BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
APR 26 2018
WORKERS' COMPENSATION

DARYL STOUT, Claimant, vs. COTTAGE GROVE PLACE, Employer, and ZURICH AMERICAN INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5053610 ARBITRATION DECISION Head Notes: 1402.40, 1803, 2501

STATEMENT OF THE CASE

Daryl Stout, claimant, filed a petition in arbitration seeking workers' compensation benefits from Cottage Grove Place, employer and Zurich American Insurance Company, insurance carrier, as defendants. Hearing was held on December 18, 2017 in Des Moines, Iowa.

Claimant, Daryl Stout, and Amber Taft both testified live at trial. The evidentiary record also includes joint exhibits JE1-JE14, claimant's exhibits 1-2, and defendants' exhibits A-J.

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.

The parties submitted post-hearing briefs on January 29, 2018.

ISSUES

The parties submitted the following issues for resolution:

1. Whether the stipulated injury is the cause of permanent disability? If so, the nature and extent of permanent disability claimant sustained as a result of the November 20, 2013 work injury.

2. The appropriate commencement date for the permanent partial disability benefits.

3. Whether claimant is entitled to past medical benefits?

FINDINGS OF FACT

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

On the date of the stipulated injury, Daryl Stout (hereinafter "claimant" or "Daryl"), was working as an oral medication technician (OMT) and certified nurse's aide (CNA) for Cottage Grove. He was working the night shift on November 20, 2013. He injured his lower back while lifting a resident from a wheelchair to a bed. Daryl stood the patient upright to put her in a bed which was on blocks. This is a task he performs approximately once every other week. He immediately felt a stabbing pain in his back that went down his left lower extremity to his toes. Although he previously had some back pain, for which he sought chiropractic care, he had never experienced this type of pain before. This injury took place around 10:00 p.m. Daryl reported the injury to the Director of Nursing the next morning around 8:00 a.m. (Testimony)

Cottage Grove sent Daryl to their authorized workers' compensation medical provider, Mercy Occupational in Cedar Rapids. Daryl had low back pain and pain down his left leg. He reported that the current episode started yesterday when he was lifting a resident at work. He rated his pain as 10/10. He was prescribed pain medications and restricted from working. (JE2, p. 2)

Daryl's pain continued to worsen. He returned to Mercy for additional treatment. An MRI was performed on November 25, 2013. The MRI revealed no new disc protrusions; a small disc protrusion at the L4-L5 level was noted on a 2010 exam, but the protrusion was no longer evident. The report stated the protrusion presumably regressed. There was an apparent new small annular tear at the L4-L5 level on the left. (JE2, p. 12)

On December 2, 2013, Ignatius Brady, M.D. reviewed the MRI results with Daryl. The doctor noted that Daryl was using a cane to help unload his back. Daryl exhibited decreased range of motion and tenderness in his lumbar back. Dr. Brady ordered physical therapy, no work, and follow-up in one week. (JE1, pp. 5-6)

Daryl was seen again at Mercy's emergency department on December 11, 2013. He reported that he had continued low back pain and pain down this left leg. Percocet and valium were not providing any relief. He reported he had been attending physical therapy. After traction on Monday his pain escalated and had not decreased. He had

decreased range of motion, tenderness, pain, and spasm. He was discharged home. (JE2, pp. 15-17)

Stephen C. Maze, M.D. provided Daryl with an epidural steroid injection (ESI) on December 18, 2013. Daryl reported the injection improved his pain by approximately fifty percent. (JE2, pp. 19-20, JE1, pp. 7-8)

Daryl did undergo therapy at Mercy Medical Center, beginning on December 30, 2013. (JE1, p. 7) Daryl testified that he attended therapy for two to three weeks, but he felt the therapy aggravated his lower back so he stopped.

Daryl continued to treat with Mercy Occupational Health. He received a second ESI in January of 2014. Again, he received temporary relief of his lower back and radicular leg pain. After receiving an injection, Daryl received approximately 1 to 2 months of pain relief before the pain returned. Daryl testified that since the date of the injury, he had received pain medications, facet injections, radiofrequency ablation (FRA), and ESIs approximately every 3 to 4 months. Despite this treatment, he continues to have low back and leg pain. (Testimony)

The treatment records show that Daryl was discharged from occupational therapy on February 3, 2014. At that appointment, he reported he was still feeling good and ready to try going back to work. He rated his pain as 2/10. The therapist recommended a gradual increase in work hours to build up his tolerance. (JE2, p. 27)

On February 19, 2014, Dr. Brady stated that Daryl could return to work on February 20, 2014. (JE1, p. 12) Daryl returned to Dr. Brady for a recheck on February 25, 2014. He reported he had returned to work full duty and was off of prescription medications. Daryl was taking 3 tablets of ibuprofen 3 to 4 times per day. His left leg pain was increasing. The doctor noted that Daryl had called to ask to try full duty for the last 2 weeks because his employer was having him perform maintenance and painting work that seemed more aggravating than his regular duties. The doctor agreed with Daryl's request and lifted his restrictions early. The doctor felt that if they alternated days of work and rest and limit his work hours a bit, then there was a good chance the work could be therapeutic, rather than damaging to his recovery. (JE1, pp. 13-14)

Dr. Brady felt that Daryl reached Maximum Medical Improvement (MMI) on March 10, 2014. He indicated that no additional treatment was recommended. He felt there was no need for permanent restrictions. Additionally, the doctor opined that Daryl did not sustain any permanent functional impairment as a result of the work injury. (JE1, p. 16)

Daryl testified that in June of 2014, he slipped and fell while working in his pickup truck at his house. He slipped in the truck bed and fell against a trailer that was behind the truck. (Testimony)

On September 3, 2014, Daryl saw Dr. Brady at Mercy Medical Center. He reported a recurrence of low back and left leg pain for the past 6 weeks with no distinct aggravating event. His pain was especially bothersome at night when he was trying to fall asleep. His leg was very painful all the way down to the left toes. Daryl was performing his normal activities at work. The doctor's assessment was lumbar radiculopathy. The doctor recommended another evaluation for a possible ESI. (JE1, pp. 17-18)

Daryl saw Stephen Runde, M.D. on November 6, 2014. Daryl reported a recurrence of low back pain with some occasional left sciatica in the last 8 weeks. His low back pain and left sciatica was quite severe this morning, so he went to the emergency room. He would like to see Loren Mouw, M.D., local neurosurgeon, who performed successful surgery on his neck. Daryl reported he actually seems to do better if he remains active. Dr. Runde felt it was reasonable for Daryl to see Dr. Mouw. (JE3, pp. 1-2)

On December 2, 2014 Daryl saw Dr. Mouw. He reported that his low back and left leg pain developed 1 year ago. He rated his pain as 8/10 and constant. Dr. Mouw's assessment was lumbar region disc disorder, degeneration of lumbar intervertebral disc, lumbar spondylosis, and lumbosacral radiculopathy. The doctor felt that Daryl was neurologically intact and that surgical intervention was not the most appropriate treatment for him at that time. (JE4, pp. 1-5)

Daryl returned to see Dr. Runde on December 4, 2014. He reported his pain was about the same. He was taking 2-3 hydrocodone per day. At his best, the pain is an 8 and at its worst a 10. He missed work yesterday due to level 10 pain. His employer expected him to find his own replacement, so he would like to be taken off work all together until his pain is better controlled. Dr. Runde felt this was reasonable because Daryl had really been a "trooper" and had been working since he aggravated his back three months ago. Daryl was scheduled for additional therapy and another ESI. He was taken off of work. (JE3, pp. 5-6)

Jerome Janda, D.O. performed an ESI at the L4-L5 level on December 8, 2014. (JE2, pp. 63-64)

On December 20, 2014, Dr. Runde allowed Daryl to return to work with restrictions. (JE3, pp. 7-8)

Dr. Runde saw Daryl on January 9, 2015. Daryl reported improvement since his last visit. Since he was last seen three weeks ago, he had about 6 instances where he had a little bit of sciatic pain and tingling in his leg; other than that he had been feeling much better. Daryl ran out of hydrocodone 2 weeks ago and had not taken any since, but he wanted to have some on hand for pain flare ups. He had been working without restrictions since December 20, 2014 and reported it was going well. Overall, Daryl and the doctor were quite pleased with his progress. The assessment was follow up of lumbosacral strain with left leg radiation, much, much improved. Dr. Runde placed

Daryl at MMI. He provided him with a prescription for Flexeril and hydrocodone. Daryl was to follow up as needed. The doctor felt there was no permanent impairment. (JE3, p. 9)

Daryl returned to Dr. Runde on February 23, 2015, for a flare-up of his low back pain radiating into his left leg that began 4 days ago. His symptoms were not new; he had been having trouble off and on for several months. His back started to hurt a bit last week, but nothing too noticeable. However, Thursday night right after work, he had intense pain in his entire left leg. Symptoms were very similar to what he had experienced before, except it was very hard to even walk due to the pain, numbness and tingling. The assessment was flare up of lumbosacral strain with left sciatica. The doctor felt he might be a candidate for a third ESI. Dr. Runde felt there was no way Daryl could work given his pain level. He was taken off of work. (JE3, pp. 2-3)

A third ESI was performed on March 12, 2015. (JE2, p. 79) Daryl felt that the injection provided some partial improvement. However, Daryl was frustrated by the long-term picture and wanted to return to see Dr. Mouw. (JE3, pp. 15-16)

Daryl saw Dr. Mouw on March 24, 2015. Dr. Mouw's assessment was lumbar spondylosis and back pain. Dr. Mouw noted that Daryl had non-operative back pain. He recommended conservative treatment with occupational medicine. (JE4, pp. 8-11)

Another lumbar MRI was performed on March 30, 2015. The impression was grossly stable exam compared to November 25, 2014, stable mild degenerative changes throughout the lumbar spine sparing L5 to S1, and stable right L3 to L4 9 mm synovial cyst. (JE2, pp. 81-82)

On April 13, 2015, at the request of the defendants, Daryl underwent an IME with Charles Mooney, M.D. Daryl reported that he still had ongoing pain in his low back. He described the pain as constant, sharp, and achy, radiating to the left hip and left leg. He estimated that 60 percent of his pain was in his left leg and 40 percent in his low back. He felt as though his left leg was going to give out, prompting him to use a cane. Dr. Mooney's assessment was ongoing complaints of low back pain with degenerative disc disease in multiple areas of the spine associated with spondylosis with evidence of pseudo-radiculopathy without specific objective findings supporting ongoing radicular pain. Dr. Mooney opined that Daryl's current complaints were directly related to the November 20, 2013 injury. He felt that the prior declaration of MMI was premature, as Daryl was less than 3 months post ESI. Dr. Mooney felt that Daryl's increased pain in February was an increase in pain complaints related to the prior diagnosis of an aggravation of underlying degenerative disc disease and myofascial pain. Dr. Mooney recommended additional evaluation including EMGs of the lower extremities, x-rays of the lumbar spine and hips and potentially an MRI of the left hip. Dr. Mooney felt that Daryl should also be considered for a deep gluteal trigger point injection and perhaps other interventional pain-type techniques along with physical therapy. The doctor felt that opiate medications might also be appropriate. Dr. Mooney stated that Daryl was only capable of functioning in the sedentary-type activity at that time. (JE5, pp. 1-7)

Daryl returned to Dr. Runde on April 23, 2015. The doctor was in receipt of Dr. Mooney's recommendations. Dr. Runde ordered the testing recommended by Dr. Mooney and allowed Daryl to return to sedentary work. (JE3, pp. 19-20)

Daryl returned to Dr. Runde on May 7, 2015. The EMGs were normal, but the neurologist did comment that the testing did not totally rule out some irritation or subclinical compression of the nerve root. Dr. Runde noted that this would coincide with the diagnosis of pseudo-radiculopathy made by Dr. Mooney. The x-rays of the hip were normal. X-rays of his lumbosacral spine were pretty much normal except for some mild degenerative changes and very mild compression fracture of L1, which was stable. Daryl did return to sit down duty, but would prefer to perform his regular job because sitting seems to be worse for his back pain than standing and moving around. He rated his overall pain at a 6-7. The assessment was lumbosacral strain with left sciatica. Conservative treatment was recommended. Daryl was released to return to full duties. The doctor noted he would check to see if workers' compensation would approve another ESI. (JE3, pp. 21-23)

Daryl returned to see Dr. Runde on May 29, 2015. Daryl had an ESI the week before the appointment. He reported that he felt as good as he had felt for quite some time. He still experienced left lower back pain but was no longer having any sciatica. He had been back to work without restrictions and it was going well. Dr. Runde placed him at MMI and provided him with prescription refills. Daryl was to return to Dr. Runde on an as-needed basis. (JE3, p. 25)

On June 10, 2015, Dr. Runde indicated that Daryl did not sustain any permanent partial impairment as a result of the work injury. (JE3, p. 27)

Daryl saw Darin W. Smith, M.D. on September 9, 2015. The note indicates that Daryl went there on his own for a second opinion regarding his low back pain. Dr. Smith's assessment was low back pain, leg pain, and lumbar spondylosis. The doctor did not see any nerve compression. He felt that Daryl had tried all of the treatment he would recommend. He felt surgery was not indicated. (JE8)

Daryl underwent another ESI at the L5-S1 level on September 16, 2015. (JE2, pp. 87-90)

On November 13, 2015, Dr. Sadler issued a letter to claimant's counsel. He opined that as long as Daryl continued to receive over 50 percent pain relief, then it was reasonable to proceed with repeat injections. He would not recommend more than 4 injections over the course of one year. The doctor noted that the goal of injections is to provide pain relief to allow increased activity and decrease in his need for medication. (JE2, p. 92)

Claimant underwent an IME with David H. Segal, M.D., a board certified neurosurgeon, on December 10, 2015. Dr. Segal diagnosed Daryl with lumbar radiculopathy, possible facet arthropathy, and mechanical low back pain. The doctor

felt that these conditions were permanent. He recommended facet injections in addition to the ESIs. If the facet injections were positive, then he would recommend radiofrequency ablation. If negative, then he would recommend a spinal cord stimulator evaluation. Dr. Segal opined that the November 20, 2013 work injury directly caused the injury. He noted that Daryl did not have the symptoms before the injury and had he not had that specific work injury he may never have experienced these pains. Dr. Segal felt that the fact that the MRI failed to show a compressive etiology for the pain it did not change the causality. Dr. Segal stated it was clearly possible both in terms of trauma and non-trauma situations that individuals have radiculopathies without compressive lesions on the nerve. Dr. Segal opined that permanent restrictions were warranted and felt the restrictions from Dr. Runde were appropriate. However, when Daryl's pain was significant, which seemed to be about two-thirds of the time, then he should not lift more than 10 pounds and should limit his bending, sitting, squatting, lifting, and repeated motions with his low back. He also felt an FCE might be helpful. The doctor believed that the treatment Daryl had received was necessitated by the work injury. Dr. Segal placed Daryl in the DRE Lumbar Category III. He assigned him 13 percent impairment of his whole person. (JE9)

It should be noted that defendants' exhibit E contains a statement of charges made before the Iowa Board of Medicine against Dr. Segal. However, the procedures referenced in the charges were not performed by Dr. Segal on Daryl. I do not find exhibit E to be persuasive in this case. (Def. Ex. E)

Julie A. Saddler, M.D., performed another ESI at L4-5 on December 23, 2015. (JE2, p. 124) She performed facet injections at L3-4 and L5-S1 on January 20, 2016. (JE2, p. 129) The doctor stated that the November 20, 2015 MRI of the lumbar spine showed a probable synovial cyst on the right at the L3 level. There was also mild diffuse disk desiccation through the lumbar spine. (JE2, p. 127)

Dr. Saddler performed additional facet injections on April 27, 2016. He performed another ESI on July 6, 2016. (JE2, pp. 133-142)

On July 11, 2016, Chad D. Abernathey, M.D., board certified neurosurgeon, issued a letter to the defendants. Dr. Abernathey felt that Daryl's diagnosis was chronic subjective lumbosacral strain. He opined that, based on the history provided, Daryl's symptoms were related to the November 20, 2013 work injury. He felt that Daryl reached MMI around six months after the injury. He noted Daryl was given permission to return to work on May 7, 2015 and was placed at MMI on May 29, 2015. He did not believe that the patient had any impairment, nor required any permanent work restrictions related to the work injury. Dr. Abernathey stated that Daryl's medical management had been successful with intermittent ESI. He felt this was a reasonable treatment approach. (JE10)

At the request of his attorney, Daryl saw Sunil Bansal, M.D. on October 5, 2016 for an IME. He diagnosed Daryl with L4-L5 disc protrusion and annular tear, aggravation of facet arthropathy, and an aggravation of depression. He placed Daryl at

MMI as of August 6, 2016, one month after his last appointment with Dr. Saddler. Dr. Bansal felt that the described mechanism of injury and his immediate clinical presentation was consistent with his symptomatic radicular low back pain, L4-L5 disc protrusion, annular tear and aggravation of his facet arthropathy. Dr. Bansal also noted that just prior to the injury, Daryl was able to perform all of his job duties over a sustained period of time. With regard to Daryl's depression, Dr. Bansal stated that "[i]t would not be surprising that given the backdrop of chronic depression, the added stress from a physical and financial standpoint would lead to this aggravated development." (JE11, p. 24a) Dr. Bansal placed Daryl in the DRE Category III and assigned 13 percent impairment of the whole person. He permanently restricted Daryl to no lifting over 10 pounds occasionally, no frequent bending or twisting. Daryl should sit, stand, and walk as tolerated. Specifically, he should avoid sitting for more than 30 minutes, no standing for more than 30 minutes, and no walking more than 120 minutes at a time. He should avoid multiple steps, stairs, or ladders and uneven terrain. He recommended continued treatment for Daryl's back and mental health management. (JE11)

On November 4, 2016 Dr. Saddler performed bilateral medial branch blocks at L3, L4, and L5. (JE2, p. 157) Daryl saw Dr. Saddler again on December 28, 2016 and reported that the prior lumbar facet injections and lumbar medial branch block provided excellent pain relief. At that point, Daryl wanted to go ahead with the bilateral lumbar radiofrequency. Dr. Saddler performed the radiofrequency that same day. (JE2, pp. 162-63) Dr. Saddler performed additional ESIs and radiofrequency ablations in May, August, and September of 2017. (JE2, pp. 167-180)

We now turn to the disputes in this case. The first issue to be addressed is whether the stipulated injury was the cause of any permanent disability. I find that Daryl sustained permanent disability as a result of the stipulated November 20, 2013 work injury.

Defendants contend that the November 20, 2013 work injury was, at most, a temporary exacerbation that has returned to baseline. I do not find defendants' argument to be persuasive. In 2007 Daryl had a two-level fusion in his upper spinal column. Daryl also had back pain prior to the stipulated date of injury. However, he testified that he had never experienced pain like he did after the injury. Prior to the injury, he did receive some chiropractic treatment, but it was mostly for his upper and middle back. He received chiropractic treatment in October of 2013. However, Daryl testified that following his injury at work, the pain was like nothing he had previously experienced, and he did not want a chiropractor touching his back after that. Prior to the date of injury, Daryl was able to perform his regular, full-time duties, without assistance. Daryl had performed his regular duties as an OMT/CNA for over 10 years before the injury. Although Daryl continues to be employed as an OMT/CNA, he testified that he is only able to do so with the help of his co-workers. (Testimony)

Defendants also argue that Daryl sustained an intervening, non-occupational injury in June of 2014 when he fell in a truck bed. In support of their position, defendants point out that Daryl had previously been placed at MMI on February 20,

2014. However, this argument fails because even Dr. Mooney, who was hired by the defendants, has stated that the MMI date in January of 2015 was premature. Thus, it would follow that a date before January of 2015 was also premature. Furthermore, the record lacks a reliable expert opinion to support defendants' argument.

I find the expert opinions of Dr. Bansal and Dr. Segal to carry greater weight than those of Dr. Runde or Dr. Abernathey.

Dr. Segal felt that Daryl had lumbar radiculopathy, possible facet arthropathy, and mechanical back pain. (JE9, p. 14) Dr. Segal also noted that the November 2013 MRI revealed that Daryl had an annular tear. Dr. Bansal diagnosed Daryl with L4-L5 disc protrusion, annular tear and aggravation of facet arthropathy. (JE11, p. 23)

Dr. Abernathey felt an appropriate diagnosis for Daryl was chronic subjective lumbosacral strain. He placed Daryl at MMI six months post-DOI. This would be almost one year before Dr. Mooney's statement that MMI was premature in April 2015.

Dr. Mooney saw Daryl in April of 2015. It is not clear if he was provided with the MRI which demonstrated the annular tear at L4-L5 because Dr. Mooney makes no mention of the tear.

The facet injections and the radiofrequency ablation recommended by Dr. Segal, Dr. Bansal, and Dr. Saddler provided Daryl with more relief than just the ESIs. This supports the argument that Dr. Bansal and Dr. Segal's diagnoses are more accurate than those provided by Dr. Abernathey or Dr. Mooney. Based on the record as a whole and the expert opinions of Dr. Bansal and Dr. Segal, I find the claimant has shown by a preponderance of the evidence that he has sustained permanent disability as a result of the injury.

I further find that Daryl has sustained 13 percent functional impairment to his body as a whole as a result of the November 20, 2013 work injury. I also find that Daryl has permanent restrictions as a result of the injury. Those restrictions are as set forth in the report of Dr. Bansal. Daryl is restricted to no lifting over 10 pounds occasionally. No frequent bending or twisting, avoiding steps and stairs that cause discomfort, and sitting, standing, and walking as tolerated. (JE11, p. 25)

Daryl also contends that the work injury caused an exacerbation of his preexisting depression. Defendants deny that his depression was exacerbated by the work injury.

On November 5, 2015, Daryl sought psychiatric treatment with Jeffrey Wilharm, M.D. at Associates for Behavioral Healthcare. There are treatment records in evidence which date from November of 2015 through November of 2017. Unfortunately, the treatment records are hand-written and difficult to decipher. However, the records do note Daryl's back pain, difficulty sleeping due to leg and back pain, and also some family issues. (JE12, pp. 1-35)

On November 19, 2015, Daryl went to the Mercy Emergency Department with low back pain and suicidal ideation. Daryl stated, "im [sic] in so much pain i [sic] just want to kill myself". (JE2, p. 97) He felt like no one was helping him with his ongoing back pain issues. Daryl took 8 tablets of his significant other's anxiety medication the previous day in an attempt to relieve his pain. Although he had been sober for 6 months, he had started drinking again over the past two weeks. He was admitted for psychiatric treatment. Daryl remained at Mercy for psychiatric treatment until November 23, 2015. (JE2, pp. 97-101)

In February of 2017, claimant's counsel authored a missive to Dr. Wilharm setting forth several questions for him to answer. Dr. Wilharm provided hand-written, not very legible, answers. Dr. Wilharm stated that he had been treating Daryl with medication management since November 20, 2013, for major depressive disorder and anxiety. The doctor was asked if he felt it was "more likely than not that the work injury on November 20, 2013 either caused or worsened the conditions" he diagnosed. The doctor responded that the patient certainly felt it had. The doctor added that the injury may not solely be related to the injury now. The doctor felt that ongoing medication management and therapy was needed. Dr. Wilharm also indicated that Daryl likely did not have any permanent restrictions related to his psychiatric diagnoses. (JE12, pp.36-37) The undersigned notes that Dr. Wilharm stated that the injury may not be solely related to the injury now. However, in order for causation to exist, the injury need not be the sole cause.

On October 23, 2017 Daryl underwent an independent mental health and psychiatric evaluation at Ames Therapy and Consulting Service, PC. This was performed at the request of the defendants by Terrence L. Augspurger, M.D. and Amy Mooney, Ph.D. The report indicates that Daryl had been taking medication for depression and anxiety before the work injury, and there was no worsening of symptoms after the injury. He had been diagnosed with depression, anxiety, and alcohol dependency by Dr. Janda in August of 2011. At that time, he reported difficulty sleeping, irritability, crying, loss of concentration, loss of motivation, low energy, fatigue, sadness, antisocial behaviors, and intermittent thoughts of suicide. The report stated, Daryl "had a number of such stressors and it would be impossible to prove a proximate causal relationship to the alleged injury." (JE5, p. 15) Interestingly, the report did address the issue of reasonable and necessary future treatment. The recommendation was for Daryl to have several sessions from a mental health provider experienced with chronic pain patients. (JE5, pp. 8-16) Although Dr. Augspurger and Dr. Mooney stated it was impossible to prove a proximate cause due to a number of stressors in Daryl's life, the doctors do recommend mental health treatment to help Daryl deal with his chronic pain.

In his IME report Dr. Bansal addressed Daryl's mental condition. He stated:

> Mr. Stout has experienced significant stressors that have affected him physically, functionally, and financially. These are known contributors to depression. Mr. Stout has had long standing depression, however, started

> having suicidal ideations after the November 20, 2013 incident. It would not be surprising that given the backdrop of chronic depression, the added stress from a physical and financial standpoint would lead to this aggravated development. It is imperative that he remain in regular management with a mental health specialist.

(JE11, p. 24a)

Up until the time of the hearing Daryl was continuing his mental health treatment. (Testimony)

Daryl testified that he was initially diagnosed with depression several years ago when he was trying to stop drinking and smoking. However, it was his severe post-injury pain that prompted the suicidal ideations he had in November of 2015. This is what caused him to be hospitalized and admitted to the psychiatric ward for several days. I find that the preponderance of the evidence demonstrates that the work injury aggravated his pre-existing depression and necessitated his mental health treatment. However, I further find that claimant has not shown by a preponderance of the evidence that he has sustained any permanent disability, nor does he have any permanent restrictions as a result of the aggravation of his depression.

Having found that Daryl sustained an injury to his body as a whole which resulted in permanent impairment, we now turn to the issue of industrial disability. At the time of the hearing Daryl was 53 years old. The last grade he completed was the 8th grade. He has certifications for Oral Medication Technician (OMT) and Certified Nurse's Assistant (CNA). He has worked as a CNA/OMT for over 25 years. Prior to working as a CNA/OMT he managed a gas station and a rent-to-own store. He also worked at a Walmart Vision Center in around 2012. However, he had to stop working at Walmart after his injury because his back got really bad.

Amber Taft, Director of Nursing testified at the hearing. She is Daryl's most direct supervisor. She testified that he is a very good worker. She also testified that he is very reliable and has received positive reviews. She is not aware of anyone helping Daryl perform his job, but admitted that it was possible he was receiving help and she did not know it. She felt that a person with restrictions as set forth by Dr. Bansal would not be able to meet the qualifications to be hired as a CNA/OMT. However, Daryl testified that he is currently able to perform his job with the help of his co-workers. To the credit of both parties, Daryl's employment has continued. Daryl has demonstrated that he is motivated to continue his employment, despite his pain. He testified that he loves his job and plans to continue working. (Testimony)

Daryl testified that his current job causes him pain. Almost all of his duties require him to walk and lift. He rates his pain at a 7 or 8. When his pain flares he also experiences pain down his leg. Daryl testified he is very fortunate to have co-workers who are willing to help him as needed. He believes he would not be able to perform his

job without the help of his co-workers. Daryl stated he would not be able to find a similar job with the restrictions set forth by Dr. Bansal. (Testimony)

Considering Daryl's age, educational background, employment history, ability to retrain, motivation to maintain employment, length of healing period, permanent impairment, permanent restrictions, and the other industrial disability factors set forth by the Iowa Supreme Court, I find that he has sustained a 45 percent loss of future earning capacity as a result of his work injury with the defendant employer. As such, Daryl is entitled to 225 weeks of permanent partial disability benefits.

We now turn to the issue of commencement date for the permanency benefits. I find that Dr. Brady released Daryl to return to work without restrictions on February 19, 2014. (JE1, p. 12) Claimant testified that he did return to work. I find that when Daryl returned to work this established the commencement date for permanent partial disability benefits. Therefore, permanency benefits shall commence on February 20, 2014.

Claimant is seeking payment for past medical expenses as set forth in claimant's exhibit 1. Defendants dispute payment of several of those expenses. Claimant has acknowledged that the treatment provided on January 30, 2016 for an issue regarding his appendix was included in error and should not be defendants' responsibility. I find defendants are not responsible for payment of the January 30, 2016 appendix expenses.

We now turn to the remaining bills. Defendants argue they should not be responsible for unauthorized emergency medical treatment obtained at Linn County Emergency Medicine because claimant sought this care outside of the worker's compensation system. Additionally, defendants argue that the visit was associated with an overdose of prescription medication and is not related to the work injury. Defendants' argument is not persuasive. Claimant testified that he sought emergency care because his pain was intolerable. The treatment he received was beneficial. Furthermore, I found that claimant's mental health issues are related to the work injury. Claimant testified that he took the overdose of medication in order to stop his pain; therefore, defendants are responsible for the treatment for the overdose of prescription medications. I find that defendants are responsible for the emergency treatment sought by the claimant.

Defendants argue they should not be responsible for any mental health treatment because Daryl's mental health issues are not related to the work injury. However, based on the above findings of fact, I conclude that his mental health issues are related to the work injury. As such, defendants are responsible for the expenses of the mental health treatment.

I further find that the ESI, physical therapy, and other treatment Daryl received was causally connected to the work injury, reasonable, necessary and provided Daryl with temporary pain relief. I find that defendants are responsible for said treatment.

I find that, with the exception of the January 30, 2016 appendix treatment bills, the medical bills set forth in claimant's exhibit 1 were reasonable, necessary, and causally related to claimant's November 20, 2013 work injury. Defendants are responsible for the medical expenses set forth in claimant's exhibit 1, with the exception of the expenses for the January 30, 2016 appendix treatment.

CONCLUSIONS OF LAW

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

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).

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

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).

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and

not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. I concluded that claimant's healing period ended when he returned to work on February 20, 2014. Therefore, his permanent partial disability benefits shall commence on February 20, 2014. See Evenson v. Winnebago Ind., Inc., 881 N.W.2d 360 (Iowa 2016).

Having considered the relevant industrial disability factors outlined by the Iowa Supreme Court, I found that Daryl has proven he sustained a 45 percent loss of future earning capacity as a result of his work-related injuries. A 45 percent loss of future earning capacity entitles claimant to a 45 percent industrial disability award. Therefore, I conclude that claimant is entitled to an award of 225 weeks of permanent partial disability benefits as a result of his work injuries at Cottage Grove Place. Iowa Code section 85.34(2)(u).

Having found that Daryl returned to work on February 20, 2014, this established the commencement date for permanent partial disability benefits. Thus, permanency benefits shall commence on February 20, 2014.

Daryl seeks payment of past medical expenses under Iowa Code section 85.27. 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).

Having found that the medical expenses contained in claimant's exhibit 1, excluding the January 30, 2016 appendix expenses, are reasonable, necessary and causally connected to the work injury, I conclude defendants should be ordered to pay, reimburse, or otherwise satisfy those medical expenses in a matter that will hold claimant harmless for those expenses. Iowa Code section 85.27; Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of four hundred twenty-five and 74/100 dollars ($425.74).

Defendants shall pay two hundred twenty-five (225) weeks of permanent partial disability benefits commencing on February 20, 2014.

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 be entitled to credit for all weekly benefits paid to date.

Defendants shall pay all medical providers, reimburse claimant, reimburse all third party payers, or otherwise satisfy and hold claimant harmless for the medical expenses as set forth above.

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

Signed and filed this 26th day of April, 2018.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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