BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MIKE MARION NIDAY,	:	
	:	File No. 5048754
Claimant,	:	
	:	REMAND DECISION
vs.	:	
	:	
ROEHL TRANSPORT, INC.,	:	
	:	Head Note Nos.: 1108.10, 1402.20,
Employer,	:	1802, 1803, 2301, 2501, 2502, 2907
Defendant.	:	

STATEMENT OF THE CASE

This matter is before the Iowa Workers' Compensation Commissioner on remand from the Iowa Court of Appeals from a decision dated April 3, 2019.

This matter was initially heard on June 11, 2015. An arbitration decision was filed on April 4, 2016. That decision found, in part, claimant was not working under a contract of hire made in Iowa. As a result, the decision held the Iowa Workers' Compensation Commission lacked subject matter jurisdiction over the claim.

That decision was upheld on intra-agency appeal.

In an April 3, 2019 decision, the Iowa Court of Appeals found a contract of hire for claimant, Mike Niday, was made in Iowa. As a result, the court held the Iowa Workers' Compensation Commissioner had jurisdiction over this matter under Iowa Code section 85.71(1)(b).

This decision constitutes the final agency decision on remand.

The record in this case consists of Claimant's Exhibits 1-11, Defendant's Exhibits A through F, and the testimony of claimant.

The detailed arguments of the parties have been considered, and the record of evidence has been reviewed de novo.

ISSUES

1. Whether the Iowa Workers' Compensation Commissioner has subject matter jurisdiction over this case under Iowa Code section 85.71;
2. Whether claimant sustained an injury arising out of and in the course of employment on November 1, 2013;
3. Whether the alleged injury is a cause of permanent disability; and if so
4. The extent of claimant's entitlement to permanent partial disability benefits;
5. Whether there is a causal connection between the injury and the claimed medical expenses;
6. Whether claimant is entitled to reimbursement of an independent medical examination (IME) under Iowa Code section 85.39;
7. Costs.

In the hearing report, the parties stipulated if defendant was found to be liable for the alleged work injury, claimant would be due temporary benefits from November 1, 2013 through June 6, 2014.

FINDINGS OF FACT

Claimant, Mike Niday, was 58 years old at the time of hearing. He graduated from high school. Claimant has a B.A. in business administration. Claimant completed truck driving school at a community college in 2013.

Claimant worked various production jobs for a dairy company that made dry milk. He also worked as a purchasing agent, warehouse manager, and production planner for the same company. Claimant worked as a purchasing agent for a company called Rembrandt Enterprises. Claimant worked for a pizza topping company as a production planner. (Transcript pages 9-15)

Claimant applied for a job with Roehl Transport, Inc. (Roehl) online. (Tr. p. 16)

Shortly after applying, claimant received a letter from Alice Farvour-Smith, a Roehl recruiter, dated May 7, 2013 sent to claimant's home in Dakota City, Iowa. The letter congratulated claimant on passing Roehl's initial screening process. The letter asked claimant to call Farvour-Smith within two days if he was interested in proceeding to the next step and becoming a driver for Roehl. (Exhibit 6, p. 8; Tr. pp. 17-18)

Before Niday had a chance to call Farvour-Smith, she called him to discuss employment with Roehl. Claimant testified at hearing, "I don't remember verbatim,

[what was discussed], but I do remember that we discussed the divisions they had, flatbed, dry van, reefer, and I chose the flatbed division. They have different subdivisions, Midwest regional, national, and of course there's different pay packages. We discussed that. I told them I'd like to accept the Midwest regional, have a little more home time." (Tr. p. 17)

On May 10, 2013 Farvour-Smith sent claimant another letter to his home in Dakota City, Iowa. The letter read, in part: "Congratulations! Based on the information we've received so far, I'm pleased to inform you that you qualify for a driving position with TeamRoehl!" (Ex. 6, p. 9)

The letter also indicated the employment offer was conditioned on: (1) the continued accuracy of the information he provided on his application; (2) successful completion of a "pre-work screening" to ensure Niday could meet the physical demands of the job; (3) passage of a pre-employment drug screen, and (4) successful completion of "all the requirements" of Roehl's Safety and Job Skills Program. (Ex. 6, p. 9)

The letter detailed the two phases of Roehl's training program. Phase one consisted of classroom work followed by a test. Phase two involved over-the-road experience with another driver followed by a final driving test. The letter also detailed the position and the pay claimant and Farvour-Smith had discussed in the prior phone call. (Ex. 6, pp. 9-11)

The letter told claimant to wait for a call from Roehl in the next 24 hours to arrange a Department of Transportation (DOT) exam. The letter also told claimant Roehl would arrange transportation to the Phase 1 Training Facility, along with lodging and meals during training. The letter concluded with: "Again, congratulations on qualifying for this conditional offer of employment. You've completed the first step towards a rewarding career at Roehl . . ." (Ex. 6, pp. 10-11; Ex. 7, p. 2)

Roehl arranged for claimant to get a rental car on June 1, 2013. Roehl directed claimant to report to Marshfield, Wisconsin for training beginning on June 3, 2013. (Tr. pp. 19, 39; Ex. A, p. 1)

On June 3, 2013 claimant completed paperwork for employment with Roehl, including an "Application Addendum". (Ex. A, pp. 3-4) Claimant underwent a drug test on June 3, 2013 with Allied Health Chiropractic in Marshfield, Wisconsin. (Ex. A, pp. 5-6)

On June 4, 2013 claimant traveled to Roehl's Gary, Indiana terminal to be in classroom training. (Tr. pp. 40-41)

On June 10, 2013 claimant completed classroom training and passed his initial drug test. On June 10, 2013 claimant completed a payroll form. (Ex. A, p. 7) Claimant was hired by Roehl on June 10, 2013. (Ex. 7, p. 3)

For the second phase of his training, Roehl put claimant with a trainer driver who drove with him across the United States. Claimant returned to Indiana for a final driving test. Claimant was informed he passed the test and was assigned a fleet manager named Gina Sanders. Sanders told claimant to get a truck from Roehl's maintenance shop. Claimant got the truck and returned to Iowa. (Ex. 7, p. 3; Tr. pp. 20-21, 40-45)

When he worked for Roehl, claimant received load assignments from a computer in his truck. When he accepted his assignment, Roehl sent claimant directions to pick-up sites. Claimant would drive to the site and load his truck. Claimant would then contact Roehl, let them know the load was on his truck, and Roehl would send claimant directions to where the load was to go. (Tr. p. 21)

All of claimant's runs began in Iowa. (Tr. p. 22) Claimant was dispatched by Roehl 73 times. Twenty-three of those dispatches involved pick-ups or deliveries in Iowa. (Ex. 7, p. 4)

Claimant testified that approximately two days before the date of injury, he felt lightheaded and had chest pains. He said he was leaving Chicago and driving through Illinois when he felt queasy and he felt lightheaded. He said after approximately 15-20 minutes these symptoms left. (Ex. 8, p. 12, Deposition pp. 45-48)

On November 1, 2013 claimant was sent to Logan Aluminum in Russellville, Kentucky. Claimant pulled up to the dock and his flatbed was loaded with large coils of aluminum. Claimant got a tarp, weighing approximately 125 pounds and put it on the flatbed. Claimant got chain binders, weighing about 40 pounds and began binding the coils on the flatbed. Claimant said he began to feel winded and he had chest pains. Claimant saw a warehouse worker and told him of his symptoms. Paramedics from Logan Aluminum then took claimant by ambulance to a local hospital. (Tr. pp. 23-24, 51-52; Ex. 8, pp. 12-14, Depo pp 47-54)

Claimant testified he was taken to a local hospital when he went into cardiac arrest. Claimant was transported to a hospital in Bowling Green, Kentucky where he

underwent placement of stents. Claimant was ultimately released from the hospital and was driven back to Iowa by his family. (Ex. 1, pp. 1-2; Ex. 3, p. 1; Tr. pp. 24-25)

On November 8, 2013 claimant was evaluated by Douglas Hoch, M.D. Dr. Hoch took claimant off work and recommended he stop smoking and prescribed medications. Claimant was referred to a cardiologist, Martin Aronow, D.O. (Ex. 5, pp. 1-3)

On November 20, 2013 claimant saw Dr. Aronow who kept claimant on medications. Dr. Aronow recommended a repeat angiogram and kept claimant off work. (Ex. 3, pp. 1-3)

Claimant testified the DOT required him to be off work for six months before he could return to truck driving. Claimant testified that six weeks after his work injury, he received a letter from his employer indicating he was terminated. (Tr. p. 29)

Roehl sent claimant a letter dated December 6, 2013 indicating they were aware claimant was on medical leave of absence since November 1, 2013. Roehl had not received any documentation regarding claimant's medical leave of absence. Claimant was asked to complete and return information indicating when he would be able to return to work. Claimant was informed that failure to furnish this information by December 16, 2013 would result in termination. (Ex. 6, p. 24)

On December 30, 2013 Dr. Aronow performed a coronary angiography and a coronary flow reserve measurement on claimant. Based on testing, he opined claimant had non-obstructive coronary artery disease. (Ex. 3, pp. 10-11; Ex. C, pp. 1-2)

On January 12, 2014 claimant was seen at the Wayne County Hospital Emergency Room in Corydon, Iowa with complaints of chest pain. An EKG showed no acute findings. Claimant was treated with medications. He was released from the hospital the following day. (Ex. 4, pp. 1-8)

On April 21, 2014 claimant was cleared to return to work with a restriction of no repetitive lifting greater than 20 pounds with lifting 40 pounds occasionally. (Ex. 4, p. 12)

In an April 22, 2014 letter, written by claimant's counsel, Dr. Aronow opined claimant's work activities with Roehl on November 1, 2013 substantially contributed to the cardiac episodes. He opined claimant's need for cardiac care was contributed to by his work activities with Roehl on November 1, 2013. (Ex. 3, pp. 15-16)

On May 16, 2014 claimant was seen at the Wayne County Emergency Room with complaints of chest pains for the last two days. Claimant was assessed as having musculoskeletal chest wall pain. (Ex. 4, pp. 13-14, 17)

On June 6, 2014 claimant was evaluated by Craig Hoffman, PA-C. He opined claimant met the qualifications necessary to return to work driving following myocardial infarction. (Ex. 3, p. 21)

In June of 2014 claimant began filling in for a local driver. Claimant testified he drove dry loads around the country. Claimant did this for approximately four weeks. (Ex. 8, pp. 6-7; Depo. pp. 22-25)

In July of 2014 claimant began to work for Alan Ritchey Trucking (Ritchey). Ritchey delivers U.S. mail. Claimant drives with a partner hauling no-touch loads. Claimant is paid by the trip. (Ex. 8, pp. 5-6; Depo. pp. 18-26) Claimant was working for Ritchey at the time of hearing. (Tr. p. 58)

Claimant testified he believes he earns approximately $50,000.00 a year with Ritchey. (Tr. p. 31) He testified he could earn more, but he takes shorter trips for Ritchey because of his age. (Tr. pp. 59-60)

Claimant returned to Dr. Hoch in follow up on August 25, 2014. Claimant was recommended to continue current medications and treatments and remain off cigarettes. (Ex. 5, pp. 19-21)

In an April 10, 2015 report, Sunil Bansal, M.D. gave his opinion of claimant's condition following an independent medical examination (IME). Claimant had some pain in the area of his sternum, around the top of his chest. Claimant reported he smoked for 37 years and did have shortness of breath prior to his heart attack. (Ex. 1, pp. 1-6)

Dr. Bansal opined claimant's heart attack was causally related to his work with Roehl. This is because claimant sustained a heart attack within one hour of performing physically demanding work. He opined the physical exertion of moving tarps weighing 125 pounds served as a trigger for claimant's heart attack. (Ex. 1, p. 9)

Based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Bansal found claimant had a 10 percent permanent impairment to the body as a whole. He recommended claimant not lift more than 40 pounds occasionally and 15 pounds frequently. (Ex. 1, pp. 9-10)

In a May 3, 2015 report, Paul Conte, M.D. gave his opinions of claimant's condition following a records review. Dr. Conte specializes in general, thoracic, and vascular surgery. (Ex. B) Dr. Conte opined the occurrence of the heart attack within minutes of heavy physical exertion is suggestive that his work accelerated or aggravated his preexisting, but undiagnosed, coronary artery disease. (Ex. 2, p. 2)

Dr. Conte agreed claimant had a 10 percent permanent impairment to the body as a whole based on the Guides. He opined claimant had no permanent restrictions. (Ex. 2, p. 2)

Claimant testified in deposition he still takes prescription medications to manage his cardiac condition. Claimant believes he is required to take the medications indefinitely. (Ex. 8, p. 20; Depo. pp. 77-78)

CONCLUSIONS OF LAW

The first issue to be determined is whether the Iowa Workers' Compensation Commission has subject matter jurisdiction over this case under Iowa Code section 85.71.

Iowa Code section 85.71 indicates the Iowa Workers' Compensation Commission has jurisdiction for injuries outside the state under the following circumstances:

> 1. If an employee, while working outside the territorial limits of this state, suffers an injury on account of which the employee, or in the event of death, the employee's dependents, would have been entitled to the benefits provided by this chapter had such injury occurred within this state, such employee, or in the event of death resulting from such injury, the employee's dependents, shall be entitled to the benefits provided by this chapter, if at the time of such injury any of the following is applicable:
>
> *a.* The employer has a place of business in this state and the employee regularly works at or from that place of business, or the employer has a place of business in this state and the employee is domiciled in this state.
>
> *b.* The employee is working under a contract of hire made in this state and the employee regularly works in this state.

c. The employee is working under a contract of hire made in this state and sustains an injury for which no remedy is available under the workers' compensation laws of another state.

d. The employee is working under a contract of hire made in this state for employment outside the United States.

e. The employer has a place of business in Iowa, and the employee is working under a contract of hire which provides that the employee's workers' compensation claims be governed by Iowa law.

2. This section shall be construed to confer personal jurisdiction over an employee or employer to whom this section is applicable.

Claimant contends Iowa Code section 85.71(1)(b) grants the commission jurisdiction over this matter. Iowa Code section 85.71(1)(b) requires proof that at the time of the injury claimant was working under a contract of hire made in Iowa and claimant regularly worked in Iowa.

Defendant does not dispute claimant regularly worked in Iowa. Defendant disputes a contract of hire was made in Iowa.

The Iowa Court of Appeals found a contract of hire was made in Iowa based on two pieces of communication made between claimant and Roehl. The first communication was Ms. Farvour-Smith's phone call to claimant, answered by claimant while he was in Iowa. The second communication occurred when Roehl confirmed the terms, discussed in the phone call, in the May 10, 2013 letter. This letter was mailed to claimant in Iowa. Because claimant took the phone call from Roehl while he was in Iowa, and because Roehl later sent claimant a letter defining the terms discussed in the phone call to Iowa, the Iowa Court of Appeals found contract of hire was made in Iowa.

Roehl agreed claimant worked regularly in Iowa. The Iowa Court of Appeals found Roehl and claimant entered into a contract of hire made in Iowa. Based on this, claimant has carried his burden of proof this agency has jurisdiction over this matter under Iowa Code section 85.71(1).

The next issue to be determined is whether claimant sustained an injury arising out of and in the course of employment on November 1, 2013.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

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

Iowa claimants with preexisting circulatory or heart conditions are permitted, upon proper medical proof, to recover workers' compensation benefits where the employment contributes something substantial to increase the risk of injury or death. The employment contribution must take the form of an exertion greater than nonemployment life. Sondag v. Ferris Hardware, 220 N.W.2d 903 (Iowa 1974). The comparison, however, is not with the employee's usual exertion in employment, but with exertions of normal nonemployment life of this or any other person. Id., at 905. These exertions may be physical or emotional. Swalwell v. William Knudson & Son, Inc., II Iowa Industrial Commissioner Report 385 (App. Dec. 1982). The Sondag rule is favored by Professor Larson in his treatise on workers' compensation. See 2-46 Larson's Workers' Compensation Law, Section 46.03. According to Professor Larson, the causation test is a two-part analysis. First, medical causation must be established. That is, medical experts must causally relate the alleged stress, whether emotional or physical, to the heart injury. Second, legal causation must be established. That is, the fact-finder must determine whether the medically-related stress is more than the stress of everyday nonemployment life.

In Iowa, the legal causation component of the analysis is satisfied under one of three circumstances. The first situation is when heavy exertion, ordinarily required by the work, is superimposed on a defective heart, aggravating the preexisting condition. The second situation involves instances of unusual strenuous employment exertion imposed on a pre-existing diseased condition. The final situation supporting compensation is when damage results from continued exertion required by the employment after the onset of the heart attack. P.D.S.I. v. Peterson 685 N.W.2d 627, 630 (Iowa 2004)(citations omitted); Riley v Oscar Mayer Foods Corp., 532 N.W.2d 489, 492 (Iowa Ct. App 1995).

Claimant began experiencing symptoms of his heart attack shortly after lifting a tarp weighing approximately 125 pounds, and using chain binders weighing approximately 40 pounds. (Ex. 8, pp. 12-14)

Three experts have opined regarding the causation of claimant's heart attack. Dr. Aronow treated claimant for an extended period of time for his heart attack. Dr. Aronow opined claimant's coronary condition was substantially contributed to by his work with Roehl. (Ex. 3, p. 16)

Dr. Bansal evaluated claimant once for an IME. Dr. Bansal opined claimant's heart attack of November 1, 2013 was causally related to his work with Roehl. (Ex. 1, p. 9)

Dr. Conte performed a records review. He opined the heavy physical exertion performed on his job with Roehl aggravated or accelerated a preexisting, but undiagnosed, coronary artery disease. (Ex. 2, p. 2)

Claimant performed heavy physical work on November 1, 2013, shortly before he began experiencing heart attack symptoms. Three experts have opined claimant's heavy physical activities with Roehl substantially caused the heart attack, or aggravated a preexisting heart condition. Given this record, claimant has carried his burden of proof he sustained an injury arising out of and in the course of employment with Roehl on November 1, 2013.

The next issue to be determined is if claimant's injury resulted in a permanent disability. Claimant sustained a heart attack after performing heavy lifting in his job with Roehl. Claimant had surgery consisting of coronary stents. Claimant was off work from his injury for over six months. At the time of hearing, approximately one and a half years after the injury, claimant was still taking medications related to his injury. Two experts have opined claimant has a permanent disability from his heart condition. Given this record, claimant has carried his burden of proof he sustained a permanent disability related to the November 1, 2013 work injury.

The next issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

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.

Claimant was 58 years old at the time of hearing. Claimant has worked production jobs for a dairy company. He has also worked as a production planner and purchasing agent. Claimant began working as an over-the-road truck driver in 2013.

Both Dr. Bansal and Dr. Conte found claimant had a 10 percent permanent impairment to the body as a whole from his work injury with Roehl. Given this record, claimant has a 10 percent permanent impairment to his body as a whole from the November 1, 2013 work injury.

On April 21, 2014 claimant was given a restriction of not to lift more than 40 pounds occasionally. (Ex. 4, p. 12) There is no evidence in the record this restriction was ever lifted. Dr. Bansal also opined claimant should only lift 40 pounds occasionally. (Ex. 1, p. 10) Dr. Conte opined claimant had no permanent restrictions. (Ex. 2, p. 2)

Claimant testified he believed he could lift between 50-55 pounds once and could consistently lift 30-35 pounds. (Tr. pp. 27-28) Claimant testified that given his self-imposed lifting restrictions he could probably return to work to most of his prior jobs before truck driving, but could not return to work as a flatbed driver. (Tr. pp. 28, 31) Given this record, it is found claimant has a restriction of lifting between 40-50 pounds occasionally.

Claimant testified that while driving with Ritchey he earns approximately $50,000.00 a year. The parties stipulated claimant had an average weekly wage of $870.21 per week with Roehl. This would result in claimant earning approximately $45,000.00 a year with Roehl. Based on this, the record suggests claimant's earnings have slightly increased.

Claimant had a heart attack that resulted in a 10 percent permanent impairment. He has lifting restrictions that limit him to lifting between 40-50 pounds occasionally. Claimant continues to take medication for his heart condition. The record suggests claimant's yearly earnings have slightly increased. Given this record, it is found claimant has a 20 percent loss of earning capacity or industrial disability.

The next issue to be determined is whether there is a causal connection between the injury and the claimed medical expenses.

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

The record indicates the disputed medical expenses relate to claimant's heart attack. There is no evidence the cost of care was not fair and reasonable. Claimant's heart attack is found to have been an injury arising out of and in the course of employment. Defendants are liable for all of claimant's medical expenses listed in Exhibit 10.

The next issue to be determined is whether claimant is due reimbursement for Dr. Bansal's IME.

Regarding the IME, the Iowa Supreme Court provided a literal interpretation of the plain-language of Iowa Code section 85.39, stating that section 85.39 only allows the employee to obtain an independent medical evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. DART v. Young, 867 N.W.2d 839, 847 (Iowa 2015).

Under the Young decision, an employee can only obtain an IME at the employer's expense if an evaluation of permanent disability has been made by an employer-retained physician.

Iowa Code section 85.39 limits an injured worker to one IME. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009).

The Supreme Court, in Young noted that in cases where Iowa Code section 85.39 is not triggered to allow for reimbursement of an independent medical examination (IME), a claimant can still be reimbursed at hearing the costs associated with the preparation of the written report as a cost under rule 876 IAC 4.33. Young at 846-847.

Dr. Bansal's IME report is dated April 10, 2015. Dr. Conte is the employer-retained physician. His report is dated May 3, 2015. Based on the chronology of the reports, claimant is not entitled to reimbursement under Iowa Code section 85.39.

Claimant is not permitted to receive reimbursement for the full cost of Dr. Bansal's IME as a practitioner's report under rule 4.33. Rather, the Iowa Supreme Court has ruled only the portion of the IME expense incurred in preparation of the written report can be taxed. DART v. Young, 867 N.E.2d 839 (Iowa 2015). Dr. Bansal's bill itemization fails to identify what portion of his fee of $2,975.00 for the IME is attributable solely to report preparation. Under the guidance provided in LaGrange v. Nash Finch Co., File No. 5043316 (Appeal July 1, 2015), I find taxation of one-third of the total expense fee is reasonable. Claimant is entitled to $991.68 for reimbursement for Dr. Bansal's report ($2,975.00 x 1/3).

The final issue to be determined is costs. Costs are awarded at the discretion of this agency. Claimant prevailed on most of the issues in this case. Defendant shall pay the costs detailed in Exhibit 11.

ORDER

THEREFORE IT IS ORDERED:

That defendant shall pay claimant healing period benefits from November 1, 2013 through June 6, 2014 at the rate of five hundred twenty-three and 47/100 dollars ($523.47) per week.

That defendant shall pay claimant one hundred (100) weeks of permanent partial disability benefits at the rate of five hundred twenty-three and 47/100 dollars ($523.47) per week commencing on June 7, 2014.

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

That defendant shall reimburse claimant nine hundred ninety-one and 68/100 dollars ($991.68) regarding Dr. Bansal's IME.

That defendant shall pay claimant's medical expenses as detailed above and found at Exhibit 10.

That defendant shall pay costs.

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

Signed and filed this 30th day of March, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE, II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served, as follows:

Lee Hook (via WCES)

Joseph Powell (via WCES)