

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ERNEST BYNUM,

Claimant,

vs.

KRAFT HEINZ COMPANY,

Employer,

and

INDEMNITY INSURANCE COMPANY  
OF N.A.,Insurance Carrier,  
Defendants.

File No. 20005112.01

## ARBITRATION DECISION

Head Note Nos.: 1101, 1108, 1402.30,  
1402.40, 1801, 1803, 2206,  
2209, 2907

Claimant Ernest Bynum filed a petition in arbitration on June 17, 2020, alleging he sustained injuries to his abdomen and a hernia while working for Defendant Kraft Heinz Company ("Kraft") on February 8, 2019. Kraft and its insurer, Defendant Indemnity Insurance Company of North America ("Indemnity Insurance"), filed an answer on June 30, 2020, denying Bynum sustained a work injury.

An arbitration hearing was held *via* CourtCall video conference on July 1, 2021. Attorney Adnan Mahmutagic represented Bynum. Bynum appeared and testified. Attorney Peter Thill represented Kraft and Indemnity Insurance. Richard Campa, Anthony Meeks, and Karen McCusker appeared and testified on behalf of Kraft and Indemnity Insurance. Joint Exhibits ("JE") 1 through 3, and Exhibits 1 through 3 and A through L were admitted into the record. The record was held open through August 13, 2021, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

The parties submitted a Hearing Report, listing stipulations and issues to be decided. The Hearing Report was approved and filed at the conclusion of the hearing. Kraft and Indemnity Insurance asserted the affirmative defense of lack of timely notice under Iowa Code section 85.23 and waived all other affirmative defenses.

**STIPULATIONS**

1. An employer-employee relationship existed between Kraft and Bynum at the time of the alleged injury.

2. Although entitlement to temporary benefits cannot be stipulated, Bynum was off work from February 28, 2019 through April 14, 2019, and May 13, 2019, to the present.

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

4. The commencement date for permanent partial disability benefits, if any are awarded, is June 26, 2019.

5. At the time of the alleged injury Bynum's gross earnings were \$718.20 per week, he was single and entitled to one exemption, and the parties believe the weekly rate is \$453.41.

6. Kraft and Indemnity Insurance are entitled to a credit under Iowa Code section 85.38(2) in the amount of \$4,040.37 in net short-term disability payments paid from March 7, 2019 through June 30, 2019.

7. Costs have been paid.

### **ISSUES**

1. Did Bynum sustain an injury, a left inguinal hernia, which arose out of and in the course of his employment with Kraft?

2. Is the date of injury February 8, 2019?

3. Is the alleged injury a cause of temporary disability during a period of recovery?

4. Is Bynum entitled to temporary disability benefits from February 28, 2019 through April 14, 2019, and a running award of temporary benefits from May 13, 2019, to present?

5. Is the alleged injury a cause of permanent disability?

6. If the alleged injury is a cause of permanent disability, what is the extent of disability?

7. Is Bynum entitled to payment of medical expenses?

8. Should Kraft and Indemnity Insurance be ordered to hold Bynum harmless against any claims by third parties who may have already paid for all or a portion of his medical treatment?

9. Is Bynum entitled to recover the cost of an independent medical examination under Iowa Code section 85.39?

10. Should costs be assessed against either party?

### FINDINGS OF FACT

Bynum lives in Cedar Rapids, Iowa. (Exhibit 3, page 2; Transcript, p. 9) Bynum graduated from high school in Leland, Mississippi. (Ex. 3, pp. 2, 8; Tr., pp. 9, 28) Bynum is covered by Medicaid. (Tr., p. 32) In 2019, Bynum turned 65 years old and he started receiving Social Security retirement benefits. (Tr., p. 35) At the time of the hearing, he was 67. (Tr., p. 8)

Bynum has owned a car detailing business for many years and he has performed odd jobs for people. (Tr., p. 9)

On April 11, 2018, Bynum commenced work for Ranstad, a temporary employment service. (Ex. J, p. 49) Ranstad placed Bynum at Kraft on November 12, 2018, where he worked in sanitation. (Tr., pp. 9-11, 29, 87; Ex. J, p. 49) On January 7, 2019, Kraft hired Bynum as a permanent employee and he continued to work in sanitation on the second shift. (Tr., pp. 9-10, 31, 49-50, 61, 87)

Anthony Meeks, the second shift production supervisor, was one of Bynum's supervisors. (Tr., pp. 12-13, 67-68, 78-79) Meeks relayed he was not Bynum's direct supervisor on second shift. (Tr., p. 68)

Richard Campa commenced his employment as the sanitation supervisor at Kraft on January 7, 2019. (Tr., pp. 54-55) Campa worked day shift and he was present at the start of Bynum's shift. (Tr., pp. 12-13, 61) Campa reported when the second shift started he would remain at work for 30 minutes to one hour before he left for the evening and during that time he was a supervisor of Bynum. (Tr., p. 64)

Bynum testified his job duties at Kraft included shoveling out containers with noodles, picking up and cleaning pallets, and stacking the pallets 10 high. (Tr., p. 11) Bynum relayed he had to shovel 4,000 pounds of product into containers. Campa relayed the sanitation employees normally shoveled 300 pounds of product into containers and testified job was always a two-person job. (Tr., p. 57)

Bynum testified he washed and stacked pallets 10 high at Kraft and when he would get to the eighth pallet he would start to feel a little pulling in his groin, it would start hurting, and he would back off and wait a while. (Tr., p. 13) Bynum relayed the pain started getting worse over time, so he went to his team leader, Ron Meier, and Meier told him he would get him some help. (Tr., p. 13) Bynum reported Meeks came back and told him to take it easy and that he would send some help. (Tr., pp. 13-16) Bynum testified he received help every now and then, but he did not get the help he wanted and his pain became worse. (Tr., pp. 13-15) Bynum reported he went to talk to Rufina Neild, a supervisor, and she told him to go to human resources for time off. (Tr., pp. 13-14) Bynum testified he does not recall the exact date when he started feeling pain in his left side. (Tr., p. 32)

Bynum sought treatment for left lower quadrant pain when he was working for Randstad at Kraft. On November 21, 2018, Bynum presented to Mercy Medical Center complaining of left side pain for one month, and he was examined by Robert Lancaster, ARNP. (JE 1, p. 1) Lancaster determined he did not have a hernia, diagnosed Bynum with left lower quadrant abdominal pain, recommended Bynum undergo a colonoscopy, recommended he take 600 milligrams of ibuprofen four times daily, and imposed a ten-pound lifting restriction for one week. (JE 1, p. 2)

On January 4, 2019, Bynum returned to Lancaster, complaining of abdominal pain with an onset several months ago and no change in his symptoms. (JE 1, p. 4) Lancaster noted the colonoscopy did not show a cause for the pain, which predominates with movement, is intermittent, and can last up to eight hours. (JE 1, p. 4) On exam, Lancaster noted Bynum exhibited a "mass (palpable 'cord like' body in the lower left pelvic area" that was painful to palpation, he did not find a hernia, and he ordered a pelvis computerized tomography scan. (JE 1, p. 5) The scan was performed on January 18, 2019, after Bynum left Randstad and became a Kraft employee, was positive for a hernia. (JE 1, p. 8)

On February 5, 2019, Bynum attended an appointment with Nora Royer, M.D., a surgeon, complaining of left groin pain. (JE 1, p. 6) Bynum reported he had started a new job a few months ago that involved a lot of repetitive lifting and bending, relayed he had noticed a bulge in his left groin area and aching in that same area that had not been present before, the bulge had become larger since he first noticed it, and the bulge was smaller when lying down. (JE 1, p. 6) Dr. Royer reviewed Bynum's imaging, listed an impression of a moderate sized fat-containing left inguinal hernia, completely reducible, told Bynum his symptoms would likely get worse with the lifting and physical nature of his job, recommended surgery, and noted Bynum would need a 10-pound lifting restriction for six weeks following surgery. (JE 1, pp. 6-9) Bynum testified no medical provider had found he had a hernia before February 5, 2019. (Tr., pp. 48-49)

In his petition, Bynum alleges he sustained an injury while working for Kraft on February 8, 2019. The attorney for Kraft and Indemnity Insurance inquired what happened on February 8, 2019, a day he worked 8.25 hours. (Tr., p. 33) Bynum reported he could not recall what happened that date, but relayed he had gone off work. (Tr., p. 33) On re-direct, Bynum testified nothing happened on a specific date at work regarding his hernia, rather, it kept getting worse over time. (Tr., p. 51) Bynum continued to work for Kraft until his surgery on February 28, 2019. (Tr., p. 34)

Bynum testified after he reported his injury to Neild, she told him to go to human resources, and human resources gave him a packet of documents to fill out for time off work following surgery. (Tr., pp. 17-18)

Meeks testified during the week of February 10, 2019, Bynum came in and interrupted a meeting he was holding with the first shift supervisor and his five leads and that Bynum was joking with the first shift supervisor and break-dancing on the floor. (Tr., pp. 73-74)

On February 28, 2019, Bynum underwent a left inguinal hernia repair. (JE 1, p. 24; JE 3, pp. 51-52) Bynum applied for and was approved to receive short-term disability benefits. (Tr., p. 18) Bynum started receiving short-term disability benefits on March 7, 2019. (Tr., pp. 35, 96) Kraft's short-term disability plan is managed by a third party. (Tr., p. 98) Kraft does not receive copies of medical records regarding short-term disability claims made by its employees. (Tr., p. 98)

During a follow-up appointment with Dr. Royer on March 15, 2019, Bynum reported having minimal pain with mild numbness around his incision. (JE 1, p. 24) Dr. Royer imposed a 10-pound lifting restriction, restricted Bynum from working until April 15, 2019, and stated that he would not have any restrictions after April 15, 2019. (JE 1, p. 26) On April 2, 2019, Dr. Royer released Bynum to return to work. (JE 1, p. 27)

Bynum returned to Dr. Royer on May 3, 2019, complaining of an occasional sharp sensation inferior and lateral to his incision, and noted he had not modified his work duties. (JE 1, p. 28) Dr. Royer examined Bynum and found there was no evidence of a hernia recurrence. (JE 1, p. 29)

On May 13, 2019, Bynum presented to the emergency room at Mercy Medical Center, complaining of pain at the incision site in his left lower groin for two weeks, which was worse when he was lifting pallets at work. (JE 1, p. 32) Bynum relayed he lifted 25 to 30 pound pallets throughout the day and he was experiencing some pain at rest. (JE 1, p. 32) Catherine Knight, M.D., examined Bynum, ordered a computerized tomography scan of his abdomen, found he had mild discomfort in the left inguinal area with no masses or swelling, diagnosed him with left inguinal pain, recommended he decrease his activity at work with less heavy lifting, prescribed pain medication, and restricted Bynum to light duty until June 13, 2019. (JE 1, pp. 34-39) Bynum testified at the time he went to the emergency room he had not returned to work at Kraft because Kraft had told him there was no light-duty work available. (Tr., pp. 50-51)

On June 12, 2019, Bynum attended an appointment with Lancaster, reporting he was not experiencing symptoms except with lifting, and noting he did not want to return to lifting pallets at work when he returned to work the next day. (JE 1, p. 40) Bynum requested a referral for a second opinion at the University of Iowa Hospitals and Clinics ("UIHC"). (JE 1, p. 41) Lancaster examined Bynum, reviewed his imaging, and noted his pain should improve over time. (JE 1, pp. 43-45) Lancaster recommended Bynum move and stretch his abdominal area, imposed restrictions of no lifting over 20 pounds eight hours per day and no lifting over 20 pounds at one time from June 12, 2019 through June 28, 2019, and wrote he did not need to see Bynum again to have his restrictions removed. (JE 1, pp. 43-45)

On June 13, 2019, Bynum wrote a letter to Kraft, which provides:

I Earnest Bynum was hurt on 2/8/19 and I told Richard, Ron, Colby and Anthony who are all supervisors I work with that told me to take it easy. No one set me up to see a Doctor or said anything about workmans

compensation. I eventually went to a doctor on my own and had surgery. I returned to work 4/11/19. I am still having problems due to hernia and I need further care. I should be getting workmans compensation benefits and medical treatment. Please submit this matter to the workmans comp carrier immediately. I also let my boss of all Bosses know Rafina [sic].

(Ex. A) Bynum took the letter to Kraft, made copies of the letter, and distributed the letter to different offices, leads, and supervisors. (Tr., p. 40) After receiving the letter, Kraft filed a First Report of Injury or Illness Report, noting it first learned of Bynum's injury on June 13, 2019. (Ex. B)

At hearing Bynum clarified he told Meier, a shift lead, about his work injury and that Meier and Meeks then told Campa about his work injury. (Tr., pp. 21, 41-42) Bynum relayed when he told Neild he was hurting from lifting pallets she told him to talk to human resources about light duty work and the safety person told him Kraft did not have any light duty work. (Tr., pp. 21-22, 42) McCusker, the Operational Risk Manager for Kraft in Cedar Rapids testified Neild and Colby Corrigan, the first shift supervisor, are individuals an employee could report a work injury to. (Tr., pp. 86, 88)

Bynum continued to receive short-term disability benefits through June 30, 2019. (Tr., pp. 45, 96) Lancaster's work restrictions ended on June 28, 2019. (Tr., p. 45; JE 1, pp. 43-45)

On November 8, 2019, Bynum returned to Dr. Royer reporting he was lifting 35-pound pallets repetitively at work, which he believed was aggravating his discomfort, which was more frequent, and reported he was experiencing pain while sitting and when reaching over his head. (JE 1, p. 46) Dr. Royer examined Bynum, found no evidence of a hernia recurrence, noted she believed his pain was neuropathic with skin sensitivity, noting he reported discomfort with certain movements and some sharp and burning pain, recommended a trial of gabapentin, and ordered a referral to a pain clinic for consideration of an ilio-inguinal nerve block. (JE 1, pp. 47-48)

Bynum reported he tried to return to work and when he went to Kraft his card did not work and a member of human resources told him he had been terminated. (Tr., p. 45) McCusker testified human resources sent Bynum one letter inviting him to come back to work or to call them about his employment status. (Tr., p. 97) McCusker reported human resources did not receive a response and Kraft terminated Bynum's employment February 18, 2020. (Tr., p. 97)

On May 29, 2020, Anthony Meeks signed an affidavit, which he testified is accurate. (Ex. D; Tr., p. 75) Meeks reported he was Bynum's supervisor at Kraft on February 8, 2019 and that Bynum never told him he believed his hernia was related to his work at Kraft. Meeks relayed Bynum told him he was going to have hernia surgery, but he never stated it was work-related or that he was under any work restrictions. (Ex. D) Meeks stated Bynum never told him he was in serious pain, but he did recall telling Bynum not to overdue his tasks at work and to take it as easy as he could. (Ex. D)

Meeks stated he was never informed Bynum was claiming he suffered a work-related injury or that he was under any restrictions until 2020. (Ex. D)

Meeks testified toward the end of January 2019, Kraft notified the sanitation workers would be moving from eight to 12-hour shifts. (Tr., p. 76) Meeks reported Bynum told him the new schedule would cut into his karaoke time and that he could not work overnights from 6:00 p.m. until 6:30 a.m. (Tr., p. 76) Meeks relayed he believed Bynum voluntarily quit his job with Kraft and that he thought he quit because he did not want to work to cut into his karaoke time. (Ex. D)

Meeks testified Bynum never told him he had been injured on the job at any time before June 13, 2019. (Tr., pp. 68-69) The February 8, 2019, Shift Summary for Kraft notes an employee sustained a hand injury on the tub line prep and that an incident form had been filled out. (Ex. K, p. 54) There is no documentation Bynum sustained an injury on that date. Meeks recalled Bynum reported he had an upset stomach, and he told him he could go home for the rest of the day, but Bynum said he would be fine, and he told him not to overdo it that day. (Tr., pp. 71-72, 75-76) Meeks testified if Bynum had reported a work injury, he would have documented the injury in the Shift Summary and he would have had 24 hours to document the injury so the safety team could perform its duties. (Tr., p. 72)

Campa signed an affidavit, on June 1, 2020, which he testified was accurate. (Ex. E; Tr., p. 59) Campa reported he was Bynum's direct supervisor on February 8, 2019, and that Bynum never told him he had been injured at work at Kraft, and if he had, he would have written an incident report the same day. (Ex. E) Campa testified he performed rounds at work to observe the employees working and Bynum never told him he had been injured at work. (Tr., p. 58) Bynum recalled receiving a copy of the June 13, 2019, letter from Bynum, which Bynum taped to his desk that date. (Tr., p. 58)

McCusker testified Kraft investigated Bynum's alleged injury after he delivered the June 13, 2019, letter. (Tr., p. 89) McCusker reported she could not find an accident report or witness documentation to corroborate Bynum's statements in the June 13, 2019 letter. (Tr., pp. 89-91) McCusker testified Bynum did not request medical care from any of the individuals he named in the June 2019 letter. (Tr., p. 92)

On May 17, 2021, Joseph Chen, M.D., a physiatrist, conducted an independent medical examination of Bynum for Kraft and Indemnity Insurance. (Ex. F) Dr. Chen reviewed Bynum's medical records and examined him. (Ex. F) Dr. Chen noted Bynum commenced working for Randstad at Kraft in late 2018, and Kraft hired him as a regular employee on January 7, 2019. (Ex. F, p. 12) Dr. Chen documented Bynum reported having pain in his left lower quadrant three to four months before his January hire date. (Ex. F, p. 12) Dr. Chen found on exam, Bynum had moderate swelling in the right inguinal canal with slight enlargement with cough/Valsalva effect, the left inguinal canal revealed minimal swelling that did not enlarge with cough/Valsalva effect, and that Bynum was tender to palpation over the left femoral triangle/inguinal canal. (Ex. F, p. 14)

Dr. Chen wrote Bynum told him he lifted 600 pallets per day. Campa testified the sanitation employees clean and stack the pallets 10 high on a rotating schedule. (Tr., p. 56) Campa reported the pallets weigh between 30 and 40 pounds when they are empty. (Tr., p. 56) Campa relayed in any given week a typical sanitation employee would wash, rinse and stack 100 pallets, and that the entire rotation of people would wash, rinse, and stack 500 to 600 pallets per week. (Tr., p. 56)

Dr. Chen opined Bynum's work activities from November 2018 to February 2019 aggravated his pre-existing left inguinal hernia and despite surgical intervention repairing his left inguinal hernia with mesh, he now has chronic left groin pain with both neuropathic and musculoskeletal features. (Ex. F, p. 15) Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Chen assigned Bynum a 5 percent whole person permanent impairment under Table 6-9 at page 136 of the AMA Guides, noting Bynum has a small palpable cord/defect in the left inguinal support structures with a slight protrusion and pain with increased abdominal pressure. (Ex. F, p. 15) Dr. Chen opined Bynum had no prior functional disability despite having preexisting inguinal hernias that were most likely asymptomatic and bilateral before his work injury/work activities from November 2018 to February 8, 2019. (Ex. F, p. 16) Dr. Chen recommended restrictions due to his personal risk factors not causally related to the February 2019 work injury of no lifting over 50 pounds occasionally and 25 pounds repetitively. (Ex. F, p. 16)

On May 18, 2021, Richard Kreiter, M.D., an orthopedic surgeon, conducted an independent medical examination for Bynum. (Ex. 1) Dr. Kreiter reviewed Bynum's medical records and examined him. (Ex. 1) Dr. Kreiter wrote:

- 1) It is my opinion Mr. Bynum has had complications from his hernia repair. There may not be a recurrent herniation with bulge, bowel and fat but a problem with scar tissue, neuroma formation or perhaps a complication after the mesh plug was inserted. The current diagnosis has not been established but pain and impairment continue.
- 2) The work in the sanitation department of washing and handling pallets repeatedly was physical, but the use of a scoop shovel to remove spoiled or overcooked product from the facility caused increased stress to the abdominal musculature. This stress to the abdominal wall then, in my opinion, started to cause a slight herniation in the left groin which led to the treatment as previously noted in the history and physical. There was no history of previous left-sided hernia and I would assume that he passed the pre-employment physical at Heinz. He does have an asymptomatic right-sided inguinal hernia.

(Ex. 1, p. 1) Dr. Kreiter found Bynum had not reached maximum medical improvement, recommended a referral to the UIHC Department of General Surgery and provided a



provisional rating under the AMA Guides of 10 to 19 percent for a herniation in a class 2 situation, based on frequent discomfort which produced pain with lifting and strenuous work, but not hindering significant activities of daily living. (Ex. 1, p. 1)

Pursuant to a request from counsel for Kraft and Indemnity Insurance, Dr. Chen clarified his opinion as follows:

[i]t is my medical opinion within a reasonable degree of medical certainty that Mr. Bynum reached maximum medical improvement on June 26, 2019 according to Mr. Robert Lancaster's ARNP instructions that Mr. Bynum be afforded two weeks of light duty starting June 12, 2019.

It is my medical opinion within a reasonable degree of medical certainty that Mr. Bynum has no permanent work restrictions as a result of the February 8, 2019 left inguinal hernia injury.

(Ex. F, p. 23)

Bynum testified at hearing he continues to experience sharp pain. (Tr., p. 22) Bynum reported he did some weeding at his home and he was hurting after weeding. (Tr., p. 22) Bynum relayed he cannot do anything and that he hurts when sitting in a chair. (Tr., p. 22)

Bynum reported he planned to work for Kraft as long as he could, and that he planned to work at least 10 more years after his employment with Kraft ended. (Tr., p. 23) Bynum testified he used Medicaid to pay for his surgery and that he had received bills in the mail at the time of the hearing. (Tr., p. 26)

Since his employment ended with Kraft, Bynum has not looked for work. (Tr., p. 26) Bynum testified he has not looked for work because he cannot do it. (Tr., p. 26) He relayed that using a weed-eater at home and lifting "almost anything" cause his symptoms to flare up. (Tr., p. 27)

## **CONCLUSIONS OF LAW**

### **I. Applicable Law**

This case involves the issues of whether Bynum sustained an injury arising out of and in the course of his employment, notice, entitlement to temporary benefits, extent of disability, recovery of medical bills, recovery of the cost of an independent medical examination, and costs. In 2017, the Iowa Legislature enacted changes to Iowa Code chapters 85, 86, and 535 effecting workers' compensation cases. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.71, 86.26, 86.39, and 86.42 apply to injuries occurring on or after the effective date of the Act. This case involves an injury occurring after July 1,

2017, therefore, the provisions of the new statute involving extent of disability, notice, and temporary benefits under Iowa Code sections 85.23, 85.33 and 85.34 apply to this case.

The calculation of interest is governed by Deciga-Sanchez v. Tyson, File No. File No. 5052008 (Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is 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. Again, given this case concerns an injury occurring after July 1, 2017, the new provision on interest applies to this case.

## **II. Arising Out of and in the Course of Employment**

Bynum alleges he sustained an injury arising out of and in the course of his employment with Kraft on February 8, 2019. Kraft and Indemnity Insurance reject his assertion, averring if he sustained an injury, the injury occurred when he was working for Ranstad and that Bynum is not a credible witness.

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

The question of medical causation is “essentially within the domain of expert testimony.” Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must “weigh the evidence and measure the credibility of witnesses.” Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa 1997). When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert’s education, experience, training, and practice, and “all other factors which bear upon the weight and value” of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

It is well-established in workers’ compensation that “if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or ‘lighted up’ by an injury which arose out of and in the course of employment resulting in a disability found to exist,” the claimant is entitled to compensation. Iowa Dep’t of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

a disease which under any rational work is likely to progress so as to finally disable an employee does not become a “personal injury” under our Workmen’s Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

I assessed Bynum’s credibility by considering whether his testimony was reasonable and consistent with other evidence I believe, whether he has made inconsistent statements, his “appearance, conduct, memory and knowledge of the facts,” and his interest in the case. State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990). Bynum has an obvious interest in the outcome of this case given he is seeking workers’ compensation benefits. During the hearing, Bynum engaged in direct eye contact and he did not engage in any furtive movements. While Bynum’s recollection of specific dates and times was poor, this case involves a cumulative injury. And while I found Bynum exaggerated the weight he was lifting on a daily basis, I found Bynum, generally to be a credible witness.

This is a denied claim. The record evidence supports Bynum experienced left lower quadrant symptoms when he was working for Ranstad at Kraft. He was not diagnosed with a hernia until after he commenced his employment with Kraft. Dr. Chen, the physiatrist who performed an independent medical examination for Kraft and Indemnity insurance and Dr. Kreiter, an orthopedic surgeon, who conducted an independent medical examination for Bynum causally related Bynum’s job duties in

February 2019, when he was working for Kraft to his hernia condition. Dr. Chen found Bynum's left hernia was lighted up or aggravated by his work duties, noting Bynum also has an asymptomatic hernia on the right, which is also noted by Dr. Kreiter. This finding is supported by Bynum's medical records. I find Bynum has met his burden of establishing he sustained an injury arising out of and in the course of his employment with Kraft.

### III. Notice and Date of Injury

Kraft and Indemnity Insurance aver Bynum failed to provide timely notice of his injury. Bynum rejects their assertion and avers Kraft had actual notice of his work injury.

Under Iowa Code section 85.23,

unless the employer or the employer's representative shall have actual knowledge of the occurrence of an injury received within ninety days from the date of the occurrence of the injury, or unless the employee or someone on the employee's behalf or a dependent or someone on the dependent's behalf shall give notice thereof to the employer within ninety days from the date of the occurrence of the injury, no compensation shall be allowed. For the purposes of this section, "date of the occurrence of the injury" means the date that the employee knew or should have known that the injury was work-related.

The purpose of the notice provision is to afford the employer the opportunity to investigate the circumstances of the injury when the information is fresh. Johnson v. Int'l Paper Co., 530 N.W.2d 475, 477 (Iowa Ct. App. 1995). "Actual knowledge must include information that the injury might be work related." Id. The employer bears the burden of proving the affirmative defense. DeLong v. Iowa State Highway Comm'n, 229 Iowa 700, 703, 295 N.W.2d 91, 92 (1940).

Kraft and Indemnity Insurance allege Bynum did not provide notice of his hernia condition until June 13, 2019, more than 90 days after he knew his hernia condition might be work-related. At hearing several witnesses testified, McCusker, Meeks, Campa, and Bynum. Bynum testified he informed Neild and Meier of his work injury. He testified when he reported his work injury to Neild, she sent him to human resources. While Bynum could not recall the specific date he spoke to Neild and Meier, his testimony was un rebutted. This is a cumulative injury case, where Bynum's symptoms developed over time. Neild and Meier did not testify at hearing or provide an affidavit in this case. I find Kraft has failed to establish Bynum failed to provide timely notice. The record evidence supports Bynum first knew he had a symptomatic hernia that was work-related during his appointment with Dr. Royer on February 5, 2019. I find February 5, 2019, to be the date of injury.

#### IV. Nature of the Injury: Permanent Impairment

Bynum seeks temporary benefits from February 28, 2019 through April 14, 2019, and a running award of temporary benefits from May 13, 2019, to present. Kraft and Indemnity Insurance aver he is not entitled to temporary benefits and that he is only entitled to permanent benefits of 5 percent, consistent with Dr. Chen's rating, commencing on June 26, 2019.

Iowa Code section 85.33 governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012).

An employee has a temporary partial disability when because of the employee's medical condition, "it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee's disability." Iowa Code § 85.33(2). Temporary partial disability benefits are payable, in lieu of temporary total disability and healing period benefits, due to the reduction in earning ability as a result of the employee's temporary partial disability, and "shall not be considered benefits payable to an employee, upon termination of temporary partial or temporary total disability, the healing period, or permanent partial disability, because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury." Id.

As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Dunlap, 824 N.W.2d at 556.

"[A] claim for permanent disability benefits is not ripe until maximum medical improvement has been achieved." Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 201 (Iowa 2010). "Stabilization of the employee's condition 'is the event that allows a physician to make the determination that a particular medical condition is permanent.'" Dunlap, 824 N.W.2d at 556 (quoting Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 200). If the employee has a permanent disability, then payments made prior to permanency are healing period benefits. Id. If the injury has not resulted in a permanent disability, then the employee may be awarded temporary total benefits. Id. at 556-57.

Iowa Code section 85.34(1) governs healing period benefits, as follows:

[i]f an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of

this section, the employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until 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, whichever occurs first.

Under Iowa Code section 85.33(6), “employment substantially similar to the employment in which the employee was engaged at the time of the injury’ includes, for purposes of an individual who was injured in the course of performing as a professional athlete, any employment the individual has previously performed.”

The record supports Bynum was off work from February 28, 2019 through April 14, 2019, due to his hernia condition. I find Bynum is entitled to an award of temporary benefits for this period.

Bynum also seeks a running award of temporary benefits from May 13, 2019, to present, relying on Dr. Kreiter’s opinion. Kraft avers Bynum reached maximum medical improvement on June 26, 2019, as supported by Dr. Chen’s opinion. I find Dr. Kreiter’s opinion most persuasive, based on the record evidence.

Bynum continued to complain of symptoms following his hernia surgery through the time of the hearing. During an appointment on November 8, 2019, Dr. Royer examined Bynum, found no evidence of a hernia recurrence, noted she believed his pain was neuropathic with skin sensitivity, discomfort with certain movements, and some sharp and burning pain, recommended a trial of gabapentin, and ordered a referral to a pain clinic for consideration of an ilio-inguinal nerve block. (JE 1, pp. 47-48) There is no evidence Bynum was ever evaluated by a pain clinic. Dr. Royer’s note recommending additional treatment is inconsistent with Lancaster’s finding Bynum did not need to be seen again. (JE 1, pp. 43-45) Dr. Royer most recently examined Bynum, she performed surgery on Bynum, and her education is superior to that of Lancaster. Dr. Chen recommended permanent restrictions, but then modified his opinion to state the restrictions were not due to the work injury. I do not find his opinion persuasive. Dr. Kreiter most recently examined Bynum and he recommended additional treatment consisting of an evaluation at the UIHC. I find Bynum is entitled to a running award of temporary benefits from May 13, 2019.

## **V. Medical Bills**

Bynum seeks to recover medical bills for treatment he received for his hernia. Kraft and Indemnity Insurance aver Bynum is not entitled to recover the cost of medical bills in this case or that they should be ordered to hold Bynum harmless from any claims of a third party related to the medical bills because he did not submit the bills at hearing.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability"). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

Bynum self-directed his care, which was paid by Medicaid. Bynum did not present any medical bills at hearing. He did not request the opportunity to leave the record open to provide the bills. Due to his failure to provide the medical bills, I find Bynum is not entitled to recover the cost of medical bills related to his hernia surgery and treatment in this case. Kraft and Indemnity Insurance remain liable for all future care related to Bynum's left hernia condition.

## **VI. Independent Medical Examination**

Bynum seeks to recover the \$1,000.00 cost of Dr. Kreiter's independent medical examination. (Ex. 2) Iowa Code section 85.39(2), provides:

2. If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination. . . . An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection, shall be based on the typical fee

charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

I found Bynum's claim compensable. Dr. Chen conducted an independent medical examination assigning Bynum a permanent whole body rating of 5 percent. Dr. Kreiter performed his examination after Dr. Chen issued his rating. I find under the statute Bynum is entitled to recover the cost of the independent medical examination.

**ORDER**

IT IS THEREFORE ORDERED, THAT:

Defendants shall pay Claimant temporary benefits from February 28, 2019 through April 14, 2019, at the stipulated rate of four hundred fifty-three and 41/100 dollars (\$453.41).

Defendants shall pay Claimant a running award of healing period benefits commencing on May 13, 2019, at the stipulated rate of four hundred fifty-three and 41/100 dollars (\$453.41), until such time as benefits shall cease pursuant to Iowa Code section 85.34.

Defendants are entitled to a credit for all benefits paid to date, including short-term disability payments as stipulated by the parties.


Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendants remain liable for all causally connected medical care consistent with this opinion.

Defendants shall reimburse Claimant one thousand and 00/100 dollars (\$1,000.00) for the cost of Dr. Kreiter's independent medical examination.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 4th day of October, 2021.

  
HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER



The parties have been served, as follows:

Adnan Mahmutagic (via WCES)

Peter Thill (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.