

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SKENDER ZUKAJ,

Claimant,

vs.

EFCO CORP WILIAN HOLDING CO.,

Employer,

and

SENTRY INSURANCE CO.,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,
Defendants.File Nos. 19000172.01
1663391.01

ARBITRATION DECISION

Headnotes: 1108.10, 1402.30, 1402.40,
1802, 2202, 2206, 2701, 2907

Claimant Skender Zukaj filed a petition in arbitration, File No. 1663391.01, on July 11, 2019, alleging he sustained an injury to his back while working for the defendant, EFCO Corp Wilian Holding Co. ("EFCO") on April 17, 2019. EFCO and its insurer, the defendant, Sentry Insurance Company ("Sentry"), formerly known as Sentry Insurance, filed an answer on July 29, 2019. Zukaj filed a second petition in arbitration, File No. 19000172.01, on July 11, 2019, alleging he sustained a heart attack and injury to his body as a whole while working for EFCO on June 27, 2019. EFCO and Sentry filed an answer on July 17, 2019.

An arbitration hearing was held by CourtCall on December 7, 2020. Attorney Gregory Taylor represented Zukaj. Zukaj appeared and testified. Kadira Mujkanovic, Zukaj's daughter-in-law, appeared and testified on Zukaj's behalf. Zijo Sucasca provided Bosnian interpretation services during the hearing. Attorney Michael Roling represented EFCO and Sentry. Joint Exhibits ("JE") 1 through 6, and Exhibits 1 through 18 and A through N were admitted into the record. The record was held open through February 5, 2021, for the receipt of JE 7 and post-hearing briefs. JE 7 and the briefs were received and the record was closed.

At the start of the hearing the parties submitted a hearing report, listing stipulations and issues to be decided. EFCO waived all affirmative defenses.

At the time of the arbitration hearing Zukaj alleged he sustained a permanent partial impairment due to a heart attack. EFCO and Sentry disputed the claim. In his

post-hearing brief, Zukaj withdrew his claim for permanent partial disability benefits and reported he was not seeking industrial disability benefits for his heart attack injury.

FILE NO. 1663391.01 – BACK INJURY

STIPULATIONS

1. An employer-employee relationship existed between EFCO and Zukaj at the time of the alleged injury.
2. Zukaj sustained an injury on April 17, 2019, which arose out of and in the course of his employment with EFCO.
3. The alleged injury is a cause of temporary disability during a period of recovery.
4. While entitlement to temporary benefits cannot be stipulated, Zukaj has been off work since January 27, 2020.
5. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.
6. At the time of the alleged injury Zukaj's gross earnings were \$880.15 per week, he was married and entitled to two exemptions, and the parties believe the weekly rate is \$576.30.
7. The costs listed in Exhibit 17 have been paid.

ISSUES

1. Is the alleged injury a cause of permanent disability?
2. Is Zukaj entitled to a running award of temporary benefits from January 27, 2020?
3. If the injury is found to be the cause of permanent disability, what is the extent of disability?
4. Has Zukaj reached maximum medical improvement, and if so, what is the commencement date for permanency?
5. Is Zukaj entitled to alternate care under Iowa Code section 85.27?
6. Should costs be assessed against either party?

FILE NO. 19000172.01 – MYOCARDIAL INFARCTION

STIPULATIONS

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

2. While entitlement to temporary benefits cannot be stipulated, Zukaj was off work from June 28, 2019 through October 3, 2019.

3. At the time of the alleged injury Zukaj's gross earnings were \$835.47 per week, he was married and entitled to two exemptions, and the parties believe the weekly rate is \$549.53.

4. The costs listed in Exhibit 17 have been paid.

ISSUES

1. Did Zukaj sustain an injury on July 27, 2019, which arose out of and in the course of his employment with EFCO?

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

3. Is Zukaj entitled to temporary benefits from June 28, 2019 through October 3, 2019?

4. Is Zukaj entitled to payment of medical expenses set forth in Exhibits 15 and 16?

5. Is Zukaj entitled to alternate care under Iowa Code section 85.27?

6. Is Zukaj entitled to an award of penalty benefits?

7. Should costs be assessed against either party?

FINDINGS OF FACT

Zukaj was born and raised in Sarajevo, Bosnia. (Transcript, page 9) Zukaj attended elementary school in Bosnia and he has not received any additional education. (Tr., p. 9) Zukaj moved to the United States in 2001. (Tr., p. 9) Zukaj can understand English, but he uses an interpreter for medical appointments and he used an interpreter during the hearing. (Tr., p. 10) Zukaj can read English, but he cannot write in English. (Tr., p. 10) Zukaj can read and write in Bosnian. (Tr., p. 10) At the time of the hearing he was fifty-five. (Tr., p. 9)

While living in Bosnia, Zukaj worked for the Metro Transportation Company, where he was responsible for filling gasoline tanks. (Tr., pp. 10-11) Zukaj believes he could do that job today because it was not hard work. (Tr., p. 11)

After moving to the United States, Zukaj secured work as a full-time welder. (Tr., pp. 11-12) Since 2002 he has worked as a welder for various companies. (Tr., p. 11)

In 2017, Zukaj commenced employment with EFCO as a welder. (Tr., pp. 11-12) The welder position requires frequent to continuous standing and frequent walking, in addition to other physical requirements. (Ex. A) Zukaj testified the welder position was not physically that hard because ninety percent of the welding is done with the help of cranes. (Tr., p. 13) Zukaj had to lift plates weighing up to fifty pounds a distance of four

feet. (Tr., p. 13) Zukaj testified he did not have any physical limitations or work restrictions for his back when he commenced his employment with EFCO. (Tr., p. 12)

On March 2, 2018, Zukaj crushed his left hand in a machine press at work. He was diagnosed with a left hand crush injury with middle finger middle phalanx base fracture, intraarticular, diffuse pain and swelling of the left hand after crush injury, and left hand arthritis, and he received treatment. (JE 1, pp. 1-3, 5)

On February 8, 2019, Zukaj attended a pre-placement physical following the crush injury. (JE 7) Zukaj reported he had injured his left middle finger in a press machine in 2018, he was a smoker, and he denied having any problems with his back, legs, or cardiovascular system. (JE 7) The reviewing medical practitioner opined Zukaj was medically qualified to perform the essential functions of all positions with EFCO. (JE 7) Zukaj worked on the painting line after he returned to work. (Tr., pp. 13-14)

On April 17, 2017, Zukaj was working on the painting line at EFCO. (Tr., p. 14) After his painting partner left to use the bathroom, Zukaj bent over to pick up material on the line and when he tried to stand up he could not straighten up. (Tr., p. 14) Zukaj estimated the part he picked up weighed more than sixty or seventy pounds. (Tr., p. 14) Zukaj testified he was in a crooked position and he instantly had back pain radiating into his left leg. (Tr., pp. 14-15) Zukaj denied ever having similar pain in his back or leg in the past. (Tr., p. 15) Zukaj later reported the work injury to EFCO, noting he could not sit or stand well because of pain in his lower back extending down his left leg. (Ex. 4, p. 20)

On April 22, 2019, Zukaj attended an appointment with David Berg, D.O., an occupational medicine physician, complaining of low back pain with radiculopathy into his left lower extremity and numbness in his left small toe after lifting heavy metal at work and feeling sudden pain in his low back. (JE 2, p. 15) Dr. Berg examined Zukaj, and assessed him with a low back strain, left SI joint dysfunction, and left S1 radiculopathy. (JE 2, p. 15) Dr. Berg administered a left SI joint injection, restricted Zukaj from working, and scheduled lumbar spine magnetic resonance imaging. (JE 2, pp. 15-16)

On May 15, 2019, Zukaj underwent lumbar spine magnetic resonance imaging. (JE 1, p. 10) The reviewing radiologist listed an impression of:

L3-L4, L4-L5, and L5-S1 mild lumbar spondylosis, as detailed above, chronic three mm retrolisthesis of L5 on S1, chronic.

At L4-L5 there is a small broad-based disc bulge eccentric to the right contracting the exiting right L4 nerve root as well as the traversing right L5 nerve root, age indeterminate. Mild right neural foraminal narrowing. No spinal canal or left foraminal compromise.

(JE 1, p. 10)

During a follow-up visit on May 29, 2019, Zukaj reported he did not receive much relief from the injection, but relayed after the injection he just had pain down the anterior aspect of his left thigh and no longer below his knee into his foot. (JE 2, p. 18) Dr. Berg assessed Zukaj with low back pain and left S1 radiculitis, restricted Zukaj to sedentary work, and recommended a referral to a pain specialist for consideration of an injection. (JE 2, pp. 18-19)

On June 18, 2019, Zukaj attended an appointment with Clay Ransdell, D.O., a pain specialist, complaining of left lumbar pain radiating from his left side lower back into his left hip and down his left thigh to his knee. (JE 3, p. 49) Dr. Ransdell examined Zukaj, assessed him with lumbar radiculopathy, and administered a lumbar epidural steroid injection. (JE 3, p. 52) Two days later Zukaj's daughter-in-law contacted Dr. Ransdell's office and reported Zukaj's pain had increased in his low back after the injection. (JE 3, p. 54) Zukaj testified two days after the injection the pain in his left leg subsided, but he developed pain in his right leg that was worse than his left leg pain had been and that he continued to experience low back pain. (Tr., pp. 16-19)

EFCO assigned Zukaj to put together screw and nut assemblies. (Tr., p. 20) The boxes of unassembled bolts came on pallets that were delivered by a forklift. (Ex. 10, p. 17) Zukaj testified he had to lift the boxes of bolts weighing fifty to fifty-five pounds from a pallet onto a table. (Tr., pp. 21-22) Crawford, Zukaj's immediate supervisor, testified it was possible employees were placing the boxes of bolts on the floor and Zukaj then had to lift the bolts from the floor and put them on the table. (Ex. 10, Crawford Depo., pp. 5-7, 21) Zukaj assembled the nuts and bolts on the table and placed each assembly into a bucket that held 100 assembled nuts and bolts. He then used a jib hoist to lift each bucket to take the bucket away before reaching down to lift the next box to the table. (Ex. 10, Crawford Depo., pp. 9, 16; Tr., p. 21, 23-24) Crawford recalled that before June 27, 2019, Zukaj asked him if he could have some help lifting the boxes of unassembled nuts and bolts. (Ex. 10, Crawford Depo., pp. 27-28)

Zukaj worked evening shift. Zukaj testified on June 27, 2019, at 11:15 p.m., toward the end of his shift, he experienced dizziness, light headedness, and a tight chest when he was returning from a ten-minute smoke break. (Ex. 5, p. 22; Tr., p. 23) Zukaj testified he could not catch his breath or breathe and reported he had never had those symptoms or been diagnosed with a heart condition before. (Tr., p. 25) Zukaj reported before he experienced the symptoms he had lifted between ten to eleven boxes of bolts, each weighing 50 to 55 pounds. (Tr., pp. 22, 24, 44)

Crawford testified an employee flagged him down at work and told him Zukaj was about to pass out. (Ex. 10, Crawford Depo., p. 29) Crawford observed Zukaj looked flushed and he believed Zukaj was having issues with the heat. (Ex. 10, Crawford Depo., p. 29) Crawford transported Zukaj by electric cart to an air-conditioned office, gave him some water, and gave him a wet towel to wrap around his neck, and left him to sit and cool off for a few minutes. (Ex. 10, Crawford Depo., p. 29) When Crawford returned Zukaj was complaining of chest tightness, so Crawford gave him an aspirin

and told him he was going to call an ambulance. (Ex. 10, Crawford Depo., p. 30) Zukaj told Crawford not to call an ambulance because his daughter-in-law was coming to pick him up from work. (Ex. 10, Crawford Depo., p. 29) Crawford completed an incident report, Exhibit 5. (Ex. 10, Crawford Depo., p. 30)

On June 28, 2019, Zukaj attended a follow-up appointment with Dr. Berg. (JE 2, p. 21) Dr. Berg noted Zukaj's imaging revealed right-sided L4 and L5 nerve root irritations, he had some stenosis in the left L5 nerve, and he had "absolutely no right lower extremity symptoms." (JE 2, p. 21) Dr. Berg documented Zukaj reported after Dr. Ransdell's injection his left-sided pain was gone and had moved to his right lower extremity and that he was performing sedentary work and his employer was allowing him to lie down during his shift. (JE 2, p. 21) Zukaj complained of pain and difficulty sleeping at night. (JE 2, p. 21) Dr. Berg assessed Zukaj with a low back strain, found the epidural was helpful for his left-sided symptoms, which were gone, and stated he was uncertain what would have caused Zukaj's right-sided symptoms, since he denied he had been reinjured after April 2019. (JE 2, p. 21) Dr. Berg prescribed tramadol and Voltaren, ordered physical therapy, and continued Zukaj's restrictions. (JE 2, pp. 21-22)

Zukaj testified he did not tell Dr. Berg his left-sided pain was gone because he still had left-sided pain at the time of the hearing, but it was not as bad as the pain in his right leg. (Tr., p. 40) Zukaj also denied EFCO was letting him lie down at work, noting EFCO allowed him to sit in a chair. (Tr., p. 49) Dr. Berg's records do not document Zukaj complained of any cardiac symptoms or that he told Dr. Berg what had happened the evening before. Zukaj also denied attending an appointment with Dr. Berg on June 28, 2019. I do not find his testimony regarding the appointment credible.

Zukaj returned to work for his next shift on June 28, 2019. (Ex. 10, Crawford Depo., p. 30) Crawford asked him how he was feeling and whether he was okay, and testified Zukaj "smiled and gave [him] a thumbs-up and started working." (Ex. 10, Crawford Depo., p. 30) Zukaj did not complain to Crawford that he was continuing to experience cardiac symptoms.

On June 29, 2019, Zukaj sought emergent care, complaining of chest pain, tightness, and bilateral arm numbness for two days. (JE 4, p. 55) Magdi Ghali, M.D., an interventional cardiologist with Iowa Heart Center, performed an emergency coronary angiography, left heart catheterization, and placed stents in Zukaj's left anterior descending artery at the ostial position and proximal left anterior descending. (JE 4) Zukaj was admitted to the hospital and discharged on July 1, 2019 with recommendations to stop smoking and to follow up with a cardiologist. (JE 4, pp. 56-59)

On July 8, 2019, Zukaj attended an appointment with Liberato Iannone, M.D., a cardiologist with Iowa Heart Center. (JE 5, p. 60) Dr. Iannone noted Zukaj had a history of hyperlipidemia, a family history of coronary disease, and "has what sounds like possibly claudication involving more the right leg than the left. (JE 5, p. 60) Dr. Iannone diagnosed Zukaj with cardiac signs and symptoms with right leg pain, coronary

artery disease, arterial graft with stable angina, and prior myocardial infarction, and recommended additional testing and cardiac rehabilitation. (JE 5, pp. 60-63)

Zukaj returned to Dr. Berg on July 12, 2019, complaining of right-sided symptoms and reporting his left-sided symptoms were gone since his epidural. (JE 2, p. 23) Zukaj relayed since his last appointment he had a heart attack and received two stents, but he had not started physical therapy. (JE 2, p. 23) Dr. Berg assessed Zukaj with a low back strain and status post cardiac stents, continued his restrictions, and requested his cardiac records before commencing physical therapy. (JE 2, pp. 23-24)

On July 26, 2019, Zukaj returned to Dr. Berg, reporting he had not returned to work due to his heart condition, he was starting cardiac rehab, and he was experiencing pain in his back and radiculitis into his right lower extremity contained mostly in the SI joint area. (JE 2, p. 25) Dr. Berg released Zukaj to return to sedentary work and ordered physical therapy. (JE 2, pp. 25-26)

Zukaj attended a cardiac recheck with Rachel Onsrud, ARNP with Iowa Heart Center on July 31, 2019, complaining of right leg numbness that wakes him up at night and reporting he could not "walk more than 100 feet before [having] difficulty moving the right leg." (JE 5, p. 64) Onsrud listed an impression of coronary artery disease with recent anterior wall myocardial infarction, LV dysfunction, abnormal ankle-brachial index with claudication symptoms on the right, mild carotid disease, and prior nicotine abuse, and referred Zukaj to a peripheral vascular disease specialist for evaluation and recommendations. (JE 5, pp. 64-65)

On August 14, 2019, Zukaj attended a peripheral vascular consult with James Ebaugh, M.D., with Iowa Heart Center. (JE 5, p. 69) Dr. Ebaugh noted Zukaj experienced a back injury and a new onset of right lower extremity pain. (JE 5, p. 69) Dr. Ebaugh documented,

[p]atient with recent onset right lower extremity 100 foot claudication and moderate to severe right lower extremity arterial inflow disease with evidence of inflow disease on physical exam. I think he also has mixed nerve compression symptoms as his paresthesias and numbness are clearly related to his back issue. I would like him to complete his cardiac rehabilitation and back rehabilitation program and then I will see him back to diagnose the level of his disease with an aortic and right iliac duplex, and full ABIs and PVRs.

(JE 5, p. 69)

On October 1, 2019, Dr. Ghali with Iowa Heart Center released Zukaj to return to work. (JE 5, p. 78)

On October 7, 2019, Zukaj attended a follow-up appointment with Dr. Berg, complaining of right-sided back pain. (JE 2, p. 27) Dr. Berg listed an impression of low back pain with right lower extremity radiculitis, noted Zukaj was not a surgical candidate,

related Zukaj had been referred for lower extremity vascular studies by his cardiologist, and recommended a referral to a spine surgeon. (JE 2, p. 27)

On October 29, 2019, Zukaj attended an appointment with Lynn Nelson, M.D., an orthopedic surgeon, complaining of "right-sided low back pain greater than right posterior thigh and leg pain while walking" that commenced after lifting a panel at work weighing between fifty and seventy pounds. (JE 1, p. 12) Zukaj reported he was experiencing hard, aching pain that was the same throughout the day and worse with standing, lifting, and bending forward. (JE 1, p. 12) Dr. Nelson documented Zukaj related he was experiencing low back pain and left lower extremity pain, and after undergoing an epidural steroid injection, he began experiencing right lower extremity pain. (JE 1, p. 12) Zukaj related he had been placed on a five pound lifting restriction, but EFCO had not been following the restriction and was having him lift fifty pounds, and that Dr. Berg restricted him from working for the past two weeks. (JE 1, p. 12)

Dr. Nelson documented during his exam that Zukaj reported pain to palpation throughout his entire low back area and that lumbar flexion and extension elicited low back pain. (JE 1, p. 12) Dr. Nelson observed Zukaj ambulated slowly with an antalgic gait to the right, reviewed Zukaj's x-rays and magnetic resonance imaging, and listed an impression of right-sided low back pain and L5-S1 degenerative joint disease/spondylosis. (JE 1, p. 13) Dr. Nelson noted he explained to Zukaj that he had some degree of degenerative change at L5-S1, which had been present and developing for many years, he did not find any significant neurological impingement at any level, and he did not believe Zukaj was a surgical candidate. (JE 1, p. 13)

On November 7, 2019, Dr. Iannone signed a letter prepared by counsel for EFCO and Sentry following a telephone conversation, without providing any comments. (Ex. B) Dr. Iannone agreed Zukaj had preexisting heart disease with plaque in his arteries before June 27, 2019, that plaque in arteries can cause a myocardial infarction, and that a plaque may rupture spontaneously. (Ex. B, p. 6) At that time EFCO and Sentry believed Zukaj was engaging in sedentary work on June 27, 2019. Dr. Iannone agreed given Zukaj was only performing sedentary work when he first experienced chest pain Zukaj's myocardial infarction and/or chest pain was not caused by, aggravated, or accelerated by his work duties at EFCO, and that his employment duties at EFCO did not substantially or significantly contribute to the myocardial infarction that occurred on June 27, 2019. (Ex. B, p. 6)

During an appointment on November 13, 2019, Dr. Berg assessed Zukaj with low back pain and left lower extremity radiculopathy that had "completely resolved" as of June 28, 2019, and right lower extremity radiculitis unrelated to the April 17, 2019 work injury. (JE 2, pp. 29-30) Dr. Berg noted Zukaj was undergoing vascular studies and he believed the cramps Zukaj was experiencing while walking were most likely related to neurogenic or vascular disease of the lower extremities and unrelated to the work injury. (JE 2, p. 30) Dr. Berg imposed a ten pound lifting restriction, noted he wanted to see Zukaj's vascular records, found Zukaj's symptoms from the work injury resolved as of

June 28, 2019, and opined Zukaj had not sustained an impairment or disability associated with the April 2019 work injury. (JE 2, pp. 30-31)

On November 15, 2019, Zukaj attended a peripheral vascular recheck with Dr. Ebaugh. (JE 5, p. 79) Dr. Ebaugh noted Zukaj appeared “uncomfortable in clinic today, I believe exclusively due to the back pain issue. Nonetheless, I am sure he has vascular claudication as well, but this may predate his back injury.” (JE 5, p. 79) Dr. Ebaugh offered Zukaj Pletal, which Zukaj declined, and noted Zukaj would work on physical therapy for his back, he may undergo another VAC injection, and recommended an annual follow up for testing of his ankle-brachial indices and PVRs and a follow up every two years for his asymptomatic carotid disease. (JE 5, p. 79)

On November 27, 2019, Zukaj attended an appointment with Dr. Berg, complaining of back pain. (JE 2, p. 32) Dr. Berg noted he had received some of the records from a Dr. Hassan and Zukaj had four stents in place and had a fairly significant heart attack in June around the time he developed his right lower extremity symptoms. (JE 2, p. 32) Dr. Berg noted vascular testing of Zukaj’s lower extremities indicated the mid portion of the right external iliac artery was totally occluded, a distal segment of the external iliac artery was also totally occluded, and Zukaj had fifty to seventy-five percent total stenosis in the vasculature of his right lower extremity and he had refused treatment for his condition. (JE 2, p. 32) Dr. Berg listed an impression of a low back strain with left lower extremity radiculopathy, resolved, significant right lower extremity vascular occlusions resulting in right lower extremity claudications that are not work related, and status post myocardial infarction with cardiac stenting. (JE 2, p. 32) Dr. Berg opined Zukaj’s low back pain from the April 17, 2019 work injury had completely resolved with no impairment or disability, he developed right lower extremity symptoms that were not the result of the April 2019 work injury, he continued to have some mild low back pain and mild degenerative changes to his lumbar spine that he believed were secondary to deconditioning, ordered physical therapy, and increased Zukaj’s lifting restriction to twenty pounds. (JE 2, pp. 32-35)

On December 5, 2019, counsel for EFCO and Sentry sent a letter to Dr. Berg, summarizing a telephone conversation. (JE 2, p. 36; Ex. C) Dr. Berg signed the summary without providing any comments. Dr. Berg agreed he had reviewed records from Zukaj’s cardiologist and that the records containing the vascular studies showed vascular claudication/vessel disease of the right lower extremity, Zukaj’s left-sided symptoms from the April 2019 work injury resolved on June 28, 2019 with no permanent impairment or need for restrictions, Zukaj’s right-sided symptoms are not related to the April 17, 2019 work injury, Zukaj has vessel disease in his right lower extremity that is the likely cause of his right lower extremity symptoms, magnetic resonance imaging from May 15, 2019, showed only degenerative changes with no acute findings, and that he had recommended physical therapy “that should more accurately be classified as work hardening or a reconditioning to acclimate [Zukaj] back to full work duty.” (JE 2, pp. 36-37; Ex. C, pp. 8-9)

During an appointment with Dr. Berg on January 13, 2020, Zukaj and his brother insisted the epidural steroid injection administered by Dr. Ransdell caused Zukaj's right lower extremity symptoms. (JE 2, p. 38) Dr. Berg recommended right lower extremity electromyography and noted if the testing was normal, he believed Zukaj did not have nerve impingement from his back causing his right lower extremity symptoms and that the symptoms were the result of his vascular claudication. (JE 2, p. 38) Dr. Berg documented he did not know if Zukaj could return to his regular job due to his right lower extremity vascular disease, noting Zukaj could only walk for five minutes. (JE 2, p. 38)

On January 23, 2020, Zukaj underwent electromyography with Donna Bahls, M.D. (JE 6) Dr. Bahls listed an impression of no evidence of peripheral neuropathy and no evidence of an acute right lower extremity radiculopathy. (JE 6, p. 86) Dr. Berg reviewed the electromyography studies, which he found were normal, and opined Zukaj's low back pain with left radiculopathy from the April 2019 injury had resolved and he released Zukaj without restrictions. (JE 2, pp. 41-42)

On February 3, 2020, Dr. Berg conducted a fitness for duty evaluation of Zukaj for EFCO. (JE 2, p. 43) Dr. Berg assessed Zukaj with low back pain with left lower extremity radiculopathy, resolved as of June 28, 2019, and right lower extremity vascular compromise, resulting in symptomatic vascular and neurogenic claudication. (JE 2, p. 44) Dr. Berg documented Zukaj told him he believed he could return to his welding job because he stands in one place and does not do a lot of walking, but Dr. Berg found the job description indicated he had to frequently walk, and based on this he did not believe Zukaj could perform the job duties as a welder for EFCO because he cannot walk for more than five minutes at a time. (JE 2, p. 44, 46)

On March 21, 2020, Francis Miller, M.D., a cardiologist, conducted a records-review only independent medical examination for Zukaj. (Ex. 2) Dr. Miller's report does not indicate Miller spoke with Zukaj. (Ex. 2) Dr. Miller diagnosed Zukaj with atherosclerotic coronary heart disease with an anterior myocardial infarction on June 27, 2019, treated two days later with two drug-eluting stents. (Ex. 2, p. 14) Dr. Miller noted Zukaj had preexisting atherosclerotic coronary heart disease and opined lifting and carrying fifty-three pound boxes on June 27, 2019, would be sufficient to cause an atherosclerotic plaque to rupture, resulting in the abrupt worsening of the disease in the area of the vessel. (Ex. 2, p. 14) Dr. Miller opined if the vessel had completely occluded, Zukaj would not have survived, but since it was ninety-nine percent occluded, it allowed some blood flow down the artery, which caused very severe stenosis with stuttering and frequent angina, noting Zukaj continued to have stuttering chest pain and completed his normal work shift on June 28, 2019, and because of continued symptoms he went to the hospital on June 29, 2019. (Ex. 2, pp. 14-15)

Pursuant to an inquiry from Sentry, Dr. Berg provided an impairment rating for Zukaj on April 16, 2020. (JE 2, p. 47) Dr. Berg noted on April 17, 2019, Zukaj sustained a low back injury with left lower extremity radiculitis, which completely resolved following an epidural steroid injection in June 2019 with no impairment or

disability. (JE 2, p. 47) Dr. Berg documented approximately two months after the work injury Zukaj began complaining of right lower extremity radiculitis, which is not related to the initial injury and is most likely related to significant vascular disease of his lower extremities, noting magnetic resonance imaging of the lumbar spine and electromyography of the lower extremities were both normal. (JE 2, p. 47)

Joseph Chen, M.D., a physiatrist, conducted an independent medical examination for Zukaj and issued his report on May 27, 2020. (Ex. 1) Dr. Chen reviewed Zukaj's medical records and examined him. (Ex. 1) Dr. Chen diagnosed Zukaj with "chronic mechanical and myofascial back and bilateral buttock pain," noting Zukaj's magnetic resonance imaging showed evidence of three millimeters of retrolisthesis of L5 on S1, which became temporarily aggravated by the work injury and worsened during the prior year during periods when he was restricted from working until cleared by cardiovascular specialists. (Ex. 1, p. 8)

Dr. Chen agreed with Dr. Berg that Zukaj initially presented with symptoms consistent with left lumbar radiculitis, and after receiving an epidural steroid injection, he reported right-sided radiculitis symptoms, explaining Zukaj's right-sided nerve root narrowing seen on magnetic resonance imaging became temporarily exacerbated "as a result of the increased volume and pressure on the nerve roots as a result of the epidural steroid injection" and that his right-sided symptoms had completely resolved. (Ex. 1, p. 8) Dr. Chen opined Zukaj's work injury when lifting and hanging parts was a "substantial contributing factor that led to a permanent aggravation of his pre-existing grade 2 spondylolisthesis of L5 on S1," which led to his need for treatment for left lumbar radiculitis with ongoing symptoms and explained the resolution of his temporary right lumbar radiculitis following the injection. (Ex. 1, p. 8)

Dr. Chen documented Zukaj had numerous misunderstandings about his spine and pain condition and whether his symptoms were due to vascular disease, which had led to fear avoidance behaviors and beliefs and a reluctance to engage in basic flexibility exercises or other therapeutic activities that could improve his overall chronic back condition. (Ex. 1, p. 9) Dr. Chen noted Zukaj understood his ongoing back pain "is not related to a 'pinched nerve' or 'blocked' blood vessels but rather tight, stiff, and short back and buttock muscles that he needs to work on gently stretching on his own over the next few weeks to months." (Ex. 1, p. 9) Dr. Chen recommended a walking program for his heart attack and vascular claudication. (Ex. 1, p. 9)

Dr. Chen noted while Zukaj may have back pain with prolonged standing, "this back pain represents weakness and deconditioning of his low back and buttock muscles," which could improve with a consistent home exercise program. (Ex. 1, p. 10) Dr. Chen recommended a pain rehabilitation and pain education treatment program of ten to thirty hours to address Zukaj's self-reported pain, pain interference, fear avoidance beliefs and behaviors, and pain catastrophization scores from pre to post-treatment, and during the program, release Zukaj to return to work gradually, working two hours per shift for two weeks, four hours per shift for two weeks, six hours per shift for two weeks, and then to eight hours per shift. (Ex. 1, p. 11)

Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Chen assigned Zukaj a "provisional impairment rating of 5% impairment of the whole person due to his complaints of left lumbar radicular pain," under Lumbar DRE Category II on page 384. (Ex. 1, p. 9) Dr. Chen did not recommend any work or activity restrictions. (Ex. 1, p. 9)

Paul Conte, M.D., a cardiovascular surgeon, conducted a records-review only independent medical examination for EFCO and Sentry and issued his report on May 12, 2020. (Ex. D) There is no evidence Dr. Conte spoke with Zukaj. In the history section of his report, Dr. Conte documented Zukaj reported he had lifted sixteen boxes weighing fifty-three pounds and carried them to a table approximately five to ten feet away, before taking a ten-minute break to smoke a cigarette. (Ex. D, p. 13) Dr. Conte further documented, after returning from the break Zukaj reported a sudden onset of cardiac symptoms, which were reported to his supervisor, the next day, June 28, 2019, Zukaj still felt chest tightness, but he reported to work and continued to experience stuttering chest pain, and on June 29, 2019, he awoke with severe chest pain and sought emergent care for a myocardial infarction and underwent stenting of his left anterior descending artery at the ostial position and proximal left anterior descending. (Ex. D, p. 13)

Dr. Conte opined lifting and carrying a fifty pound box every half hour is occasional lifting and noted Zukaj did not claim to have symptoms while actually lifting and carrying any box, but rather his symptoms occurred late in his shift when he was walking back to his work station and not exerting himself, after resting during a cigarette break. (Ex. D, p. 15) Dr. Conte noted smoking and acute myocardial infarctions or unstable angina are frequent associations and that many studies note hyperlipidemia and cigarette smoking are the most important factors for the development of unstable angina and acute myocardial infarction and that studies show exertion of the level Zukaj engaged in would only be categorized as moderate activity. (Ex. D, pp. 15-16) Based on these findings, Dr. Conte opined Zukaj's moderate intensity work did not have any significant contribution or cause an acute myocardial infarction and that smoking with untreated hyperlipidemia and hypertension provoked his symptoms, concluding he was equally as likely to have developed a myocardial infarction at home as he would have been at work, and while his first reported symptoms occurred while in the workplace, his symptoms were not directly related to his work and were not materially aggravated by his work. (Ex. D, p. 16) Dr. Conte then found while Zukaj sustained actual myocardial damage at some point after he developed unstable angina on June 27, 2017, his myocardium function was reported to be normal during a follow-up echocardiogram in November 2019, concluding Zukaj did not suffer any significant lasting myocardial damage or damage to his kidneys, lungs, or the rest of his body, and finding his vascular disease was preexisting. (Ex. D, p. 16)

On May 20, 2020, counsel for EFCO and Sentry sent a letter to Dr. Ghali, summarizing a telephone conversation. (Ex. E, pp. 18-19) Dr. Ghali signed the summary without providing any comments. (Ex. E, pp. 18-19) Dr. Ghali performed the stenting procedure Zukaj underwent after he was diagnosed with a myocardial

infarction. As with Dr. Conte's report, the letter notes Zukaj reported he lifted approximately fifteen boxes weighing approximately fifty pounds, he did not have any symptoms while lifting the boxes, and near the end of his shift, after a ten-minute cigarette break, he began experiencing cardiac symptoms while walking back to his work station. (Ex. E, p. 18) Dr. Ghali agreed the cause of Zukaj's myocardial infarction is his genetics and smoking and not his work activities, and to be a precipitating event, his myocardial infarction would have had to have occurred right after or during his June 27, 2019 work activities, as opposed to occurring two days later on June 29, 2019. (Ex. E, p. 18)

On June 11, 2020, Dr. Berg sent a letter to counsel for EFCO and Sentry noting he cared for Zukaj following a low back injury he sustained while working for EFCO. Dr. Berg opined Zukaj's injury resolved with no impairment, Zukaj had later sustained a myocardial infarction and medical professionals found he had significant vascular disease of his right lower extremity, he reviewed the records from Zukaj's vascular surgeon describing the incident, and after reviewing the medical records and job description, he was of the opinion Zukaj was not capable of performing his regular job at EFCO secondary to his personal medical issues. (JE 2, p. 48; Ex. C., p. 12)

On June 17, 2020, EFCO sent Zukaj a letter, attaching Dr. Berg's June 11, 2020 letter, and informing him that while Dr. Berg had released him to full duty for his low back condition, he determined Zukaj could not return to his position due to his personal vascular disease. (Ex. 7) EFCO notified Zukaj it was terminating his employment because his condition was likely permanent and he could not work full duty. (Ex. 7)

On July 15, 2020, Dr. Berg signed a letter from counsel for EFCO and Sentry following a telephone conversation, agreeing with contention statements without providing any comments. (Ex. B, pp. 10-11) Dr. Berg agreed that if Dr. Chen's diagnosis is accurate, the diagnosis and the rehabilitation program he recommended are not related to the April 2019 work injury. (Ex. B, p. 10) Dr. Berg further agreed Dr. Chen's rating was based on non-verifiable radicular complaints, noting Zukaj's radicular complaints subsided after he received the June 2019 epidural steroid injection, and if they returned, they would not be related to the April 2019 work injury, his right-sided complaints are due to vascular issues unrelated to the April 2019 work injury, and electromyography did not substantiate any radicular complaints coming from the spine. (Ex. C, pp. 10-11)

On July 31, 2020, Dr. Iannone signed a letter from Zukaj's counsel following a telephone conversation between Dr. Iannone and Zukaj's counsel, agreeing with contention statements without providing any comments. Dr. Iannone agreed while a spontaneous plaque rupture can occur, he believed that if Zukaj was lifting sixteen boxes weighing fifty-three pounds each on June 27, 2019, "it is more likely than not that his heavy lifting at work was a substantial aggravating and accelerating factor in causing the atherosclerotic plaque rupture, which in turn triggered" Zukaj's myocardial infarction. (Ex. 3, p. 18) Dr. Iannone further agreed:

[s]ymptoms of a myocardial infarction caused by plaque rupture are not always immediate. Instead, plaque rupture begins the process of a myocardial infarction. The symptoms from a myocardial infarction can be delayed. Therefore, it is still your opinion that Skender's lifting of heavy boxes at EFCO on June 27, 2019 was a substantial aggravating and accelerating factor in causing his myocardial infarction even though Skender first experienced symptoms of a heart attack at 11:10 pm after a short cigarette break.

(Ex. 3, p. 19)

Zukaj testified he has had low back pain in the same spot, the center, lower part of his spine, since the April 17, 2019 work injury. (Tr., p. 17) Zukaj reported his low back pain is worse when he walks, sits too long, or lies down too long. (Tr., p. 17) Zukaj testified during the hearing he continues to have leg pain, but the pain in his right leg is much worse than the left. (Tr., p. 18) Zukaj testified the pain radiates from his back, through both of his hips into his legs, but the pain in his left leg is not that bad and the pain in his right leg is "terrible." (Tr., p. 19) Zukaj noted he cannot climb more than one flight of stairs without taking a break and testified the muscles of his right leg feel like they are made of stone and he cannot lift his right leg. (Tr., p. 19) Zukaj testified he can walk a maximum of fifty feet before his right leg becomes stiff and painful and that he experiences cramps in his leg and feels like he is carrying a heavy load while walking. (Tr., p. 37) Zukaj stated he believed he would have difficulty with the lifting and bending forward required for his welding job at EFCO. (Tr., p. 38)

Zukaj reported since EFCO terminated his employment he has been looking for work. (Tr., p. 35) He testified he applied for a welding job, he tried the job, but he could not do it. (Tr., p. 36) Zukaj relayed he has applied for two jobs per week, but he has not received any job offers. (Tr., p. 36)

CONCLUSIONS OF LAW

I. Applicable Law

This case involves several issues, including the nature and extent of disability, healing period benefits, permanency benefits, alternate medical care, recovery of costs, and interest under Iowa Code sections 85.27, 85.34, 86.40, and 535.3. 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 85.18, 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. Zukaj's alleged injuries occurred after July 1, 2017, therefore, the new provisions of the statute apply to this case.

The calculation of interest is governed by Sanchez v. Tyson, 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.

II. Credibility

EFCO and Sentry aver Zukaj has not sustained a permanent impairment to his back and that he did not sustain a heart attack arising out of and in the course of his employment, attacking Zukaj's credibility.

During the hearing I assessed Zukaj's credibility by considering whether his testimony was reasonable and consistent with other evidence I believe, whether he had 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).

Credibility determinations are more complicated when a witness or party relies on interpretation for communicating with medical providers and when testifying. Even during the hearing, I observed the interpreter confused Zukaj's right and left leg symptoms on one occasion. Each officer of the judiciary or executive branch who makes credibility determinations in a case or contested case needs to consider his or her own predilections when making credibility determinations of a non-native English speaker. It is also necessary to consider whether interpretation difficulties during a hearing or during medical treatment are the cause of conflicting statements, or whether a witness's testimony is not truthful or credible.

In addition to the communication difficulties present in this case, Zukaj is not a sophisticated litigant. He completed elementary school in Bosnia and has worked in manual labor most of his adult life. Zukaj also has a complicated medical history involving back and cardiovascular complaints, which further complicates the issues in this case.

Zukaj has an obvious interest in the outcome of this case. I had the opportunity to observe Zukaj testify under oath. During his testimony he engaged in direct eye contact, his rate of speech was appropriate, and he did not engage in any furtive movements. Zukaj is a poor historian and he seemed confused during the hearing about his health conditions. Dr. Chen also noted this during his independent medical examination of Zukaj. Poor historians, immigrants who do not speak English, and even dishonest workers sustain permanent injuries caused by their work activities. Based on my physical observations of Zukaj, I generally found him to be credible at hearing. I have addressed additional credibility findings below.

III. Myocardial Infarction

Zukaj avers his employment with EFCO aggravated or accelerated his previous heart condition, causing him to sustain a heart attack when he was not at work. EFCO avers Zukaj's heart attack was caused by a personal condition unrelated to work.

In Iowa, an employee with a preexisting heart condition or defect may recover workers' compensation benefits upon a showing of legal and medical causation. Riley v. Oscar Mayer Foods Corp., 532 N.W.2d 489, 492 (Iowa Ct. App. 1995).

The legal test circumscribes the kind of work or exertion which must be present before the injury will be considered to have arisen out of the employment. Arthur Larson, Workmen's Compensation Law § 38.83(a) (6th ed. 1994). It supplies the necessary causation between the work performed and the injury. The medical test requires medical evidence that the exertion or work in fact caused the heart attack. Id.

In Iowa, the legal causation component of the analysis has been satisfied under one of the three circumstances. The first situation is when heavy exertions ordinarily required by the work are superimposed on a defective heart, aggravating or accelerating the pre-existing condition. Sondag, 220 N.W.2d at 905. The second situation involves an instance of unusually strenuous employment exertion, imposed upon a pre-existing diseased condition. Id. The final situation supporting compensation is when the damage results from continued exertions required by the employment after the onset of the heart attack. Id. at 906. See Varied Enterprises, Inc. v. Sumner, 353 N.W.2d 407, 409 (Iowa 1984).

Under the first situation, the contribution of the employment to the risk of heart attack must take the form of an exertion greater than that of nonemployment life. Sondag, 220 N.W.2d 905 (citing Arthur Larson, Workmen's Compensation § 38.83). The comparison is not with the particular employee's usual exertion in his or her employment but with exertions of normal nonemployment life of the particular employee or any other person. Id. In the second situation, the comparison is between the employee's normal work exertion and the work performed just prior to the onset of symptoms. See Guyon v. Swift & Co., 229 Iowa 625, 633-34, 295 N.W.2d 185, 189 (Iowa 1940). Under the final situation, the causal contribution of the employment to the heart attack exists when the employee, for some reason, feels impelled to continue with his or her duties after experiencing symptoms of a heart attack. Sondag, 220 N.W.2d 906.

Id.

The parties address medical causation in their post-hearing briefs. I do not find Zukaj has met his burden of establishing medical and legal causation.

On June 27, 2019, at 11:15 p.m., Zukaj was working in Bay 6 Assembly at EFCO when he experienced dizziness, light headedness, and a tight chest after his ten-minute break. (Ex. 5, p. 22; Tr., p. 23) Zukaj testified that evening he had lifted between ten to eleven boxes of bolts weighing between fifty and fifty-five pounds while he was working. (Tr., pp. 22, 24, 44) Zukaj reported he did not feel any tightness in his chest until he actually came back from break and picked up the last box to move it. (Tr., p. 24) Zukaj testified he could not catch his breath or breathe and that he had never had those symptoms before or been diagnosed with a heart condition before. (Tr., p. 25) I do not find Zukaj was actually lifting any boxes when the symptoms commenced. I find any statements to the contrary not credible and against the weight of the evidence. I find Zukaj was walking back from a ten-minute smoking break when his cardiac symptoms commenced. I do not find he engaged in any lifting on June 27, 2019, after his symptoms commenced.

Crawford, Zukaj's supervisor, testified an employee flagged him down at work and told him Zukaj was getting ready to pass out. (Ex. 10, Crawford Depo., p. 29) Crawford went to the area and observed Zukaj looked flushed and he believed he was having issues with the heat. (Ex. 10, Crawford Depo., p. 29) Crawford took Zukaj on an electric cart from his work area to an air-conditioned office, sat him down in a chair, got him some water and a wet towel to wrap around his neck, and let Zukaj sit to cool off for a few minutes. (Ex. 10, Crawford Depo., p. 29) When Crawford returned to the office, Zukaj was complaining of chest tightness, so Crawford gave him an aspirin and told him he was going to call an ambulance. (Ex. 10, Crawford Depo., p. 30) Zukaj told Crawford not to call an ambulance because his daughter-in-law was coming to pick him up from work. (Ex. 10, Crawford Depo., p. 29)

The next day, Friday, June 28, 2019, Zukaj attended an appointment with Dr. Berg. (JE 2, p. 21) Dr. Berg's notes do not reference any complaint from Zukaj or discussion regarding his chest tightness the day before or any ongoing symptoms or problems related to his cardiac function. (JE 2, p. 21) Zukaj denied attending an appointment with Dr. Berg on June 28, 2019. I do not find this testimony credible. I believe Zukaj attended an appointment with Dr. Berg on June 28, 2019, and that he did not report any cardiac symptoms to Dr. Berg.

Zukaj returned to work on June 28, 2019. (Ex. 10, Crawford Depo., p. 30) Crawford testified he asked Zukaj how he was feeling and whether he was okay and Zukaj "smiled and gave [him] a thumbs-up and started working." (Ex. 10, p. 30) Based on Crawford's testimony I do not find Zukaj complained of any cardiac symptoms at work on June 28, 2019, and he completed his normal work duties. The next morning, on June 29, 2019, Zukaj awoke with chest pain, and he was ultimately transported to the hospital where he was diagnosed with a myocardial infarction and treated. If his vessel was ninety-nine percent occluded or severely occluded on June 28, 2019, and if he was having ongoing symptoms, I would have expected Zukaj to report his symptoms to Dr. Berg and he would have complained of ongoing cardiac symptoms at work.

Four physicians have given causation opinions in this case, Dr. Ghali, a treating cardiologist who performed a procedure on Zukaj, Dr. Miller, a cardiologist who performed a records-review only independent medical examination for Zukaj, Dr. Iannone, a treating cardiologist, and Dr. Conte, a cardiovascular surgeon who conducted a records-review independent medical examination for EFCO and Sentry. I find the opinion of Dr. Conte, as supported by the opinion of Dr. Ghali to be the most persuasive.

Dr. Miller conducted a records-review independent medical examination for Zukaj and did not examine or speak with him. (Ex. 2) Dr. Miller diagnosed Zukaj with atherosclerotic coronary heart disease with an anterior myocardial infarction on June 27, 2019, treated two days later with two drug-eluting stents. (Ex. 2, p. 14) Dr. Miller noted Zukaj had preexisting atherosclerotic coronary heart disease and opined lifting and carrying fifty-three pound boxes on June 27, 2019, would be sufficient to cause an atherosclerotic plaque to rupture, resulting in the abrupt worsening of the disease in the area of the vessel. (Ex. 2, p. 14) Dr. Miller opined if the vessel had completely occluded, Zukaj would not have survived, but since it was ninety-nine percent occluded, it allowed some blood flow down the artery, which caused very severe stenosis with stuttering and frequent angina, noting he continued to have chest pain at work on June 28, 2019, and into June 29, 2019, when he went to the hospital. (Ex. 2, pp. 14-15)

Dr. Miller does not explain how he learned Zukaj continued to have chest pain on June 28, 2019, into June 29, 2019, when he went to the hospital. At work Zukaj did not complain of chest pain, nor did he complain of cardiac symptoms that day when he attended an appointment with Dr. Berg. Additionally, Dr. Miller does not state whether he considered how many boxes Zukaj lifted before he took his break, or whether lifting one box, as opposed to eleven boxes would have an impact on his opinion, or what literature he was relying on to connect the lifting of the boxes to the myocardial infarction Zukaj experienced on June 29, 2019.

Dr. Iannone has given two opinions in this case, agreeing with contention statements by counsel for EFCO and Sentry and by Zukaj's counsel. In his opinion on November 4, 2019, Dr. Iannone agreed Zukaj had preexisting heart disease with plaque in his arteries before June 27, 2019, that plaque in arteries can cause a myocardial infarction, and that a plaque may rupture spontaneously. (Ex. B, p. 6) At that time EFCO and Sentry believed Zukaj was engaging in sedentary work on June 27, 2019. Dr. Iannone agreed given Zukaj was only performing sedentary work on June 27, 2019, when he first experienced chest pain, it was his opinion Zukaj's myocardial infarction and/or chest pain was not caused by, aggravated, or accelerated by his work duties at EFCO, and that his employment duties at EFCO did not substantially or significantly contribute to the heart attack that occurred on June 27, 2019. (Ex. B, p. 6)

In his opinion from July 31, 2020, Dr. Iannone agreed with statement from Zukaj's counsel that while a spontaneous plaque rupture can occur, he believed that if Zukaj was lifting sixteen boxes weighing fifty-three pounds each on June 27, 2019, "it is more likely than not that his heavy lifting at work was a substantial aggravating and

accelerating factor in causing the atherosclerotic plaque rupture, which in turn triggered” Zukaj’s myocardial infarction. (Ex. 3, p. 18) Dr. Iannone further agreed:

Symptoms of a myocardial infarction caused by plaque rupture are not always immediate. Instead, plaque rupture begins the process of myocardial infarction. The symptoms from a myocardial infarction can be delayed. Therefore, it is still your opinion that Skender’s lifting of heavy boxes at EFCO on June 27, 2019 was a substantial aggravating and accelerating factor in causing his myocardial infarction even though Skender first experienced symptoms of a heart attack at 11:10 pm after a short cigarette break.

(Ex. 3, p. 19)

Unlike the opinions of Drs. Iannone and Ghali, Dr. Conte provided a detailed written opinion. In his history section of his May 18, 2020, report, Dr. Conte documented Zukaj reported he had lifted sixteen boxes weighing fifty-three pounds and carried them to a table approximately five to ten feet away, before taking a ten-minute break to smoke a cigarette. (Ex. D, p. 13) Dr. Conte further documented, after returning from the break Zukaj reported a sudden onset of cardiac symptoms, which were reported to his supervisor. (Ex. D, p. 13) The next day, June 28, 2019, Zukaj reported he still felt chest tightness, but he reported to work and he continued to experience stuttering chest pain, and on June 29, 2019, he awoke with severe chest pain and sought emergent care for a myocardial infarction and underwent stenting of his left anterior descending artery at the ostial position and proximal left anterior descending. (Ex. D, p. 13)

Dr. Conte opined lifting and carrying a fifty pound box every half hour is occasional lifting and noted Zukaj did not claim to have symptoms while actually lifting and carrying any box, but rather his symptoms occurred late in his shift when he was walking back to his work station and not exerting himself, after resting during a cigarette break. (Ex. D, p. 15) Dr. Conte noted smoking and acute myocardial infarctions or unstable angina are frequent associations and that many studies note hyperlipidemia and cigarette smoking are the most important factors for the development of unstable angina and acute myocardial infarction and that studies show exertion of the level Zukaj engaged in, would only be categorized as moderate activity. (Ex. D, pp. 15-16) Based on these findings, Dr. Conte opined Zukaj’s moderate intensity work did not have any significant contribution or cause an acute myocardial infarction and that smoking with untreated hyperlipidemia and hypertension provoked his symptoms, concluding he was equally as likely to have developed a myocardial infarction at home as he would have been at work, and while his first reported symptoms occurred while in the workplace, his symptoms were not directly related to his work and were not materially aggravated by his work. (Ex. D, p. 16)

Dr. Ghali has given one opinion in this case, agreeing with contention statements by counsel for EFCO and Sentry. (Ex. E, pp. 18-19) Dr. Ghali performed the stenting

procedure Zukaj underwent after he was diagnosed with a myocardial infarction. As with Dr. Conte's report, the letter notes Zukaj reported he lifted approximately fifteen boxes weighing approximately fifty pounds, he did not have any symptoms while lifting the boxes, and near the end of his shift, after a ten-minute cigarette break, he began experiencing cardiac symptoms while walking back to his work station. (Ex. E, p. 18) Dr. Ghali agreed the cause of Zukaj's myocardial infarction is his genetics and smoking and not his work activities, and to be a precipitating event, his myocardial infarction would have had to have occurred right after or during his June 27, 2019 work activities, as opposed to occurring two days later on June 29, 2019. (Ex. E, p. 18) This opinion is consistent with the fact that Zukaj did not complain of cardiac symptoms during his appointment with Dr. Berg or at work the next day. If his vessel was ninety-nine percent occluded or very severely occluded on June 27, 2019, I would have expected Zukaj to have report his symptoms to Dr. Berg and to his employer when he returned to work.

Dr. Iannone gave differing opinions in this case and did not prepare an opinion in his own words. He signed off on two opinions penned by counsel for the parties. Dr. Iannone does not reference any studies or other research he is familiar with that support his agreement with counsel's opinions. Dr. Conte's opinion is the most thorough and explains his findings based on research he is familiar with.

The evidence establishes Zukaj was a smoker with severe atherosclerosis and vascular disease, which caused his myocardial infarction. I find Zukaj first experienced cardiac symptoms after resting for ten minutes while taking a smoke break. He did not complain of cardiac symptoms to Dr. Berg or at work on June 28, 2019, and he did not seek medical attention until June 29, 2019. I find Zukaj has failed to prove the exertion or work in fact caused his heart attack, under the medical test.

I also find Zukaj has failed to meet the legal test. The evidence does not support Zukaj was engaged in heavy exertion at work, which aggravated or accelerated his preexisting condition causing him to sustain a myocardial infarction, that he was engaged in unusually strenuous employment exertion causing him to experience a myocardial infarction, or that he was engaged in continued exertions required by the employment on June 27, 2019 or June 28, 2019, that caused damage after the onset of his cardiac symptoms. Based on my findings, the issues of whether Zukaj is entitled to temporary benefits, payment of medical expenses, alternate medical care, and penalty benefits for File Number 19000172.01 are moot.

IV. Low Back Injury

A. Causation

The parties agreed Zukaj sustained a work injury on April 2019. Zukaj contends he sustained a permanent impairment to his low back caused by the April 2019 work injury. EFCO and Sentry aver Zukaj sustained a temporary impairment only and that his current complaints are not related to the work injury. This raises an issue of causation.

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, 569 N.W.2d at 156. 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).

Dr. Berg, a treating occupational medicine physician, opined Zukaj has not sustained a permanent impairment caused by the April 2019 work injury. (JE 2) Dr. Chen, a physiatrist who examined Zukaj on one occasion for purposes of an independent medical examination, opined Zukaj has sustained a permanent impairment caused by the work injury. I find the opinion of Dr. Chen, as supported by Dr. Ebaugh, most persuasive.

There is no evidence Zukaj complained of having low back pain or that he sought treatment for low back pain prior to the April 2019 work injury. In fact, Zukaj underwent a fitness for duty examination for EFCO on February 8, 2019, which found he was medically qualified to perform the essential functions of all positions at EFCO, noting he was capable of performing “heavy work.” (JE 7, pp. 87-88)

Dr. Berg initially assessed Zukaj with a low back strain, left S1 joint dysfunction, and left S1 radiculopathy. (JE 2, p. 15) Zukaj underwent lumbar spine magnetic resonance imaging and the reviewing radiologist listed an impression of:

L3-L4, L4-L5, and L5-S1 mild lumbar spondylosis, as detailed above, chronic three mm retrolisthesis of L5 on S1, chronic.

At L4-L5 there is a small broad-based disc bulge eccentric to the right contracting the exiting right L4 nerve root as well as the traversing right L5 nerve root, age indeterminate. Mild right neural foraminal narrowing. No spinal canal or left foraminal compromise.

(JE 1, p. 10) Dr. Berg referred Zukaj to Dr. Ransdell for a lumbar spine epidural. (JE 2)

Following the injection, Zukaj continued to complain of back pain and reported his left-sided lower extremity symptoms had moved to his right lower extremity. (JE 2, p. 21-22) Dr. Berg documented he could not explain why Zukaj's left-sided lower extremity complaints had moved to the right and he assessed Zukaj with a low back strain. (JE 2, pp. 21, 23, 27)

In November 2019, Dr. Berg opined Zukaj had not sustained a permanent impairment, his condition resolved as of June 28, 2019, and his right-sided lower extremity symptoms were not related to the April 2019 work injury. (Ex. 2, p. 29) In December 2019, Dr. Berg signed a letter prepared by the defendants' counsel agreeing Zukaj's left-sided symptoms resolved as of June 28, 2019, with no permanent impairment or need for restrictions, his right-sided lower extremity symptoms were unrelated to the April 2019 work injury, his imaging only showed degenerative changes with no acute findings, and his physical therapy recommendation "should more accurately be classified as work hardening or a reconditioning to acclimate him back to full work duty." (JE 2, pp. 36-37; Ex. C, pp. 8-9) Following normal electromyography studies, Dr. Berg further opined Zukaj's right-sided lower extremity complaints were more likely related to his vascular condition. (JE 2, p. 47)

Dr. Chen diagnosed Zukaj with "chronic mechanical and myofascial back and bilateral buttock pain," noting Zukaj's magnetic resonance imaging shows evidence of three millimeters of retrolisthesis of L5 on S1, which became temporarily aggravated by the work injury and worsened during the prior year during periods when he was restricted from working until cleared by cardiovascular specialists. (Ex. 1, p. 8)

Dr. Chen agreed with Dr. Berg that Zukaj initially presented with symptoms consistent with left lumbar radiculitis, and after receiving an epidural steroid injection, he reported right-sided radiculitis symptoms, explaining Zukaj's right-sided nerve root narrowing seen on magnetic resonance imaging became temporarily exacerbated "as a result of the increased volume and pressure on the nerve roots as a result of the epidural steroid injection" and that his right-sided symptoms had completely resolved. (Ex. 1, p. 8) Dr. Berg documented at first he did not know what caused Zukaj's right-sided lower extremity symptoms, and later stated they were not caused by the work injury, and more likely caused by his vascular condition. Only one vascular expert has examined Zukaj, Dr. Ebaugh, who documented Zukaj appeared "uncomfortable in clinic today, I believe exclusively due to the back pain issue. Nonetheless, I am sure he has vascular claudication as well, but this may predate his back injury." (JE 5, p. 79) Dr. Berg's opinions and the form letters written by counsel for the defendants do not discuss or distinguish Dr. Ebaugh's observations.

Dr. Chen opined Zukaj's work injury when lifting and hanging parts was a "substantial contributing factor that led to a permanent aggravation of his pre-existing grade 2 spondylolisthesis of L5 on S1," which led to his need for treatment for left lumbar radiculitis with ongoing symptoms and explains the resolution of his temporary right lumbar radiculitis following the injection. (Ex. 1, p. 8)

As noted above, there is no evidence Zukaj complained of low back pain or that he received treatment for low back pain prior to the work injury. On examination, Dr. Chen documented Zukaj had "diffuse tenderness to light tactile stimulation of the midline lower lumbar spine and paraspinal muscle mass bilaterally," and limited side-bending and extension due to reports of pain. (Ex. 1, p. 5) Dr. Berg also documented his physical examination findings, as follows:

Date	Observation
4/22/19	"He has a great deal of tenderness in the left SI joint area. . . .There is no right SI joint tenderness."
5/29/19	"He continues to have some left SI joint tenderness."
6/28/19	"There is tenderness in both the left and right SI joint Really, the epidural was helpful as all of his left-sided [lower extremity] symptoms are gone. I am not sure what resulted in his right lower extremity symptoms."
7/12/19	"Again, he has mostly SI joint pain bilaterally."
7/26/19	"Again, there is tenderness in the right SI joint He has a positive FABER bilaterally, but has no left SI joint tenderness or pain."
10/7/19	"He has some mild tenderness in the left SI joint. However, FABERs is negative."
11/13/19	"There is no longer any left-sided SI joint tenderness [with no discussion of any right-sided observations]."
11/27/19	"He continues to have some mild tenderness in the left SI joint, but FABERs is negative [with no discussion of any right-sided observations]."
1/13/20	O[bservations]: "None."
2/3/20	Fitness for Duty Evaluation. "He has mild SI joint tenderness." [No discussion of whether it is right, left, or bilateral].

(JE 2, pp. 15, 18, 21, 23, 25, 27, 29, 32, 38, 44) Both physicians documented Zukaj had low back pain on examination. Dr. Berg noted this during examinations after Zukaj received the injection from Dr. Ransdell. Dr. Berg has not explained the source of Zukaj's ongoing back pain after he found his left lower extremity symptoms resolved in June 2019. I do not find his opinion persuasive. I find Zukaj has established the work injury aggravated, accelerated, worsened, or "lighted up" his preexisting back condition.

B. Permanency and Alternate Care

Zukaj seeks a running award of healing period benefits. EFCO and Sentry aver he did not sustain a permanent impairment and that he is not entitled to any additional benefits. Zukaj seeks alternate care, as recommended by Dr. Chen.

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:

If 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.”

Dr. Chen did not recommend any activity or work restrictions for Zukaj, finding Zukaj may have back pain with prolonged standing, noting “this back pain represents weakness and deconditioning of the low back and buttock muscles.” (Ex. 1, p. 10) Dr. Chen recommended a pain rehabilitation and pain education treatment program of ten to thirty hours to address Zukaj’s self-reported pain, pain interference, fear avoidance beliefs and behaviors, and pain catastrophization scores from pre to post treatment, and during the program to release Zukaj to return to work gradually. (Ex. 1, p. 10) In the alternative, Dr. Chen provided an impairment rating. While I suspect some of Zukaj’s pain and general deconditioned status may be related to his underlying cardiovascular conditions and activity restrictions related to those conditions, as a superseding cause, EFCO and Sentry did not present any evidence at hearing supporting my suspicion. Dr. Berg opined Dr. Chen’s diagnosis is not related to the April 2019 work injury or need for treatment by responding to a form letter, without providing any comments, which I rejected. Dr. Chen opined Zukaj has not reached maximum medical improvement and that he needs additional treatment, a program lasting ten to thirty hours, with a gradual return to work. Zukaj has been off work since January 27, 2020. I find he is entitled to a running award of healing period benefits from January 27, 2020.

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).

EFCO and Sentry refused to pay for the treatment recommended by Dr. Chen, relying on the opinion of Dr. Berg that recommended no care when EFCO terminated Zukaj's employment. Given my finding above, I also find Zukaj is entitled to alternate care as recommended by Dr. Chen under Iowa Code section 85.27.

V. Costs

Zukaj seeks to recover \$200.00 for the filing fees for each date of injury, the \$750.00 cost of Dr. Miller's report, the \$50.00 cost of Dr. Iannone's report, and the \$465.40 cost of the depositions of Crawford, Brice Harrelson, and Zukaj. (Ex. 17)

Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 Iowa Administrative Code 4.33, provides costs may be taxed by the deputy workers' compensation commissioner for: (1) the attendance of a certificated shorthand reporter for hearings and depositions; (2) transcription costs; (3) the cost of service of the original notice and subpoenas; (4) witness fees and expenses; (5) the cost of doctors' and practitioner's deposition testimony; (6) the reasonable cost of obtaining no more than two doctors' or practitioners' reports; (7) filing fees; and (8) the cost of persons reviewing health service disputes.

The administrative rule expressly allows for the recovery of the filing fees, deposition transcript, and the cost of the two reports. Zukaj was not successful in proving his claims for File Number 19000172.01, regarding his myocardial infarction. I do not find he is entitled to recover the filing fee for File Number 19000172.01, or the cost of Dr. Miller's and Dr. Iannone's reports. I find Zukaj is entitled to recover the \$100.00 for File Number 1663391.01 and the \$465.40 cost of the depositions of Crawford, Brice Harrelson, and Zukaj.

ORDER

IT IS THEREFORE ORDERED, THAT:

For File Number 19000172.01:

Claimant shall take nothing.

For File Number 1663391.01

Defendants shall pay Claimant a running award of healing period benefits commencing on January 27, 2020, at the stipulated weekly rate of five hundred seventy-six and 30/100 dollars (\$576.30), 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.

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 are responsible for payment of the program recommended by Dr. Chen.

Defendants shall reimburse the claimant one hundred and 00/100 dollars (\$100.00) for the filing fee and four hundred sixty-five and 40/100 dollars (\$465.40) for the cost of the depositions.

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 17th day of May, 2021.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Robert Gainer (via WCES)

Gregory Taylor (via WCES)

Michael Roling (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.