BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TIMOTHY BEEMAN, Claimant, vs. VONACHEN SERVICES, INC., Employer, and ACCIDENT FUND INSURANCE CO. OF AMERICA, Insurance Carrier, Defendants.	File No. 5059196 A R B I T R A T I O N D E C I S I O N Headnotes: 1100, 1402.20, 1802, 1803, 2700

STATEMENT OF THE CASE

Timothy Beeman, claimant, filed a petition in arbitration seeking workers' compensation benefits from Vonachen Services, Inc. (Vonachen) as a result of an alleged injury he sustained on May 25, 2017 that allegedly arose out of and in the course of his employment. This case was heard via a video conference system and fully submitted on May 11, 2020. The evidence in this case consists of the testimony of claimant, Ricky Heimbaugh, Joint Exhibits 1 - 8, Defendants' Exhibits A - C and Claimant's Exhibits 1 - 8. Both parties submitted briefs.

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

1. Whether claimant sustained an injury on May 25, 2017 which arose out of and in the course of employment;

2. Whether the alleged injury is a cause of temporary disability and, if so, the extent;

3. Whether the alleged injury is a cause of permanent disability and, if so;

4. The extent of claimant's disability.

5. Whether claimant is entitled to payment of certain medical expenses.

6. Assessment of costs.

FINDINGS OF FACT

The deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

Timothy Beeman, claimant, was thirty-seven years old at the time of the hearing. Claimant left school in the sixth grade. Claimant has not obtained a GED. Claimant has dyslexia. Claimant cannot write and his ability to read is very limited. Claimant testified that he cannot write his own name without looking at his ID. (Transcript. page 13) Claimant has not attended any trade school. Claimant has worked as a stocker in grocery stores and a home center and worked as a painter. Claimant has worked through temporary agencies in assembly, built tires and has worked repairing motor vehicles. Claimant also delivered beds. (Exhibit 2, pp. 19, 20; Tr. pp. 14 - 22) Claimant had an injury when working as a stocker. Claimant fell from a loading dock in 2000. Claimant testified he had physical therapy and fully recovered from that injury. (Tr. pp. 18, 56)

Claimant testified he had an injury to his back in 2014 from driving an ATV. Claimant recalled having tingling sensation in his toes and bottom of his ankles. (Tr. p. 58) Claimant received care from David Boarini, M.D. and was released. (Tr. pp. 24, 25)

Claimant started to work for Vonachen in February 2017. Claimant passed a pre-employment physical. (Tr. p. 24) Vonachen placed claimant to work at the Bridgestone plant in Des Moines, Iowa. (Tr. p. 23) Claimant was employed to perform maintenance at the plant.

On May 25, 2017 claimant was working at the Bridgestone plant taking down fans and cleaning them in an area called the pit. (Tr. p. 25) Claimant was working with Kelly Acker and Roger Larimer. Claimant said he took a fan to the pit area to power wash it and when he went to pick it up he felt a pop in his back. (Tr. p. 27) Claimant said that the pop was not that significant, but later in the day his back got warm and stiff. Claimant said he told a co-worker, Mr. Acker that he felt a pop in his back. (Tr. p. 27) On May 26, 2017 claimant texted[1] his supervisor, Rick Heimbaugh informing him that he had thrown out his back yesterday and may have to fill out an accident report. Claimant texted that his back got real stiff after lunch. (Tr. p. 28; Ex. 6, p. 30)

Claimant went to his family doctor on May 30, 2017. Claimant was not directed to this doctor by the defendants and paid for the visit with his own insurance. (Tr. p. 31) Claimant told Mr. Heimbaugh on May 30, 2017 that he was going for more testing. (Ex. 6, p. 31) Claimant had an MRI on June 13, 2017 and saw Dr. Boarini on July 5, 2017.

[1] Claimant has a voice recognition on his phone that types his messages. (Tr. p. 29)

(Tr. p. 34) Claimant had an epidural injection and some physical therapy. (Tr. p. 34) Claimant said he had about two weeks of relief for his left leg with the epidural injection. Claimant said he then started having pain in his right leg. (Tr. p. 35) Claimant said Dr. Boarini had no additional care for him and he decided to get a second opinion at Mercy Hospital.

Claimant was seen on September 20, 2017 at Mercy Neurosurgery. (Joint Exhibit 6, p. 62) Claimant said Mercy Neurology was considering some procedures short of surgery but that did not happen and he had emergency back surgery. (Tr. p. 36)

Claimant was sent by defendants to William Boulden, M.D. for an independent medical examination (IME) on January 9, 2018. The day after his examination, January 10, 2018, claimant went to the emergency room. (JE 8, p. 89) Claimant has a left L5 - S1 hemilaminectomy and microdiskectomy decompression of the downgoing S1 nerve root on January 11, 2018. (Ex, 1, p. 12)

Claimant said it took six or seven months to get back all his function and that for a time he used a walker and cane. (Tr. p. 39) Claimant last received care for his surgeon's office in March 2018. Claimant returned to his family doctor for follow up care. Claimant was prescribed medication, pain pills and muscle relaxers that he did not take as they made his head cloudy. (Tr. p. 40)

Claimant said that since his surgery he tried to work at an auto repair shop. Claimant said he could work for a day or two but then he would not be able to move the next day, and he quit. (Tr. p. 41) Claimant has not looked for any additional work. Claimant said he does not believe he has the physical ability to do the work he did before or work without injuring himself. (Tr. p. 42)

Claimant testified that Mr. Heimbaugh filled out the report of injury form. Claimant did not remember whether he was asked if he had any prior injuries when Mr. Heimbaugh filed out the report or when he had a recorded statement taken. (Tr. pp. 54, 55; Ex. 7, p. 45)

Mr. Heimbaugh was called by the defendants to testify. He is employed by Vonachen and is the assistant facility manager at the Bridgestone location. On May 25, 2017 Mr. Heimbaugh was a facility supervisor at Vonachen and supervised claimant. (Tr. p. 65) Mr. Heimbaugh has performed the cleaning fans task that claimant was performing on May 25, 2017. Mr. Heimbaugh said that the fan cages weigh about nine pounds and the fans about three pounds. (Tr. p. 69) Mr. Heimbaugh testified that when he initially contacted claimant about his injury claimant was not sure how it happened. (Tr. 71) Mr. Heimbaugh made a number of calls to claimant and left voice messages, which went unanswered. (Tr. pp. 71, 75) Claimant did respond to a text message[2]. Mr. Heimbaugh did not respond to claimant's text messages for the most part. (Tr. p. 86)

[2] There are many people who now do not answer phone or voice messaging, but only respond to text. While it is frustrating to those who rely upon phones, it has become a common phenomenon.

Mr. Heimbaugh spoke to claimant's co-workers on May 26, 2017; Mr. Acker and Mr. Larimer. Mr. Heimbaugh said claimant's co-workers were "kind of shocked" and unaware of any injury of the claimant. (Tr. p. 74) Mr. Heimbaugh said he did not complete the employee's report of injury and might have read it to claimant. (Tr. p. 77) The written statements by co-workers, Mr. Acker, Mr. Larimer and Mr. Bragg were obtained about a month after claimant claimed his injury. (Tr. p. 87)

Mr. Heimbaugh said the last time he had contact with claimant was on June 16, 2016. At that time, he was terminated, as claimant was not eligible for FMLA leave and the employer could not hold the position open. (Tr. p. 79)

Claimant was interviewed by a third-party administrator on Jun 22, 2017 concerning his injury claim, and his responses were transcribed. (Ex. 7, pp. 36 – 47) In this statement claimant said that his family doctor on May 26, 2017 told him not to go back to work until he had an MRI; The MRI was on June 13, 2017. (Ex. 7, p. 44) Claimant said that at the time of the interview he could not put his clothes on, could not pick up his son, could do nothing around the house and needed help going to the bathroom. (Ex. 7, p. 44) Claimant said he had not had any injuries to his back that were traumatic in the past. (Ex. 7, p. 44)

Claimant's past medical history is relevant to this claim. On November 8, 2012 claimant was seen for ear pain and back pain. He was assessed as having mid-back pain and acute otitis media. For his back pain claimant was given a prescription and told to apply heat twice a day. (JE 1, p. 2) On December 12, 2016 claimant went to the emergency department after he slipped on stairs. Claimant was having lower left back pain and radiating left leg pain. Claimant was assessed with, "Acute left-sided low back pain, with sciatica presence unspecified." (JE 2, pp. 39 – 42)

On July 26, 2013 saw his family doctor for left flank pain. He was assessed with midback pain and recommend use of NSAIDS, heat and stretching exercises. (JE 1, p. 4) On August 9, 2013 claimant returned stating his pain had not gotten any better and was probably worse. (JE 1, p. 5) Claimant was provided stronger medication and scheduled for thoracic x-rays. (JE 1, p. 6) On October 8, 2013 claimant returned to his doctor due to midback pain that was now radiating down his lower back into his buttocks and legs, primarily on the left, but occasionally to the right. (JE 1, p. 7) X-ray of the thoracic spin was negative for fracture or malalignment. (JE 1, p. 11)

On October 21, 2014 claimant went to his family medicine office due to back pain. Claimant reported he had back pain riding his ATV/4-wheeler on October 5, 2014. Claimant reported he was seen twice in the emergency room for this condition. (JE 1, p. 12; JE 2, pp. 35 - 37) Claimant was prescribed hydrocodone, taken off work and scheduled for an MRI. On October 28, 2014 the MRI showed, "Moderately large left paramedian disc herniation at the L5-S1 level producing mass effect on the left S1 nerve root within the spinal canal." (JE 1, p. 15)

Claimant saw Dr. Boarini on November 17, 2014 for his back pain which was radiating into both legs. (JE 3, p. 45) Dr. Boarini ordered physical therapy work hardening. Dr. Boarini wrote:

> This patient does have a small ruptured disk but really mainly he has axial back pain, and nothing on his exam makes me think that removing this disk is likely to be of much help. I recommended physical therapy and nonsteroidals and just left it with him to call me if his symptoms change or if he has more radicular problems.

(JE 3, p. 47; Ex B, p. 12)

On May 30, 2017 claimant was seen at his family practice clinic by Michelle Hutchcroft, ARNP for back pain and also numbness and/or tingling in the extremities, which was new. (JE 1, p. 16) Claimant was assessed with "Lumbar disc herniation with radiculopathy" and told that his condition would not improve without surgery. (JE. 1, p. 19) Claimant was taken off work until June 3, 2017, which was extended until after the MRI results. (JE 1, pp. 20, 24)

An MRI of June 13, 2017 showed "Persistent left central L5-S1 disc protrusion with mass effect on the traversing left S1 nerve root. L5-S1 disc protrusion is only mildly smaller in the interval." (JE 1, p. 22)

Claimant saw Dr. Boarini on July 5, 2017. Claimant reported to Dr. Boarini that on May 25, 2015 he was lifting heavy fans and felt a pop and stabbing pain down his left leg. Dr. Boarini wrote,

> Upon examination today, the patient has an antalgic gait favoring his left leg. He really has no focal weakness. He has a positive straight leg raising sign, but the ankle reflexes, although hypoactive, are symmetrical.
>
> I reviewed the patient's MRI scan, and he has a defect at L5-S1 on the left similar to what he had before.
>
> This patient has a radiculopathy. We discussed the options, and his new symptoms have only been going on for a few weeks. We will get him an epidural steroid injection, physical therapy, and continue nonsteroidals. I will see him in three to four weeks for follow up.

(JE 3, p. 50) On August 7, 2017 claimant received a lumbar epidural steroid injection at Broadlawns Medical Center. (JE 5, p. 60)

Claimant returned to Dr. Boarini on August 16, 2017. Claimant reported the injection made his pain worse. (JE 3, p. 51) Dr. Boarini ordered an MRI. (JE 3, p. 52)

Claimant was seen by Mercy Neurosurgery on September 20, 2017. Claimant was assessed with:

> L S1 radiculopathy – without significant neural compression – prognosis is reasonable tha [sic] tthis [sic] will improve
>
> RLE neuropathic pain – this may become chronic and is hard to treat
>
> CHronic [sic] low back pain

(JE 6, p. 63) Claimant was referred for pain management and physical therapy. (JE 6, p. 63; JE 7, pp. 73 - 77)

On December 21, 2017 claimant was seen by Eric Johnson, D.O. Claimant reported he felt a pop in his back, has pain ever since and had trouble putting on his clothes. (JE 1, p. 29) Dr. Johnson's assessment/plan was:

> Chronic low back with radiculitis/neuritis- Continue with plan to f/u with neurosurgery and pain management a [sic] Mercy. Will trial patient on duloxetine to see if this helps with pain in the meantime. May use OTC Tylenol or ibuprofen as well. Continue with PT, tens [sic] unit, and ice/heat.

(JE 1, p. 30)

On January 2, 2018 claimant went to the emergency department at Mercy Hospital Des Moines due to his back pain. (JE 8, p. 78) Claimant went to the emergency department on January 10, 2018 for back pain after an incident of urine retention the day before. (JE 8, p. 88) Claimant was admitted to the hospital. He was assessed with "Severe low back pain with left lower extremity radiation and history of herniated disc. Patient unable to urinate." (JE 8, p. 86) Claimant had surgery on January 11, 2019. The post-operative diagnosis was "Left L5-S1 disk herniation with S1 radiculopathy." (JE 8, p. 84)

On March 20, 2018 an MRI showed "Interval left-sided L5-S1 discectomy with new enhancing scar tissue. Slight enhancement left S1 nerve root indicating neuritis." (JE 8, p. 90) No specific additional treatment was recommended. I find that this is the date claimant reached MMI.

Claimant went to the emergency department at Mercy Hospital for lumbar pain and left lower extremity pain on August 21, 2018. The notes also reflect chronic right lower extremity pain. (JE 8, p. 92) Claimant was referred to pain management. (JE 8, p. 93)

On January 9, 2019 Dr. Boulden performed an IME. (Ex B, pp. 3 – 7) Dr. Boulden noted claimant has had problems with urinating and that claimant has a well-documented history of a herniated disk in 2014. (Ex. B, p. 4) Claimant was brought into the examination room in a wheelchair. (Ex. 8, p. 5) Dr. Boulden reviewed the MRIs of 2014, June 13, 2017 and August 23, 2017. Dr. Boulden's diagnosis was "[P]robable herniated disc at L5-S1 on the left with S1 changes on the left." (Ex. B, p. 6) Dr. Boulden was not able to relate whether claimant had a work injury, as claimant had

some symptoms two months before the work incident. (Ex. B, p. 6) Dr. Boulden said the claimant was at maximum medical improvement (MMI). Dr. Boulden noted claimant did not have leg symptoms for several weeks after the May 25, 2017 work injury. (Ex. B, p. 6) On March 16, 2018 Dr. Boulden stated, after receiving records form Dr. Boarini and Esmiralda Henderson, M.D., he has not changed his opinions in his January 9, 2018 IME. (Ex. B, p. 22) On October 31, 2018 Dr. Boulden wrote he had the opportunity to review two 2018 MRIs. Dr. Boulden stated that the January 2018 MRI showed a much larger herniated disc than on August 23, 2017. (Ex. B, p. 26)

On August 14, 2019 Sunil Bansal, M.D. conducted an IME. (Ex. 1, pp. 1–18) Dr. Bansal's diagnosis was, "Left L5-S1 disc herniation with S1 radiculopathy. Status post left L5-S1 hemilaminectomy and microdiskectomy with decompression of the downgoing S1 nerve root (January 11, 2018)." (Ex. 1, p. 16) Dr. Bansal opined that the incident of May 25, 2017 aggravated claimant's disc herniation of L5-S1. Dr. Bansal wrote it was a complex case. He noted that claimant was able to function relatively well until the incident on May 25, 2017. He highlighted the fact that claimant reported new radicular symptoms to ARNP Hutchcroft on May 30, 2017 and he reported new symptoms to Dr. Boarini on July 5, 2017. (Ex. 1, pp. 16, 17) Dr. Bansal provided a ten percent whole person impairment rating and recommended no lifting greater than 20 pounds, no frequent bending, twisting and no prolonged standing greater than 30 minutes. (Ex. 1, pp. 17, 18) I find these are claimant's restrictions.

Claimant has a very limited education and is functionally illiterate due to his dyslexia. Despite this limitation claimant has been able to work in a number of employment fields. With his restriction in lifting and frequent twisting, bending and prolonged standing claimant has a 70 percent loss of earning capacity.

Claimant has requested the payment of medical expenses of $60,336.35 for medical treatment related to the May 25, 2017 incident. (Ex. 3, pp. 26, 27) Claimant has requested costs of $113.60 for the filing fee and service costs. (Ex. 4, p. 28) I find the medical expenses and costs to be reasonable.

I find that at the time of the injury claimant was single and entitled to three exemptions. Claimant's weekly workers' compensation rate, using the rate book in effect at the time of the injury, is $285.05.

CONCLUSIONS OF LAW

The first issue to determine is whether claimant has proven a work injury of May 25, 2017.

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995).

An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

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

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

It has long been the law of Iowa that Iowa employers take an employee subject to any active or dormant health problems and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). A material aggravation, worsening, lighting up or acceleration of any prior condition has been a viewed as a compensable event ever since initial enactment of our workers' compensation statutes. Ziegler v. United States Gypsum Co., 252 Iowa 613; 106 N.W.2d 591 (1961). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established in Iowa that a cause is "proximate" when it is a substantial factor in bringing about that condition. It need not be the only causative factor, or even the primary or the most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

There are two physicians that have opined concerning causation.

Dr. Boulden was not able to relate claimant's symptoms to a May 25, 2017 injury. He relied upon the "fact" that claimant was having radicular symptoms in the weeks leading up to the May 25, 2017 incident. He also, in a latter opinion, held that the January 2018 MRI showed a larger herniation than the July 2017 herniation.

Dr. Boulden noted claimant did not have symptoms in his legs for several weeks after the May 25, 2017 incident. ARNP Hutchcroft noted claimant had new symptoms of numbness in the extremities on May 30, 2017. Claimant reported to Dr. Boarini on July 5, 2017 he had new radicular symptoms after May 25, 2017. These two reports of additional symptoms are close in time to the May 25, 2017 injury and are the most accurate medical records. I find claimant experienced new radicular symptoms to his lower extremities after his May 25, 2017 injury at work.

Claimant has never returned to baseline after his May 25, 2017 injury. No other physician who provided treatment to claimant opined that claimant had a new injury between July 2017 and January 2018. I do not find the opinions of Dr. Boulden convincing.

I find that claimant's testimony was credible and that while performing the fan washing he felt something pop and pain in his back. Claimant at the time did not think it was a major event. He credibly testified that over the course of the day his back got worse. The record shows that the next morning claimant's symptoms were so severe that he texted his supervisor and told him he needed to see a doctor. I do not find it significate that his co-workers did not know or remember claimant complaining of a back injury, as the claimant continued to work and made brief mention to Mr. Acker. Claimant on the report of injury form did not put down his prior back treatment in 2012 and 2014. I do not find it significant considering the medical evidence and the reports to ARNP Hutchcroft and Dr. Boarini shortly after the accident.

I find the opinion of Dr. Bansal to be the most convincing in this case. Dr. Bansal noted the medical records show new symptoms after the May 25, 2017 injury. Dr.

Bansal pointed out that claimant was able to perform his work prior to May 25, 2017. Dr. Bansal's opinion is consistent with the medical records in this case. I find that the May 25, 2017 injury permanently aggravated claimant's preexisting low back condition.

The claimant consistently sought treatment for significant pain after May 25, 2017. Claimant had difficulty in dressing himself. The day after claimant saw Dr. Boulden for the IME and was put at MMI, he was admitted to the hospital and had surgery.

I find claimant had an injury on May 25, 2017 that arose out of and in the course of his employment with Vonachen. The injury is an industrial disability.

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 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.

In assessing an unscheduled, whole-body injury case, the claimant's loss of earning capacity is determined as of the time of the hearing based upon industrial disability factors then existing. The commissioner does not determine permanent disability, or industrial disability, based upon anticipated future developments. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009).

Claimant has a limited education. Claimant attempted to work for about a month doing auto repair, but could not perform this work. He has not engaged in any active work search or attempted to have the Iowa Department of Vocational Services assist him. Claimant is precluded from his past work. His restriction significantly limits his ability to perform most of the work he is qualified for. Prior to this 2017 injury claimant was engaged in the labor market. Considering all the factors of industrial disability, I find he had a 70 percent industrial disability. This entitles claimant to 350 weeks of permanent partial disability benefits.

Iowa Code section 85.34 provides that permanent partial disability (PPD) benefits are to "begin at the termination of the healing period." Iowa Code § 85.34(2). Said differently, healing period benefits end and PPD benefits commence whenever the first factor of Iowa Code section 85.34(1) is met. Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360, 372 (Iowa 2016). The three factors of Iowa Code section 85.34(1) are whether (1) "the employee has returned to work," (2) "it is medically indicated that significant improvement from the injury is not anticipated" (MMI), or (3) "the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury." Iowa Code § 85.34(1).

In this case claimant did not return to work with defendants. He had an unsuccessful attempt to return to work, but the date is not in the record other than it was after his surgery. There is no medical opinion that claimant can return to substantially similar employment. The claimant had a post-surgery MRI on March 20, 2018 and no additional care was recommended. I find that permanent partial disability benefits should commence on March 21, 2018.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

I find claimant is entitled to healing period benefits from May 26, 2017 through March 20, 2018.

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

In cases where the employer's medical plan covers the medical expenses, claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, the defendants are ordered to make payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Where medical payments are made from a plan to which the employer did not contribute, the claimant is entitled to a direct payment. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 867-68 (Iowa 2008)("We therefore hold that the commissioner did not err in ordering direct payment to the claimant for past medical expenses paid through insurance coverage obtained by the claimant independent of any employer contribution.") See Also: Carl A. Nelson & Co. v. Sloan, (Iowa App. 2015) 873 N.W.2d 552 (Iowa App. 2015) (Table) 2015 WL 7574232 15-0323).

There is no evidence that the employer and insurance carrier paid for any of claimant's medical expenses. I find that the medical expenses found in Exhibit 3 are causally related to his work injury. I also find that they are reasonable. Defendants shall pay directly to claimant these expenses.

In my discretion I award claimant the filing fee and service costs.

ORDER

Defendants shall pay claimant healing period benefits from March 26, 2017 through March 20, 2018 at the weekly rate of two hundred eighty-five and 05/100 dollars ($285.05).

Defendants shall pay claimant three hundred fifty (350) weeks of permanent partial disability benefits at the weekly rate of two hundred eighty-five and 05/100 dollars ($285.05) commencing March 21, 2018.

Defendants shall pay claimant the medical expenses as set forth in this decision. Defendants shall pay claimant these expenses directly.

Defendants shall pay claimant costs of one hundred thirteen and 60/100 ($113.06) dollars.

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

Signed and filed this 2nd day of June, 2020.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

David Drake (via WCES)

Andrew Portis (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.