

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICKY MINCKS,

Claimant,

vs.

HOOVESTOL, INC.,

Employer,

ACE AMERICAN INSURANCE CO.,

Insurance Carrier,
Defendant.

File No. 20009551.01

ARBITRATION DECISION

Headnotes: 1108.50; 1402.40; 1801;
2907

STATEMENT OF THE CASE

Ricky Mincks, claimant, filed a petition in arbitration seeking workers' compensation benefits from Hoovestol, Inc., employer, and Ace American Insurance Company, insurance carrier, as defendants. The hearing was held in person at 150 Des Moines Street in Des Moines, Iowa on February 14, 2023.

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.

Claimant, Ricky Mincks, was the only witness to testify live at trial. The evidentiary record also includes Joint Exhibits 1-2, Claimant's Exhibits 1-3, and Defendants' Exhibits A-E. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on April 3, 2023; the case was fully submitted to the undersigned at this time.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained permanent disability as the result of the stipulated August 6, 2020 work injury.

2. If so, the nature and extent of permanent disability benefits claimant is entitled to receive.
3. Whether claimant is entitled to benefits from December 7, 2020 to March 9, 2021.
4. Whether claimant is entitled to reimbursement for an independent medical examination pursuant to Iowa Code section 85.39.
5. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Ricky Mincks, was involved in a motor vehicle accident which arose out of and in the course of his employment on August 6, 2020. Mr. Mincks alleges that as the result of that accident he sustained permanent disability to his left shoulder and right knee. He is also seeking temporary total disability benefits. Defendants dispute that Mr. Mincks is entitled to any benefits beyond what they have already paid to him. (Transcript pp. 20-23; Hearing Report)

Mr. Mincks resides in Knoxville, Iowa. He works as a truck driver for Hoovestol. Each day he begins his workday in Urbandale, Iowa and travels to either Elm Creek, Nebraska or Morris, Illinois. On August 6, 2020, Mr. Mincks was performing his duties driving a semi-truck on an interstate in Nebraska when the accident occurred. Mr. Mincks was driving when he saw an arrow pointing to the left due to road construction and the vehicles in front of him had their brake lights engaged. Mr. Mincks began slowing down but realized that the blue semi-truck behind him was not slowing down. Mr. Mincks' semi-truck was struck by the blue semi-truck. Mr. Mincks had his seat belt on but the two bolts on the back of his seat broke and he was sent forward over the steering wheel. He hit his head on something, but he is uncertain what his head hit. When he opened his eyes, everything was black, and he saw stars. He closed his eyes again and opened his eyes real slow and he was able to see. He found his hat and glasses. Mr. Mincks testified that he was struck so hard that his shoe was knocked off his right foot. He does not recall striking his right knee on anything but believes he may have struck it on the steering wheel. Mr. Mincks was examined by an ambulance crew who gave him the option to seek treatment near the accident or wait until he was home. Mr. Mincks decided he would rather seek treatment closer to home. Mr. Mincks believes that the injuries he sustained in the accident include his right ankle, right knee, left shoulder, left hip, and whiplash. (Tr. pp. 18-24, 46)

Hoovestol, Inc. sent another driver to pick up Mr. Mincks and drive him to Urbandale. Mr. Mincks drove his pick-up truck to his home in Knoxville. He arrived home around 1:00 or 1:30 in the morning. When he woke up the next day, he contacted

Hoovestol, who obtained an appointment for him to be seen in Pella on the afternoon of August 7, 2020. (Tr. pp. 23-25)

On August 7, 2020, Mr. Mincks was seen at Pella Regional Health Center. The records indicate he was injured in an accident on August 6, 2020. X-rays were taken of the left shoulder, cervical spine, left hip, pelvis, and right knee; all were negative. The diagnoses was left hip pain, right shoulder strain, right knee pain. He was instructed to use ice, Motrin, and Tylenol as needed. He was taken off work and instructed to return to Occupational Health in 5-7 days. (JE1, pp. 1-6)

On September 4, 2020, Mr. Mincks went to physical therapy in Pella. He reported he only slept about 4 hours last night intermittently secondary to left shoulder pain and right knee pain. His primary pain is in the left shoulder, secondary pain is in the right knee. The assessment was left shoulder diagnostic testing positive for involvement will continue to hold with left shoulder treatment until he follows-up with the physician. Concern for the right knee pain was noted. (JE1, pp. 7-8)

Mr. Mincks completed a "Complete History Form" for Iowa Ortho on September 15, 2020. (JE2, pp. 31-32) Mr. Mincks stated he was being seen for his left shoulder and was referred to Iowa Ortho from a Pella doctor. He reported the August 6, 2020, semi-truck accident. On the form Mr. Mincks was instructed to shade in the area on diagrams where he had symptoms. The only area Mr. Mincks shaded was his left shoulder; he did not note symptoms on any other areas of his body. (JE 2, pp. 31-32) At hearing Mr. Mincks testified the reason he did not indicate he was having any right knee pain was because at that time his right knee was good, and he did not have pain. However, between September 15, 2020 and the February 14, 2023 arbitration hearing his right knee pain returned. (Tr. pp. 49-50)

Mr. Mincks returned to physical therapy on September 22, 2020, which had been prescribed by Dr. Doty at Pella Regional Health Care. The short-term goals for the next two weeks included improved range of motion of the left shoulder and improved left hip, and right knee. Another short-term goal was for him to be able to step up 18 inches to allow him to get into his truck. The therapist also listed several long-term goals to be met within 4 to 6 weeks. However, a note was later made in the records that the therapist received no further communication, thus his chart was closed therapy was discontinued. (JE1, pp. 9-10)

Also on September 22, 2020, Mr. Mincks saw Leah Bruxvoort, ARNP, at Pella Regional Health Center. By this point he had seen Dr. Aviles for his left shoulder, and it was determined he was going to have surgical repair. He was still in physical therapy for his left hip and right knee. Mr. Mincks reported medial knee pain. His knee throbbed mostly at night when he tried to lie down. He had no problems ambulating. There was some clicking and popping. He reported that the knee still bothered him, but his left shoulder was so painful that it distracted him. The assessment was right knee medial pain, left hip. He was to continue with physical therapy for four weeks. Mr. Mincks was instructed to follow-up in 4 weeks to see if he is having any reduced pain in his hip and

knee. If so, further imaging may need to be considered. Left shoulder continuing care with Dr. Aviles. (JE1, p. 11)

On October 13, 2020, Steven A. Aviles, M.D. performed left arthroscopic rotator cuff repair with subacromial decompression and biceps tenotomy. According to the operative note the subscapularis was intact, there was partial biceps tearing, and a full-thickness rotator cuff tear was identified through the entirety of the supraspinatus, and two metal anchors were inserted. The postoperative diagnosis was partial biceps tear, rotator cuff tear, impingement, left shoulder. (JE1, pp. 13-20)

Mr. Mincks returned to Pella Regional Health Center on October 20, 2020, where he saw Matthew K. Doty, M.D. He was there for follow-up of his left hip, knee pain, status post motor vehicle collision. He reported he was doing reasonably well since his left shoulder surgery 1 week ago. He is doing well with his knee and hip and has no concerns. He denies left hip pain and reports at worst his right knee is a 1 out of 10 in intensity. Dr. Doty's assessment was right knee pain and left hip pain. Dr. Doty stated, "[i]n regard to the patient's right knee and left hip he is no longer having pain and he may be discharged at maximal medical improvement with no resultant disability. He does not need any restrictions regarding the hip or knee . . ." (JE1, p. 21)

Mr. Mincks continued physical therapy for his shoulder with Pella Regional Health Center on October 23, 2020. The therapy notes mention continued right hip and knee pain. The therapy goals were to improve the left shoulder strength. (JE1, pp. 22-24)

On November 24, 2020, Mr. Mincks went to physical therapy at Pella Regional Health Center. He reported he was compliant with wearing his sling. He continued to have intermittent right knee pain. The therapist noted the patient was progressing as expected. (JE1, p. 25-26)

Mr. Mincks returned to physical therapy on December 18, 2020, with continued right knee pain. He reported minimal shoulder discomfort. (JE1, p. 27-28)

On January 8, 2021, Mr. Mincks attended physical therapy. He reported his knee has been more sore lately and the soreness has not gone away from the accident. He states his shoulder is still a little tender. (JE1, p. 29)

By January 12, 2021, Mr. Mincks reported to the physical therapist that his shoulder is improving. He also reported that his knee has started to bother him. (JE1, p. 30)

Dr. Aviles saw Mr. Mincks on March 9, 2021, for follow-up of the left shoulder rotator cuff repair. Dr. Aviles noted he seemed to be doing great and had excellent range of motion. Dr. Aviles placed him at maximal medical improvement and released him to activities as tolerated. Dr. Aviles opined he required no work restrictions. He felt Mr. Mincks did not require any additional care but would see him back as needed. (JE2, pp. 33-37)

Dr. Aviles authored a missive to the defendants on March 10, 2021. Dr. Aviles reiterated that Mr. Mincks was at MMI as of March 9, 2021. He assigned 2 percent upper extremity impairment rating. He cited Figure 16-40 and 16-46 of the Fifth Edition of the AMA Guides. Dr. Aviles stated:

"As it pertains to his right knee and his left hip, he never mentioned injury to either the right knee or the left hip as a result of an injury on August 6, 2020. I do not believe that there was an injury to his right knee or left hip since it was never brought to my attention. Typically, when somebody has an injury that is musculoskeletal in nature, it is acute onset and is brought to the attention of the provider relatively quickly. Within a reasonable degree of medical certainty, Mr. Mincks, more likely than not, did not sustain an injury as it pertains to his right knee or his left hip, as it pertains to an accident on August 6, 2020."

(Def. Ex. D, p. 14)

On April 20, 2021, at the request of his attorney, Mr. Mincks underwent an independent medical evaluation (IME) with Charles A. Wenzel, D.O. As the result of the examination and review of the records provided to Dr. Wenzel he issued a report dated May 13, 2021. Mr. Mincks reported the August 6, 2020 accident to Dr. Wenzel. The doctor noted that Mr. Mincks advised that his semi was rear-ended by another vehicle. The driver of the other vehicle died at the scene of the accident. Mr. Mincks stated that his driver's seat broke, and he struck the windshield, but is unable to describe what happened. (Cl. Ex. 1, p. 2)

At the time of the IME, Mr. Mincks reported he experienced occasional left shoulder pain when he slept on his left side. He has occasional 3-4 out of 10 left shoulder pain when he throws horseshoes. He is usually pain-free and occasionally has 2-3 out of 10 pain but cannot describe what causes it. Mr. Mincks denied any current or recent left hip pain. Mr. Mincks reported constant 7-8 out of 10 right knee pain and could not identify any aggravating factors. Dr. Wenzel's diagnoses included: left supraspinatus tear; left proximal long head of the biceps tendon tear; left hip pain/contusion, resolved; right knee osteoarthritis, aggravated; status post left arthroscopic rotator cuff repair with subacromial decompression and biceps tenotomy on 10/13/2020. Regarding causation Dr. Wenzel stated:

All opinions are expressed within a reasonable degree of medical certainty. Mr. Mincks sustained a work injury on 08/06/2020 when he was involved in a motor vehicle collision while working. The resulting left supraspinatus/ biceps tears, and left hip/right knee pain arose, were "lit up," aggravated, or accelerated in the course of his work for Hoovestol, and are, therefore, work-related.

Mr. Mincks denied any history of left shoulder, left hip, or right knee injuries/ pain before the 08/06/2020 work injury.

(CE1, p. 8)

Dr. Wenzel recommended an orthopedic evaluation of the right knee due to extensive and consistent reporting of right knee pain and positive findings on examination. However, if there were no surgical indications then he would recommend pain management for injections or a home TENS unit, if indicated. The doctor further opined that if Mr. Mincks did not have knee surgery, then he would agree with the March 9, 2021 MMI date. (CE1, p. 9)

Dr. Wenzel noted Dr. Aviles' March 10, 2021 opinion wherein Dr. Aviles indicated he did not believe there was any injury to the right knee as the result of the August 6, 2020 motor vehicle accident. Dr. Wenzel's opinion regarding causation differed from that of Dr. Aviles' opinion. Dr. Wenzel stated, "Mr. Mincks sustained a work injury on 08/06/2020 when he was involved in a motor vehicle collision while working. The resulting left supraspinatus/biceps tears, and left hip/right knee pain arose, were 'lit up,' aggravated, or accelerated in the course of his work for Hoovestol, and are, therefore, work-related." (Cl. Ex. 1, p. 8) Dr. Wenzel's report offers little explanation or rationale in support of his causation statement for the right knee. On October 20, 2020, Mr. Mincks reported that his right knee pain at its worst was 1 out of 10 and he was released by Dr. Doty with no resultant disability and no permanent restrictions. Dr. Wenzel does not explain how the constant 7-8 out of 10 level right knee pain Mr. Mincks reported to him on April 20, 2021 is related to the August 2020 accident. It is not clear from Dr. Wenzel's statement how he believes the accident affected Mr. Minck's knee. In his report, he states that Mr. Mincks "*extensively* reported his right knee pain." (Cl. Ex. 1, p. 3). In support of this statement, Dr. Wenzel points to a few treatment records where knee pain was mentioned. Dr. Wenzel states, there were "likely multiple references to left hip and right knee pain in these PT notes, but I did not have those for review." (CE1, p.4) It is troubling to the undersigned that Dr. Wenzel bases his opinion, at least in part, on information he assumed is contained in records that he admittedly has never seen.

Dr. Wenzel was asked for his opinions regarding permanent impairment. He assigned 4 percent upper extremity impairment due to the left shoulder injury and cited Figures 16-40, 16-43, and 16-46 of the AMA Guides. Dr. Wenzel assigned 7 percent lower extremity impairment for right knee roentgenographically determined cartilage interval of 3 mm (Table 17-31, p. 544). He also assigned a 10 percent lower extremity impairment for right patellofemoral roentgenographically determined cartilage interval of 2 mm (Table 17-31, p. 544). Dr. Wenzel cited the Combined Values Chart for a combined total of 16 percent impairment of the lower extremity. (CE1, p. 13)

In his report, Dr. Wenzel discussed the anatomy of the shoulder. (CE1, pp. 9-12) Dr. Wenzel placed permanent restrictions on the left shoulder to include: "[a]bove the shoulder and away from the body lifting as tolerated." (CE1, p. 13) For the right knee he recommended temporary restrictions to include: "May rarely kneel; may occasionally squat." Id. Dr. Wenzel did not explain how long these "temporary" restrictions would be in place.

At the time of hearing, Mr. Mincks was working the same job as a truck driver for Hoovestol. (Tr. pp. 18-20) Mr. Mincks testified that he has the same job as he did at the time of the accident, but he drives a new Kenworth truck. He prefers the old Volvo trucks because the accelerator punches more into the firewall, whereas the Kenworth is more of a down motion. Mr. Mincks explained that it's a different angle for the ankle and the knee and he cannot get comfortable. He believes that when he holds the cruise control it is not good for his knee. He testified that he is flat-footed all day and gets pain in his knee that starts shooting up into his right hip. His left shoulder still shoots a little bit of pain occasionally, but he does not think much can be done about that. (Tr. pp. 32-33)

The first issue to be addressed is whether Mr. Mincks sustained any permanent disability as the result of the August 6, 2020 work accident. In his post-hearing brief, Mr. Mincks concedes that no physician has assigned any impairment for his left hip and does not argue that he sustained any permanent impairment due to his hip. Therefore, I find that the issue of whether he sustained any permanent disability to his left hip is moot. (Cl. Brief, pp. 7-8, 14)

Ms. Mincks does assert that he sustained permanent disability to his right knee as the result of the accident. Several physicians have offered their opinions regarding Mr. Mincks' right knee. Dr. Aviles, the treating orthopedic surgeon, who saw Mr. Mincks on numerous occasions, opined that he did not believe that Mr. Mincks sustained an injury to the right knee on August 6, 2020. In support of his position, Dr. Aviles noted that Mr. Mincks never mentioned his right knee to him. (Def. Ex. D, p. 14) Mr. Mincks did mention his right knee pain to the providers, including Dr. Doty at Pella Regional Health Center. On October 20, 2020, Dr. Doty noted that Mr. Mincks was doing well with his knee and had no concerns. Mr. Mincks reported that at worst his right knee pain is 1 out of 10. Dr. Doty placed Mr. Mincks at MMI for his right knee with no permanent disability or permanent restrictions. (JE1, p. 21) The only physician to relate Mr. Mincks' right knee pain to the August 6, 2020 accident was Dr. Wenzel. In support of his position, Dr. Wenzel relies, in part, on assumptions he made about treatment records he has never seen. Due to Dr. Wenzel's scant rationale and the fact that the medical records he reviewed were incomplete, I do not give great weight to Dr. Wenzel's opinion causally relating the right knee pain to the motor vehicle accident. Rather, I find the opinions of Dr. Aviles and Dr. Doty are more convincing. Thus, I find Mr. Mincks has failed to prove that his right knee pain is related to the August 6, 2020 work injury.

Because I find that Mr. Mincks' right knee pain/condition is not casually related to the August 6, 2020 work injury, all other issues related to the right knee are rendered moot.

We now turn to whether Mr. Mincks sustained any permanent disability to his left shoulder as the result of the August 6, 2020 accident. Mr. Mincks was diagnosed with left supraspinatus tear, left proximal long head of the biceps tendon tear. He underwent left arthroscopic rotator cuff repair with subacromial decompression and biceps tenotomy. Both Dr. Aviles and Dr. Wenzel causally connect Mr. Mincks' left shoulder injury to the

work accident. I find that Mr. Mincks' left shoulder injury is causally related to the August 6, 2020 work accident.

There are two physicians who have assigned permanent functional impairment ratings for Mr. Mincks' left shoulder injury. Dr. Aviles assigned 2 percent upper extremity impairment rating and cited Figures 16-40 and 16-46 of the Fifth Edition of the AMA Guides. (Def. Ex. D, p. 14) Dr. Wenzel assigned 4 percent upper extremity impairment due to the left shoulder injury and cited Figures 16-40, 16-43, and 16-46 of the AMA Guides. (Cl. Ex. 1, p. 13) Neither party contends that either doctor's rating is erroneous under the Guides. I find Dr. Wenzel's report provides more detail in how he reached his rating. I find claimant sustained 4 percent upper extremity impairment due to the left shoulder injury.

Next, Mr. Mincks is seeking temporary total or healing period benefits from December 7, 2020 to March 9, 2021. Defendants stipulate that claimant was off work during this period. (Hearing Report, paragraph 4) However, defendants dispute Mr. Mincks' entitlement to temporary benefits because they contend that he rejected light duty work.

On December 3, 2020, the defendants sent Mr. Mincks a letter entitled, "Offer of Alternative Modified Work." (Def. Ex. B, pp. 10-12) The letter explained that as part of the company's return-to-work program, they provided employees with temporary opportunities in the local community to perform light duty work for nonprofit organizations. The company offered Mr. Mincks an opportunity at The Well in Pella, Iowa. The letter advised Mr. Mincks of the location of The Well and who his supervisor would be. On Monday, December 14, 2020, at 2:30 p.m. he was to meet with Tabitha Vos at the Well to discuss the opportunity, confirm his schedule, and The Well would answer any questions Mr. Mincks might have. The start date of his temporary work assignment was Monday, December 21, 2020, at 8:00 a.m. His hours were Monday through Friday from 8:00 a.m. until 4:30 p.m. with a 30-minute lunch break. Mr. Mincks was instructed to bring his own mask. The letter explained his work duties, wages, dress codes, and other details. There was a place at the end of the letter where Mr. Mincks was to indicate if he was willing to accept the temporary work offer or if he was refusing it. The letter advised Mr. Mincks that pursuant to Iowa Code section 85.33 and 85.34 if he did not accept the offered work he must set forth the reason for his refusal in writing. (Def. Ex. B, pp. 10-12) The letter also stated that "[d]uring the period of refusal there may be forfeiture of wage loss benefits unless the work refused is not suitable." (Def. Ex. B, p. 12)

On December 8, 2020, Mr. Mincks hand wrote on the letter that he refused to accept the temporary work offer. He signed the letter and wrote the reason for his refusal was "Covid-19 still going up or spiking up in Iowa. I feel safer at home. Hate wearing mask." (Def. Ex. C, p. 13) Mr. Mincks testified that he signed and dated the refusal, took a picture of the document, and emailed it to the workers' compensation woman. (Tr. pp. 30-31) After this written refusal someone, he believes it was the workers' compensation woman, called or sent him a text message and encouraged him to reconsider his refusal. She urged Mr. Mincks to go to The Well and meet with the woman, have an interview,

and see what happens. (Tr. pp. 30-31) On Monday, December 14, 2020, Mr. Mincks did go to The Well. He sat with a woman at The Well and had an interview. He felt the interview went well. He explained that he was still going to physical therapy twice a week and he would need to leave work for those appointments. He would need to punch out around 2:30 to get to therapy in Knoxville on time and would likely not return until approximately 15 minutes before his shift ended. Mr. Mincks did not think driving back from Knoxville to Pella after therapy for 15 more minutes of work made much sense. However, he was willing to work at The Well. At the end of the interview, he asked if he was going to be hired. The woman at The Well told Mr. Mincks that he would receive a phone call the next day; he never heard from anyone. (Tr. pp. 31-32, 52-54) Mr. Mincks' testimony on this issue is unrebutted.

First, claimant argues that there is no medical evidence in the record to confirm that Dr. Aviles had released Mr. Mincks to any work before March 9, 2021. Claimant seems to argue that the work offered to him was not suitable. I find that claimant's December 8, 2020 written refusal was not based on suitability. Rather, the refusal states it was due to the requirement that he wear a mask and the recent spike in COVID-19 cases.

Second, claimant argues that ultimately he did not refuse the work. I find that the defendants made a written offer of light duty work dated December 2, 2020. I find that the light duty work was to begin on December 21, 2020. I further find that on December 8, 2020, claimant signed a written refusal of that work. I find that after claimant submitted his written refusal, but before the December 14, 2020 job interview, a representative of the defendants urged Mr. Mincks to reconsider and attend the job interview. I find that Mr. Mincks did attend the December 14, 2020 job interview and expressed his willingness to perform the offered work. I find that at the end of that interview Mr. Mincks was told that he would receive a phone call that would advise him if he got the job. I find he did not receive said phone call. I find that on December 14, 2020 when Mr. Mincks attended the job interview and expressed his willingness to accept the job offer, he rescinded his refusal of light duty work, which was set to begin on December 21, 2020. I find Mr. Mincks did not refuse to accept the suitable work offered in the December 2, 2020 letter. Rather, I find that defendants did not offer light duty work to Mr. Mincks.

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. 6.904(3)(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).

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).

Claimant alleges he sustained permanent disability to his right knee as the result of the August 6, 2020 work injury. Based on the above findings of fact, I conclude that the opinions of Dr. Aviles and Dr. Doty are more persuasive than the opinion of Dr. Wenzel. Thus, I conclude that claimant failed to prove by a preponderance of the evidence that he sustained permanent disability to his right knee as the result of the work injury. Thus, claimant has failed to show entitlement to any permanent partial disability benefits for his right knee.

Next, claimant contends he sustained permanent disability to his left shoulder as the result of the work accident.

One of the issues in this case is whether claimant's injury extends to the body as a whole and is compensated as an industrial disability under Iowa Code section 85.34(2)(v), or whether the injury is limited to the shoulder and is compensated as a functional loss under Iowa Code section 85.34(2)(n).

In 2017, the Iowa Legislature amended Iowa Code section 85.34. Before the 2017 changes, shoulder injuries were considered proximal to the arm and compensated as a body as a whole injury, under Iowa Code section 85.34(2)(u). Prior to the 2017 changes to Iowa Code section 85.34, a shoulder injury was compensated as an unscheduled injury, and based on industrial disability. See Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161(1949).

One of the changes made to Iowa Code section 85.34 in 2017, dealt with the shoulder. The legislative changes added the shoulder to the list of scheduled members. Iowa Code section 85.34(2)(n) states: "[f]or the loss of a shoulder, weekly compensation during four hundred weeks." Iowa Code section 85.34(2)(n)(2018). This amendment went into effect on July 1, 2018. The legislature did not define the term "shoulder."

Claimant's injury involves a supraspinatus tear and arthroscopic rotator cuff repair with subacromial decompression and biceps tenotomy. (JE1, pp. 13-15) Injuries to the rotator cuff and biceps tendon constitute injuries to the shoulder under Iowa Code section 85.34(2)(n). Deng v. Farmland Foods, Inc., 972 N.W.2d 727, 728 (Iowa 2022) (injuries to the infraspinatus and labrum are included in the definition of the shoulder); Chavez v. MS Tech. LLC, 972 N.W.2d 662, 665 (Iowa 2022) (claimant who underwent extensive debridement of the labrum, biceps tendon, and subacromial space with biceps tenotomy and a subacromial decompression sustained an injury to the shoulder and not the body as a whole). Given these cases, I conclude claimant failed to prove that any of his injuries or conditions are compensable as unscheduled, whole body injuries under Iowa Code section 85.34(2)(v). I conclude claimant has demonstrated compensation for his scheduled member shoulder under Iowa Code section 85.34(2)(n).

Having concluded that the disability is a scheduled member evaluated under Section 85.34(2)(n), I must now assess the degree of disability to the claimant's left shoulder.

In all cases of permanent partial disability described in paragraphs "a" through "t", or paragraph "u" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the Guides to the Evaluation of Permanent Impairment, published by the American Medical Association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "t", or paragraph "u" when determining functional impairment and not loss of earning capacity.

After reviewing all the evidence in the record related to claimant's extent of impairment under the AMA Guides, I conclude claimant has demonstrated that he sustained 4 percent right upper extremity impairment as the result of the August 6, 2020, work injury.

Permanent partial disability compensation for the shoulder shall be paid based on a maximum of 400 weeks. Iowa Code section 85.34(2)(n). Dr. Wenzel's 4 percent upper extremity impairment rating entitles claimant to 16 weeks of PPD benefits. These benefits shall commence on the stipulated commencement date of March 9, 2021. (Hearing Report, paragraph 5). Defendants shall receive credit for the 8 weeks of benefits that they paid claimant prior to the hearing. (Cl. Brief, p. 2)

Claimant is seeking temporary total disability or healing period benefits from December 7, 2020 to March 9, 2021. Because claimant has demonstrated that the August 6, 2020 injury resulted in permanent partial disability, these benefits are properly categorized as healing period benefits. Iowa Code states:

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.

Iowa Code section 85.34(1).

The general rule in Iowa is that the workers' compensation statutes should be interpreted liberally for the benefit of the injured worker. Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018); Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250 (Iowa 2010); Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387 (Iowa 2009); 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995).

There is no dispute that claimant was off work from December 7, 2020 to March 9, 2021. However, defendants contend that they offered claimant light duty work and because he initially refused the work, claimant is not entitled to healing period benefits.

Iowa Code states:

3. a. If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employer offers the employee suitable work and the employee refuses to accept the suitable work offered by the employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. Work offered at the employer's principal place of business or established place of operation where the employee has previously worked is presumed to be geographically suitable for an employee whose duties involve travel away from the employer's principal place of business or established place of operation more than fifty percent of the time. If suitable work is not offered by the employer for whom the employee was working at the time of the injury and the employee who is temporarily, partially disabled elects to perform work with a different employer, the employee shall be compensated with temporary partial benefits.

b. The employer shall communicate an offer of temporary work to the employee in writing, including details of lodging, meals, and transportation, and shall communicate to the employee that if the employee refuses the offer of temporary work, the employee shall communicate the refusal and the reason for the refusal to the employer in writing and that during the period of the refusal the employee will not be compensated with temporary

partial, temporary total, or healing period benefits, unless the work refused is not suitable. If the employee refuses the offer of temporary work on the grounds that the work is not suitable, the employee shall communicate the refusal, along with the reason for the refusal, to the employer in writing at the time the offer of work is refused. Failure to communicate the reason for the refusal in this manner precludes the employee from raising suitability of the work as the reason for the refusal until such time as the reason for the refusal is communicated in writing to the employer.

Iowa Code section 85.33(3)(a)(b).

Based on the above findings of fact, I conclude that defendants sent a written offer of light duty work to the claimant in a letter dated December 2, 2020. I also conclude that the light duty work was scheduled to begin on December 21, 2020. On December 8, 2020, claimant signed a written refusal of the light duty work. At the request of a representative of the defendants, claimant reconsidered his refusal and attended the job interview on December 14, 2020. At the conclusion of the interview, the interviewer told claimant that they would contact him the next day about whether he had the job or not. I conclude that defendants' urging claimant to reconsider his refusal, his attendance at the job interview, and his communication to the interviewer that he was willing to perform the light duty work demonstrated that the claimant rescinded his December 8, 2020 refusal of light duty work. I conclude defendants failed to demonstrate by a preponderance of the evidence that they offered him light duty work from December 7, 2020 to March 9, 2021. Thus, claimant has demonstrated entitlement to healing period benefits from December 7, 2020 to March 9, 2021.

Next, claimant is seeking reimbursement in the amount of \$3,599.00 for the IME conducted by Dr. Wenzel on April 20, 2021. Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination. On the hearing report, defendants dispute claimant's entitlement to reimbursement. Defendants do not articulate an argument on why claimant's entitlement to reimbursement of the IME is disputed. On March 10, 2021, Dr. Aviles issued his opinion regarding permanent disability. I find that the prerequisites of section 85.39 were met. Thus, I conclude claimant has demonstrated entitlement to reimbursement of the IME in the amount of three thousand five hundred ninety-nine and no/100 dollars (\$3,599.00). (Cl. Ex. 3, p. 20)

Finally, claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the Iowa Workers' Compensation Commissioner or the deputy hearing the case. 876 IAC 4.33. I find that claimant was somewhat successful in his claim and exercise my discretion and find that an assessment of costs against the defendants is appropriate. Specifically, claimant seeks costs in the amount of \$103.00 for the petition filing and processing fee. I find that this is an appropriate cost under 876 IAC 4.33(7).

Thus, defendants are assessed costs in the amount of one hundred three and no/100 dollars (\$103.00).

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of seven hundred sixty and 75/100 dollars (\$764.75).

Defendants shall pay healing period benefits from December 7, 2020 to March 9, 2021.

Defendants shall pay 16 weeks of permanent partial disability benefits commencing on the stipulated commencement date of March 9, 2021.

Defendants shall be entitled to credit for all weekly 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 shall reimburse claimant for the independent medical examination in the amount of three thousand five hundred ninety-nine and no/100 dollars (\$3,599.00). Defendants shall reimburse claimant costs 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 11th day of August, 2023.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Clarissa Rietveld (via WCES)

John S. Culter (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, 10A) 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.