approximately a year. He then began welding on tanks and then worked as a material handler at an overhead crane manufacturer. In 1991, he began work for the defendant employer where he welded commercial laundry machines. He primarily worked with tubs, welding the metal tumblers together and affixing legs. He averaged 45 to 50 hours of work per week. He wore a welding helmet for approximately 22 to 23 years. He would handle the helmet 100 to 200 times a day and sometimes up to 300 to 400 times a day by lifting the facemask of the helmet up with his hand and then jerking his head to bring the helmet down. In 2017, his job changed when two panels were added to his work routine. This required him to pull a 4x4 panel weighing approximately 45 pounds, lift it, flip it upright and slide it on to the table.

He is still employed with the defendant employer.

On February 2, 2018, claimant was seen at the University of Iowa Hospitals and Clinics (UIHC) for "continued left knee pain" following the knee replacement surgery in

August 2017. (Joint Exhibit 1:2) He was walking with a limp and feeling pain in his left lower leg, hip and back. The pain began in November and worsened. Id. He also reported numbness, tingling and weakness in the left arm. (JE 1:5) He had some reduced strength on the left as opposed to the right upper extremity and slightly decreased sensation in the C4-T1. (JE 1:10) He reported that he was dropping things when he tried holding them in his left hand. Imaging showed prominent osteophyte formation at C5-C6. An MRI was ordered and claimant was instructed to modify activities and limit hyperextension of his neck. (JE 1:11)

Claimant testified that his symptoms of numbness and general “weirdness” in his fingertips began in January and that his neck pain began weeks before his knee surgery. At hearing, claimant described having pain that caused him to go “down at work” and at the deposition he characterized the pain as a spasm. (Exhibit A:6; Hearing Testimony)

After the cervical MRI which showed severe canal and left foraminal involvement at C3 – C5 claimant returned to the Spine Clinic on February 23, 2018. (JE 1:16) Claimant was prescribed gabapentin for the radicular discomfort and baclofen for lower back spasms. Id. He was encouraged again to modify his activity and avoid hyperextension of his neck. Id.

Andrew Pugely, M.D., an orthopedic specialist, evaluated claimant on February 27, 2018. (JE 1:17) In the historical section, patient was reported to have had clumsiness with the left hand and decreased grip strength present since November, numbness and tingling most intensely in the thumb, index and middle fingers but also affecting the entire arm. (JE 1:17) Claimant also complained of debilitating low back spasms that had kept him from work. Id. Given the claimant's condition, Dr. Pugely recommended decompression and fusion of levels C3-C5 as even a minor trauma could result in a devastating injury to the cervical spine. (JE 1:19)

The surgery took place on March 5, 2018. (Joint Exhibit 1:42 – 43)

After reading claimant’s job description and discussing the issue with claimant, Dr. Pugely came to the conclusion that claimant’s injury was work related. Dr. Pugely wrote in a letter to the defendants that claimant reported a specific work incident on or about 6 weeks’ post-surgery. (Ex. C:1) This is consistent with claimant’s testimony that he recalls discussing the issue with Jonathan Rueter, PA-C on the April 24, 2018 visit. (JE 1:47) That day the two discussed claimant’s welding activities and Mr. Rueter verbally suggested the claimant’s condition was work-related. Claimant then researched this issue and came to the conclusion his neck pain, radicular numbness and weakness may be work related.

During the June 1, 2018, postoperative visit with Dr. Pugely, claimant reported improvement and left arm pain and weakness. (JE 1:51) He expressed his desire to return to work. Id. Work restrictions of no lifting more than 50 pounds, no excess of

overhead lifting and no excessive neck motion were imposed. (JE 1:52) Claimant tried to return to work during the first week of June, but his employer did not want him to return until he had no restrictions. (JE 1:49) Claimant's job description was sent to Dr. Pugely's office by the claimant's wife and new restrictions were provided of work eight hours per day for five days a week, no overtime, and no excessive overhead lifting or lifting over 50 pounds. (JE 1:49-50; Ex. 3)

On June 5, 2018, claimant informed the defendant employer via a letter that he had learned that the surgery was necessitated by his many years of working as a welder. (Ex. 2:1)

> As you know I have been off of work for a neck surgery that took place on March 5, 2018. It was an emergency surgery. At a follow up appointment the doctor told me that he believed my many years of working as a welder likely resulted in the condition and need for surgery. He said this was a common problem for welders. I did not know this was a work related issue until I had this discussion with the surgeon. During my work hours up to the time of surgery I began having significant pain and discomfort in my back, left arm and left leg. I am writing you as I want to let you know that this needs to be turned into the workers[']compensation insurance company. I believe they should be paying the medical expenses and for my time off work.

(Ex 2:1)

After the work restrictions were sent to the defendant employer, the defendant employer informed the claimant that there was no work available within his current job classification. (Ex. 3:5)

> Based off of your recent evaluation from Dr. Rueter, your work restrictions are very strict. Based on these restrictions we do not have any work for you to perform within your current job classification. If any changes between now and your follow-up appointment in September, you need to let us know right away so we can evaluate your return to work status. Another option would be to post or bid to a job that may be less physically intensive that you could perform within your restrictions, that is totally up to you if a bid becomes available. In summary your restrictions are listed below.
>
> > These are John's restrictions as of 6/8/18 from Dr. Rueter:
> >
> > - 50 pounds lifting/carrying
> > - Avoid repetitive pushing, pulling, lifting, neck twist and turn, head look up/down for set periods of time

- No overhead lifting
- Work no more than 8 hours daily/5 days a week

I hope and encourage you to get better soon, so you can return to work.

(Ex. 3:5) Claimant's claim was officially denied on July 12, 2018, based on the medical records received from Dr. Pugely and Jonathan Rueter, PA-C. (Ex. E) Defendants informed the claimant that there was no work for him within the current job classification. Katie Six, the senior HR administrator for defendant employer who handles workers' compensation claims, testified that prior to June 4, 2018, no one at the defendant employer was aware that claimant's neck injury was a work condition.

Defendants argue that the claimant did not bring up a work connection until after he was told they could not accommodate his restrictions and that his 13 weeks of sick and accident leave benefits were exhausted.

Claimant's testimony at his deposition, in his answers to interrogatories, and during hearing were largely consistent. His demeanor at hearing was straightforward and non-argumentative. To the extent that this issue requires a credibility determination, I find that claimant was credible based on the consistency in his testimony and the subjective complaints as well as his demeanor. I further find that the possibility of the injury being work related was not raised until April because that was when Dr. Pugely became aware of claimant's job duties. I do not adopt defendants' suggestion that claimant's allegations of a work related injury were motivated by the refusal of the company to accommodate his restrictions and/or because he ran out of sick and accident leave.

On July 19, 2018, attorney for the claimant wrote to Dr. Pugely asking for a causation opinion. (JE 2:1) The following history was provided to Dr. Pugely:

> As I indicated to you on the phone, Mr. Grim has been a welder for 27 years. This has required him to use a welding helmet. For the first 20+ years he would have to lift the welding helmet up and down 200-400 times a day. In the past few years there were some changes to the helmet where he did not have to lift it as much, but he was still lifting it 100-200 times a day.
>
> As noted in his medical records, in February of 2018 he noted that he was having left upper extremity numbness and decreased sensation for approximately three weeks. He reported this was related to his work activities. Mr. Grim has indicated that during that time he was working on a new side panel, which is approximately four feet by four feet and 40-60 pounds. He would have to pull it out of a rack, put it on the ground, then

> pick it up and slide it into a rack. In order to put it on a rack, he would have to lift it in front of his face and tilt his head back to position it and place it back on the table that he would weld on. He would have to do that 10-20 times. During late January-early February, while he was doing this he noted that his arm was causing him more difficulties in terms of numbness and sensation. He would also feel some discomfort down into his back and left leg. The 10-20 of the larger sized panels would be done once a week. This is when Mr. Grim began feeling more discomfort in his left arm, shoulder, and down into his back.

(JE 2, p. 1)

Based on this history as well as the examinations conducted by Dr. Pugely and treatment recommended by Dr. Pugely, the orthopedic doctor agreed that claimant's work activities up through February 2018 were a substantial contributing factor to the claimant's cervical condition and the need for the cervical surgery performed. (JE 2:2)

Defendants argue that the first two sentences of the attorney's letter are evidence that claimant knew that he had a work related injury in February 2018. (Defendant's Brief, p. 5) First, the undersigned is reluctant to ascribe the writings of the attorney to the claimant who may or may not have had input in the creation of the document. Second, the statement that "[claimant] reported this was related to his work activities" does not necessarily relate to the February 2018 date in the preceding sentence. Claimant has reported the left upper extremity numbness and decreased sensation was related to his work and that the discussion arose around April to June 2018. I find that the statement in JE 2:1 that "[claimant] reported this was related to his work activities" does not backdate to the February 2018 date. Instead, I rely on the claimant's letter to his employer, the medical notes, and his testimony that he was not aware the neck problems were work related until April of 2018.

By July 26, 2018, claimant had some occasional arm numbness and dyscoordination but reported that his balance had greatly improved post-surgery. At this time, Dr. Pugely wrote, "His injury and disc herniations and progressive myelopathy are the result of a work related injury and chronic overuse as a welder." (JE 1:54) The plan was to gradually increase activity but not release claimant to full activity. (JE 1:54) Claimant was instructed to minimize lifting, bending and twisting and keep activities below 50 pounds. Id.

Claimant returned to Dr. Pugely on September 13, 2018 for follow-up. (JE 1:58) Dr. Pugely set forth the following restrictions:

> John W. Grim has the following activity restrictions regarding his neck. Limit lifting, bending and twisting. No lifting, pushing, pulling or carrying more than 50 pounds.

> John W. Grim is advised not to drive or undertake any activity requiring alertness if taking sedating medication.
>
> Activity restrictions are valid only up to the next appointment date. If the employee fails to keep an appointment, the employee will be assumed to be fully recovered, at full duty and at MMI.
>
> These restrictions apply to work and non-work activities.
>
> If the employer has no work available within these restrictions, then it is up to the employer to remove the employee from work.

(JE 1:58)

In a letter dated December 11, 2018, Dr. Pugely was asked by defendant employer as to when claimant reported his injury relating to welding. (Ex. C) Dr. Pugely did not recall nor did he have it documented. He did agree that "Mr. Grim subsequently reported a specific work incident to you approximately six weeks after surgery which indicates that he sustained an acute injury at work in January or February 2018." (Ex. C) Dr. Pugely then disagreed with the remainder of the letter including the suggestion that claimant had provided an alternate history. (Ex. C) Instead, Dr. Pugely characterized the information about claimant's work as "additional history" and that claimant "provided [Dr. Pugely] additional factual history and told [Dr. Pugely] that his symptoms began after the injury." (Ex. C:2)

December 13, 2018, claimant was nine months' post-surgery. He continued to have some persistent neck, arm and leg pain and intermittent paresthesias, gait disturbance and stiffness. (Ex. 1:61) Dr. Pugely released claimant at maximum medical improvement and anticipated the claimant would have long-term use of gabapentin for management of symptoms. He released claimant with no activity restrictions. (JE 1:61)

Dr. Pugely assigned a 27 percent whole person impairment. (JE 1:62) The initial plan was to reevaluate claimant within a year; however, claimant returned on March 23, 2019 with reports of low level pain at the posterior base of his neck, left arm and hand, bilateral low back, right thigh and calf and medial left knee. He described numbness with the second, third and fourth toes, left greater than the right. He also had experienced an intermittent sensation like a shock at his left side thoracic area. (JE 1:66) He reported that when he was tired, his left foot would flap across the floor when he walked and that he dropped things with his left hand because of a lack of grip strength and decreased feeling in the hands of his fingers. (JE 1:66) Claimant's restrictions and treatment remained unchanged. (Ex. 1:70)

Sunil Bansal, M.D., conducted an examination on July 19, 2019. (Ex. 1) During the examination, claimant exhibited tenderness to palpation over the cervical paraspinal musculature and a loss of sensory discrimination of the triceps. (Ex. 1:5)

Dr. Bansal concluded that claimant sustained cervical spine damage as a result of cumulative work performed for the defendant employer and assigned a 28 percent whole person impairment. (Ex. 1:6, 1:8) Dr. Bansal recommended that claimant may benefit from additional medications, epidural injections, physical therapy, a TENS unit, or even future fusion surgery. (Ex. 1:8)

On September 11, 2019, an independent medical evaluation (IME) of the claimant was obtained from Chad Abernathey, M.D., a board-certified neurologist. (Ex. B:1) Dr. Abernathey opined that the claimant's diagnosis was related to work activities causing acute disc extrusion on top of his pre-existing degenerative changes. (Ex. B:1) He opined that the claimant achieved maximum medical improvement as of September 11, 2019 and that he sustained a permanent impairment due to limited range of motion secondary to the two-level cervical fusion. (Ex. B:1) He assessed a 15 percent whole body impairment rating, but recommended no additional restrictions. (Ex. B)

Claimant seeks reimbursement for mileage in the amount of $1,832.00 (Ex. 5:1) and medical bills in the amount of $112,525.17. (Ex. 6)

In an FMLA form that was signed by Dr. Pugely on March 29, 2018, the injury date was set as February 27, 2018. (Ex. G:1) Dr. Pugely indicated that the condition did not arise out of claimant’s employment. (Ex. G:2) In the section requesting a description of relevant medical facts, Dr. Pugely wrote the following:

> 4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):
>
> Orthopedic condition affecting the spine. Patient underwent surgery on 3/5/18. 3 - ≈ 5 clinic visits over the next ≈ 6 months. Pain medications, surgical wound care, activity restrictions, lifting restrictions, immobilization, etc.
> Patient was originally having problems with his left knee, which was thought to originally be due to a previous surgery in August. However, it was determined the problems were coming from his spine. Relief of the leg problem was almost immediate after the spine surgery. Patient now being followed by the spine surgeon.

(Ex H:2)

Claimant has returned to his regular welding job and is earning more post-injury than pre-injury. He still has symptoms of numbness up the back of his arm, some numbness in the left leg, and some pain in his shoulders. His strength is reduced. He has self-modified how he carries out his work duties such as welding a handle onto a jar

as he cannot hold a jar without a handle. He takes 300 mg of gabapentin three times a day.

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 Rule of Appellate Procedure 6.14(6).

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

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

In 2017, there were modifications to Chapter 85 of the Iowa Code pertaining to the workers' compensation law. As it pertains to the 90-day notice requirement of Iowa Code section 85.23, the following language was added:

> For the purposes of this §, "*date of the occurrence of the injury*" means the date that the employee knew or should have known that the injury was work-related.

Iowa Code § 85.23 (2019).

The defendant's argument is that the modification to § 85.23 eliminates the discovery rule from cumulative injury cases. However, the plain language of the statute includes the *knew or should have known* language which has been used by the Iowa Supreme Court for decades in applying the discovery rule. From the face of the statute, the legislative intent appears to have codified the discovery rule.

In Baker v. Bridgestone, 872 N.W.2d 672 (Iowa 2015), the Iowa Supreme Court laid out the history of the workers' compensation statute and described it as a grand bargain between the employee who gives up certain tort rights in exchange "for a system designed to provide compensation benefits and medical services promptly, without protracted and expensive litigation." Id. at 677. Further, we are to "liberally construe workers' compensation statutes in claimants' favor to effectuate the statute's humanitarian and beneficent purpose." Id. at 679. Baker involved the question of whether the discovery rule should apply to a single traumatic incident causing a work-related injury or whether it should be limited to cumulative injuries. Id. at 672. The Supreme Court refuse to place the burden on a reasonable worker to know when every ache, pain, or symptom was the result of his work. Id. at 682.

Therefore, without specific language rejecting the discovery rule, the discovery rule still applies to the application of Iowa code § 85.23 as it relates to cumulative injuries.

The long-standing rule of law since 1980 is that "the statute of limitations on a workers' compensation claim does not begin to run until the claimant knows or should recognize the nature, seriousness, and probable compensable character of his or her injury." (Id. at 680-81) More precisely, cumulative injury is deemed to have occurred when both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. Id. at 681. This is called the manifestation point. For the claimant, the manifestation point would have been April 24, 2018. On that date, claimant testified he discussed his work duties with Physician Assistant Rueter and Mr. Rueter believed that the work injury could have been the cause of claimant's neck pain and radicular symptoms necessitating surgery. Prior to that date, claimant had been told by his surgeon and the surgeon's physician assistant that he was suffering from age-related degeneration. At one point, claimant believed that his back and leg pain were related to his prior knee arthroscopy. It was not until the claimant had an in-depth discussion about his work duties, specifically the fact that he was lifting large panels on a regular basis and constantly flipping the shield of his welding helmet by downward jerk of his head that claimant was aware his work activities contributed to an aggravation of pre-existing degenerative condition.

The injury and the causal relationship of the injury to the claimant's employment manifested on April 24, 2018. Thus, claimant's June 5, 2018, letter informing his employer of his belief that his neck surgery was necessitated by work related activities was within the 90-day time period set forth in Iowa code section 85.23. Claimant's claim is not time barred by Iowa code section 85.23.

By the same argument and by using the same date of manifestation, claimant's petition filed on October 18, 2018, was within the two-year statute of limitations set forth in Iowa § 85.26. Like § 85.23, the 2017 modification to § 85.26 was the addition of the *knew or should have known* language. The date of occurrence of the injury is the manifestation date. In this case, it is found that the manifestation date is April 24, 2018.

The next issue is one of extent. Another change to the workers' compensation statute in 2017 was to Iowa Code § 85.34(2)(v) which states as follows:

> v. 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. Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee's earning capacity caused by the employee's permanent partial disability.

Iowa Code § 85.34(2)(v). In the present case, claimant has returned to work without official restrictions. He does have some personal modifications in place, but there were no restrictions imposed by his surgeon. This may be, in part, due to the defendants' refusal to accommodate the initial restrictions. Nonetheless, the facts are that claimant

is currently working the same or similar job post-injury that he was working pre-injury and he is paid more post-injury than pre-injury. Under the 2017 statutory changes, regardless of the fact that claimant has sustained what would be considered a whole body injury, his loss can only be compensated based on the functional impairment resulting from the injury, and not in relation to the employee's earning capacity.

Dr. Pugely assigned a 27 percent whole person impairment and Dr. Bansal a 28 percent whole person impairment while Dr. Abernathey assessed a 15 percent impairment. The treating physician and the IME physician retained by claimant are closely aligned and consistent with claimant's injury and post-surgical complaints. Less weight is given to Dr. Abernathey's opinions as the opinions deviate from the majority of the evidence in the record. It is determined that claimant's functional loss is 28 percent of the whole person.

As for the medical bills, defendants argue that because the claim was denied, claimant could not get authorization and further, because no authorization was obtained, it would only be speculation to determine whether the medical treatment he did receive was more efficacious than that which was authorized. If the defendants' argument was accepted, employers would never be responsible for medical care of an injured worker so long as the claim was denied. The legislature never intended for that. In fact, in this grand bargain called workers' compensation, one of the primary benefits to an employee for giving up certain rights is medical care. See Baker, 872 N.W.2d at 678.

> One stark illustration of the difference is employers' obligation to promptly furnish reasonable medical services for the care of their employees' work-related injuries. Iowa Code § 85.27(1), (4). Employers promptly furnishing such medical services for their injured workers are entitled to choose the physician who will perform the services. *Id.* § 85.27(4). In promptly furnishing reasonable medical care to injured employees under chapter 85, employers are empowered to substitute their judgment for that of their injured employees on the important question of which medical professionals are best suited to diagnose and treat work-related injuries. Tortfeasors have no corollary control over the selection of their victims' medical providers.

Id. (footnote removed.)

The Iowa Supreme Court set forth the test to determine when unauthorized medical care was compensable in Bell Bros. Heating & Air Conditioning v. Gwinn [hereinafter Gwinn], 779 N.W.2d 193 (Iowa 2010).

> The duty of an employer to furnish medical care following notice of injury, prior to an order by the commissioner, is predicated on the employer's acknowledgement that the employee sustained an injury compensable

> under the workers' compensation statute. Iowa Code § 85.27. Once compensability is acknowledged, the statute contemplates the employer will furnish reasonable medical care and supplies following an injury and will subsequently pay the workers' compensation benefits described in the statute. Id. See generally id. §§ 85.33, 85.34.

Id. at 203. In cases where the defendants deny liability, as they did in this case, they lose the right to control care. Id. at 204.

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

Id. There is no requirement in this case that the care sought by the claimant be more efficacious than the care that the defendants would have provided had compensability been acknowledged. The *more efficacious* standard applies when the employer has accepted responsibility and offered care but the claimant seeks out additional, unauthorized care. Id. at 206. That is not the case here. In this case, the defendants denied the claim and in doing so give up the right to protest the lack of authorization. Id. at 204.

Claimant is entitled to the full reimbursement of medical bills itemized in Exhibit 6 and the mileage itemized in Exhibit 5.

ORDER

THEREFORE, it is ordered:

That defendants are to pay unto claimant one hundred forty (140) weeks of permanent partial disability benefits at the rate of five hundred forty-six and 78/100 dollars ($546.78) per week from January 10, 2018.

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

That defendants shall reimburse claimant for medical bills and mileage in Exhibits 5 and 6.

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

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

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

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30. Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall pay the costs of this action.

Signed and filed this 21st day of January, 2020.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Pothitakis (via WCES)

Jason Wiltfang (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.