

5. The alleged injury is a cause of permanent disability.
6. The disability is an industrial disability.
7. The commencement date for permanent partial disability benefits is February 4, 2019.
8. At the time of the alleged injury Thompson's gross earnings were \$738.00 per week, he was married and entitled to two exemptions, and the parties believe his weekly rate is \$485.09.
9. Following the hearing Winnebago agreed to pay Thompson's medical bills set forth in Exhibit 6 and medical benefits are no longer in dispute.
10. Prior to the hearing Winnebago paid Thompson fifty-five weeks of compensation at the weekly rate of \$485.09.
11. Costs have been paid.

ISSUES

1. What is the extent of Thompson's disability?
2. Should costs be assessed against either party?

FINDINGS OF FACT

Thompson lives in Leland, Iowa with his wife. (Transcript, page 10) At the time of the hearing he was sixty-one. (Tr., p. 10)

Thompson attended high school through the eleventh grade and later completed a GED in 1977. (Exhibit G, p. 26; Tr., p. 11) In 2007, Thompson earned an Associate of Applied Science degree in business administration with a concentration in business management from Hamilton College. (Ex. G, p. 26; Tr., pp. 11-12) In 2008 Thompson earned a Bachelor of Science degree in management with a concentration in business administration from Kaplan University. (Ex. G, p. 26; Tr., p. 12)

After leaving high school Thompson worked as a dishwasher for Clear Lake High School part-time for a year. (Tr., p. 13) Thompson left the position when Winnebago hired him. (Tr., p. 13) Thompson was responsible for banding and installing windshield wipers, performing body work and grinding, and assisting with in putting in windshields. (Tr., p. 13) Thompson reported the windshields weighed over thirty pounds. (Tr., p. 14)

From 1979 through 1987, Thompson worked as the manager of Lake Truck Oasis in Clear Lake until the business was sold. (Tr., pp. 14, 16-17) Thompson hired and supervised employees, ordered inventory, stocked shelves, obtained fuel from the pipeline, and unloaded semi-tractor trailers. (Tr., p. 14) Thompson reported the

position required him to lift over fifty pounds and involved frequent bending and twisting. (Tr., pp. 15-16)

Thompson next worked for K-Way, a gas station in Forest City, as an attendant or cashier. (Tr., p. 17) Thompson was responsible for unloading the inventory and stocking shelves. (Tr., p. 17) Thompson agreed the inventory sometimes exceeded fifty or thirty pounds. (Tr., p. 18)

Thompson was not receiving enough hours with K-Way, and North Central Human Services in Forest City hired him to assist persons with disabilities with activities of daily living in a group home. (Tr., pp. 18-19) The business changed hands, but Thompson continued to do the same duties when the business was acquired by Mosaic. (Tr., pp. 18-19) The position required Thompson to be able to lift at least fifty pounds. (Tr., pp. 19-20) Thompson worked in the group home from 1989 through 2019. (Tr., p. 20) At times Thompson worked full-time, and at other times he worked as a substitute caregiver. (Tr., p. 20)

In 1997 Thompson opened Blue Moon Bar and Grill. (Tr., p. 21) Thompson lifted cases of beer and kegs, ordered inventory, cooked food, served food, and cleaned the establishment. (Tr., p. 21) In 2003 Thompson sold the business and accepted a position as a route driver for Hermel, a vending company. (Tr., pp. 21-22) The position with Hermel required Thompson to be able to lift fifty to eighty pounds, and involved frequent bending and twisting. (Tr., pp. 22-23) All of the positions Thompson held through Hermel required him to be on his feet and were not sedentary. (Tr., p. 23)

Thompson injured his shoulders and his position with Hermel ended in 2005. (Tr., pp. 23-24) Thompson returned to full-time work with North Central Human Services. (Tr., p. 24) Thompson continued to work full-time for North Central Human Services until he returned to Winnebago as a full-time machine operator in 2015. (Tr., p. 24) After he commenced his employment with Winnebago Thompson continued to work for Mosaic as a substitute. (Tr., p. 20)

Thompson testified when he returned to work for Winnebago in 2015, his general health was good and he did not have any restrictions or limitations on his activities because of his prior injuries. (Tr., p. 26) Thompson underwent a pre-employment physical with Winnebago, which he passed. (Tr., p. 26) The machine operator position description provides, the position involves medium work, requiring the ability to exert up to fifty pounds of force occasionally, up to twenty pounds of force frequently, and up to ten pounds of force constantly. (Ex. 4, p. 24) Thompson agreed the position required him to stoop, bend, stand, and walk. (Tr., p. 25)

The evening of November 14, 2017, Thompson was emptying an industrial-sized garbage can into a dumpster at Winnebago when he felt something pull on the left side of his abdomen. (Tr., p. 27) Thompson reported his work injury to Winnebago. (Tr., p. 27) Thompson continued his shift and when he went home he noticed a bulge on the left-hand side of his abdomen when he was taking a shower. (Tr., p. 28)

On November 15, 2017, Thompson attended an appointment with his personal physician, Byron Carlson, M.D., complaining of random abdominal pain located in the midline he described as ripping. (JE 1, p. 1) Thompson reported the pain had an onset on November 14, 2017 when he was lifting at work and he noticed a bulge. (JE 1, p. 1) Dr. Carlson noted Thompson had a history of diabetes mellitus, type two, hypertension, hyperlipidemia, and peripheral neuropathy. (JE 1, p. 1) Thompson had been prescribed hydrocodone for pain, as needed, in January 2017. (JE 1, p. 2) Dr. Carlson assessed Thompson with abdominal pain, recommended an abdominal ultrasound, and imposed a ten pound lifting restriction. (JE 1, p. 4)

Thompson prepared an incident report for the injury on November 16, 2017. (Ex. 3, p. 22) Thompson relayed he had a similar problem in the past, noting he had a hernia six years ago that was not work-related. (Ex. 3, p. 22) Thompson provided Winnebago with his restrictions and Winnebago arranged for medical care for Thompson a few weeks later. (Tr., pp. 28-30) Thompson continued to work for Winnebago doing his normal job without restrictions. (Tr., p. 30)

Thompson received an abdominal ultrasound on November 24, 2017. (JE 2, p. 30) The reviewing radiologist found there appeared to be a new left lower quadrant ventral hernia containing both fat and bowel, and recommended a noncontrast computerized tomography scan. (JE 2, p. 30)

On December 14, 2017, Thompson attended a surgical consultation with Jeffrey Rowe, M.D. (JE 3, p. 36) Dr. Rowe noted Thompson had a history of undergoing a perforated diverticulitis surgery, colostomy takedown, incarcerated right inguinal hernia surgery, and an incarcerated hernia in the right groin that needed a midline incision in 2015 that had a hard time healing. (JE 3, p. 36) Dr. Rowe also noted Thompson had undergone left carpal tunnel surgery, back surgery, a right rotator cuff repair, and right carpal tunnel surgery. (JE 3, p. 36) Dr. Rowe listed an impression of a new hernia in need of a large hernia repair. (JE 3, p. 37) On December 14, 2017, Dr. Carlson continued Thompson's ten pound lifting restriction for six months. (JE 1, p. 5) Thompson testified that following hernia surgery in 2015 he was released without restrictions. (Tr., p. 32)

Thompson returned to Dr. Rowe on January 10, 2018. (JE 3, p. 39) During the appointment the workers' compensation nurse inquired whether Thompson's condition was caused by or made worse by his work and Dr. Rowe declined to give an opinion. (JE 3, p. 39) Dr. Rowe listed an impression of a left-sided abdominal hernia and recommended a referral to a tertiary care center for a complex ventral hernia repair. (JE 3, p. 41)

On January 28, 2018, Thompson went to the Mercy Medical Center Emergency Department, complaining of worsening abdominal and bilateral inner thigh pain radiating from his left upper buttocks to his left thigh. (JE 2, p. 31) Hospital staff noted Thompson had a history of diverticulitis. (JE 2, p. 31) Thompson reported he was

concerned he may have developed a third abdominal hernia. (JE 2, p. 31) Thompson underwent an abdominal and pelvic computerized tomography scan,

On February 5, 2018, Paul Conte, M.D., a surgeon, conducted an independent medical examination of Thompson for Winnebago. (JE 4) Dr. Conte reviewed Thompson's medical records and examined him. (JE 4) Dr. Conte noted Thompson has a complicated past medical history, including

abdominal exploration for perforated diverticulitis and did undergo a colostomy. Following that he had to have re-operation for takedown of his colostomy and re-anastomosis of his colon. After this he did develop a ventral hernia which was repaired with mesh. Years later, he had a right inguinal hernia that presented with incarceration and he had repair and an exploratory laparotomy through his midline abdomen to assess that the bowel was not injured, making a total of four midline abdominal surgeries.

(JE 4, p. 42) Dr. Conte noted in 2015, Thompson received imaging that showed a chronic right-sided abdominal ventral hernia, but he did not really have any symptoms from that. (JE 4, p. 42) Dr. Conte documented on November 14, 2017, Thompson was lifting an industrial size trashcan at work and he felt a bulging pop in his left side and he was seen by Dr. Carlson, his family physician, and then referred to Dr. Rowe. (JE 4, p. 42)

Dr. Conte opined Thompson's injury was consistent with his description of his injury at work and the mechanism is reasonable and likely the cause of the new herniation and worsening of the pre-existing herniated area. (JE 4, p. 43) Dr. Conte noted the condition was a material aggravation, which would not improve without surgical correction, and he recommended surgery. (JE 4, p. 43) Dr. Conte found Thompson could continue his current work level and restrictions with no overtime, and recommended the surgery be performed at a tertiary care center. (JE 4, pp. 43-45)

On February 28, 2018, Thompson attended an appointment with Kent Choi, M.D., a surgeon with the University of Iowa Hospitals and Clinics ("UIHC"). (JE 5, p. 46) Dr. Choi noted the following history:

[o]riginally, he underwent Hartman's procedure for perforated diverticulitis about 25 or 30 years ago at an OSH followed by reversal. He then underwent an incisional hernia repair with mesh in 1992 done in Mason City, Iowa. He has also had open right inguinal hernia repair with mesh in 2015. He then noticed a bulge in his abdomen in November 2017. The bulge causes him constant pain that is sometimes sharp and sometimes pressure quality. The pain is worst in his LLQ and sometimes radiates down into his left leg. Overeating makes the pain worse. The pain times keeps him up at night. He also notes a chronic nonhealing wound next to his umbilicus for the past 3 years. The wound occasionally drains.

(JE 5, p. 46) Dr. Choi assessed Thompson with a recurrent ventral hernia and ordered Thompson to quit smoking before he would perform surgery. (JE 5, p. 49)

Thompson quit smoking and Dr. Choi agreed to perform the surgery. (JE 5, pp. 50, 54) On May 25, 2018, Thompson underwent a large hernia repair at the UIHC. (JE 5, p. 54) Dr. Choi documented he found an “[e]xtensive intra-abdominal adhesion throughout the entire abdomen. Very poor quality of fascia along the midline. The left rectus muscle was nearly completely destroyed.” (JE 5, pp. 54-55)

Thompson complained of pain in his wound and bloating in his abdomen. (JE 5, p. 61) Thompson underwent an abdomen and pelvic computerized tomography scan on August 1, 2018. (JE 5, p. 57) The reviewing radiologist noted Thompson had a large subcutaneous fluid collection immediately anterior to the hernia repair. (JE 5, p. 58) On August 7, 2018, Dr. Choi diagnosed Thompson with an abdominal wall seroma, and supervised the draining of the seroma. (JE 5, pp. 60-62)

On August 17, 2018, Thompson returned to the UIHC reporting the bloating had returned, but was not as severe as it was before his seroma had been drained. (JE 5, p. 63) Thompson received an abdominal ultrasound, which revealed additional fluid collection. (JE 5, p. 64) Cheryl Byrnes, ARNP, discussed the case with Dr. Choi and Thompson underwent an ultrasound-guided seroma drainage. (JE 5, p. 65)

Thompson attended a follow-up appointment the UIHC on August 31, 2018. (JE 5, p. 66) Thompson relayed he was doing well with light-duty work, denied having abdominal pain, but reported some bloating had returned. (JE 5, p. 66) Byrnes ordered Thompson to pack his wound twice per day and continued his ten pound lifting restriction. (JE 5, p. 67)

On October 2, 2018, Thompson returned to Dr. Carlson complaining of moderate, achy abdominal pain for the past three weeks, which caused nausea and a change in appetite. (JE 1, p. 6) Thompson advised he had undergone triple hernia surgery in May 2018, he had been on light duty, and fluid had built up in his abdomen, which had been removed. (JE 1, p. 6)

On October 10, 2018, Thompson returned to Dr. Choi reporting he was having abdominal pain, but his bloating had improved. (JE 5, p. 68) Thompson expressed he was discouraged and uncertain if he would be able to return to full duty. (JE 5, p. 68) Thompson underwent an abdominal ultrasound, which showed fluid collection in his abdomen, and Dr. Choi supervised an ultrasound guided drainage of the seroma. (JE 5, pp. 69-74)

Thompson attended a follow-up appointment with Dr. Carlson on November 7, 2018, complaining of moderate abdominal pain, which was recurring and had worsened, bloating, blood in his stool, constipation, diarrhea, fever, and nausea. (JE 1, p. 10) Dr. Carlson assessed Thompson with periumbilical abdominal pain, diarrhea, and chronic

pain of both shoulders, and recommended Thompson undergo an abdominal ultrasound. (JE 1, p. 14)

Thompson underwent an abdominal ultrasound on November 8, 2018, which was compared to a computerized tomography scan from January 28, 2018. (JE 2, p. 33) The reviewing radiologist listed an impression of a suspected fat necrosis and postoperative seroma within the anterior abdominal wall at the site of the ventral hernia repair, no evidence of a recurrent hernia, and no significant abnormality of the intra-abdominal contents. (JE 2, p. 33)

In 2019, Mosaic terminated Thompson's employment because it could not accommodate his work restrictions. (Tr., pp. 20, 51)

Sunil Bansal, M.D., an occupational medicine physician, conducted an independent medical examination for Thompson on November 8, 2019, and issued his report on December 13, 2019. (Ex. 1) Dr. Bansal reviewed Thompson's medical records and examined him. (Ex. 1) In his report, Dr. Bansal summarized medical records from Dr. Choi that document Thompson's full history of multiple abdominal surgeries. (Ex. 1) In the "Prior Injuries" section of his report, Dr. Bansal noted "Mr. Thompson underwent an inguinal hernia repair in 1992, on the opposite side. He recovered following this hernia surgery without any difficulties. He had no problems digesting food prior to his recent hernia surgery." (Ex. 1, p. 11) Dr. Bansal did not discuss or analyze Thompson's full surgical history.

Dr. Bansal assessed Thompson with a recurrent ventral hernia with infected mesh and recurrent incisional seroma accumulations requiring subcutaneous drainage, and agreed with Dr. Choi that Thompson reached maximum medical improvement on February 4, 2019. (Ex. 1, p. 13) Using the AMA Guides, Dr. Bansal opined:

hernias can be rated according to Table 6-9 on page 136. He meets the criteria from a class 2, with some overlap into class 3. He has frequent discomfort, seroma formation with intermittent oozing, he is precluded from heavy lifting, and he has limitations in activities of daily living. For his complex hernia case, he is assigned a **19% whole person impairment**.

(Ex. 1, p. 13) Dr. Bansal assigned Thompson a sedentary level restriction with occasional lifting of ten pounds with rare bending or twisting and noted Thompson will require periodic ultrasound-guided aspirations of his seroma and if his hernia recurs he will require reconstructive surgery. (Ex. 1, p. 14)

On November 9, 2018, Thompson returned to Dr. Carlson, complaining of moderate and recurring right upper quadrant abdominal pain with diarrhea. (JE 1, p. 16) Dr. Carlson reviewed the ultrasound results and provided a return to work note with the restrictions recommended by the UIHC. (JE 1, p. 20)

Thompson contacted Byrnes on November 11, 2018, complaining of pain and reporting he had undergone an ultrasound that showed fluid had collected in his abdomen. (JE 5, p. 75) Thompson expressed he was worried Winnebago would terminate his employment and reported he was not getting much sleep. (JE 5, p. 75) Byrnes documented she advised Thompson she did not believe the fluid collection would be causing pain and offered to make a referral to a local pain clinic. (JE 5, p. 75)

On November 15, 2018, Thompson called Dr. Carlson's office, complaining of fluid in his abdomen and that he was experiencing a lot of pain since he returned to work and requesting an increase in his medication. (JE 1, p. 22) Dr. Carlson noted Thompson was already on a lot of pain medication and he would not increase his medication. (JE 1, p. 22)

Thompson returned to Dr. Choi on November 20, 2018, reporting he was experiencing intermittent lower abdominal pain and that he worried about the fluid collection and about being on his feet too much. (JE 5, p. 76) Dr. Choi ordered an abdominal ultrasound, which revealed some fluid collection. (JE 5, pp. 78-79) Dr. Choi assessed Thompson with an abdominal wall seroma, status-post repair of ventral hernia, and chronic abdominal pain. (JE 5, p. 79) Dr. Choi noted Thompson's recurrent abdominal wall seroma was slowly improving, referred him to a local pain clinic for evaluation and treatment, ordered Thompson to wear an abdominal binder at all times, advised Thompson the seroma was not likely to be causing the pain and his body should slowly reabsorb the fluid, and advised Thompson he may never return to his pre-injury status, but he needed to be as active as possible. (JE 5, pp. 79-80)

On November 28, 2018, Thompson attended an appointment with Dr. Carlson, complaining of moderate, constant, right upper and left lower quadrant abdominal wall pain. (JE 1, p. 23)

On February 4, 2019, Thompson returned to Dr. Choi, reporting he was experiencing abdominal pain, which had improved since surgery, and that he had reduced his use of hydrocodone and Tramadol. (JE 5, p. 81) Thompson noted he had been doing well with light-duty work, but he could "feel it" at the end of the day. (JE 5, p. 81) Dr. Choi ordered an abdominal and pelvic computerized tomography scan, noted the seroma was slowly improving and that it was best to leave it alone, determined Thompson had reached maximum medical improvement from a surgical standpoint, and discussed Thompson's job requirements and lifting restrictions. (JE 5, pp. 81-84) Byrnes issued a medical excuse noting Thompson had reached maximum medical improvement, documented the UIHC staff believed Thompson may not be able to return to full duty, and recommended he be evaluated by physical medicine and rehabilitation. (JE 5, p. 85) Byrnes noted until he was evaluated by physical medicine and rehabilitation Thompson should continue to perform light-duty work with no lifting over ten pounds. (JE 5, p. 85)

After Thompson's work injury Winnebago offered Thompson light-duty work. (Tr., p. 45) After Dr. Choi found Thompson had reached maximum medical

improvement, Winnebago discontinued his light-duty work and he was subject to layoff. (Tr., p. 46) Thompson has not worked since his light-duty work with Winnebago ended. (Tr., p. 46)

On May 8, 2019, Charles Mooney, M.D., an occupational medicine physician, conducted an independent medical examination of Thompson for Winnebago. (Ex. B) Dr. Mooney reviewed Thompson's medical records and examined him. (Ex. B) Dr. Mooney assessed Thompson with status-post extensive ventral hernia with mesh placement with recurrent seroma and chronic abdominal pain. (Ex. B, p. 4) Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides 5th Edition"), Dr. Mooney assigned Thompson a permanent partial impairment rating of thirteen percent of the whole person because he has frequent discomfort precluding heavy lifting, but not hampering most activities of daily living. (Ex. B, p. 5) Dr. Mooney noted it would be difficult to test Thompson based on his current level of complaints, noting a functional capacity evaluation could be conducted, and he found a ten pound lifting restriction appropriate, noting the abdominal surgery would not preclude standing, walking, or light bench work. (Ex. B, p. 5) On June 4, 2019, Thompson underwent a functional capacity evaluation, which the evaluator determined was invalid. (Ex. D, p. 9)

Thompson received an abdominal ultrasound on July 23, 2019. (JE 2, p. 34) The reviewing radiologist noted there was anterior abdominal wall fluid collection. (JE 2, p. 33a) On August 23, 2019, Thompson underwent an ultrasound guided anterior abdominal wall seroma aspiration with Bryan Navarette, M.D. (JE 2, pp. 33b-35)

On November 6, 2019, Thompson attended an appointment at the Hancock County Health Systems Pain Clinic with Dean Heideman, CRNA, for pain treatment. (JE 6, p. 86) Heideman documented Thompson had undergone three left shoulder surgeries and one right shoulder surgery that "causes him sharp, stabbing, dull, aching pain that he is rating a 7/10. He says that weather and movement of his shoulders makes his arm worse." (JE 6, p. 86) Thompson also reported he was experiencing abdominal pain he described as sharp, stabbing, dull, aching, and burning. (JE 6, p. 86) Thompson also reported problems with sleeping. (JE 6, p. 86) Heideman found that hydrocodone for pain and nortriptyline for sleep would be appropriate. (JE 6, p. 86)

On November 11, 2019, Thompson called Dr. Carlson's office reporting he had fluid buildup in his stomach that needed to be drained and requesting an ultrasound. (JE 1, p. 26) Dr. Carlson scheduled an ultrasound guided aspiration of Thompson's abdominal wall seroma. (JE 1, p. 26)

Thompson attended an appointment with Megan Brewer, a physician's assistant working with Dr. Carlson on November 12, 2019. (JE 1, p. 27) Brewer assessed Thompson with bilateral lower abdominal discomfort and an abdominal wall seroma and recommended an ultrasound guided paracentesis. (JE 1, p. 27)

At the request of Winnebago, Dr. Mooney issued a supplemental opinion on November 18, 2019, after reviewing the results of a functional capacity evaluation performed on June 4, 2019. (Ex. B, p. 6) Dr. Mooney opined his opinion on the permanent partial impairment rating remained unchanged, noting:

I have had the opportunity to review the findings of the functional capacity evaluation performed on 6/4/2019. It demonstrates an inconsistent and invalid performance. It is my opinion that Mr. Thompson should be able to function within the light duty capacity. It is my opinion that the use of an abdominal support device, would allow him to perform active lifting of at least 20 pounds. It is my opinion that no other specific restrictions would be indicated.

It is my opinion that Mr. Thompson's pre-existing diabetes and prior right shoulder injury may limit some activities of normal work. His diabetic condition may interfere with prolonged standing and walking, and his right shoulder condition may interfere with overhead or above shoulder tasks. The findings of the functional capacity evaluation do not specifically evaluate for these issues.

(Ex. B, p. 6)

Lana Sellner, M.S., C.R.C., conducted a vocational analysis for Winnebago in December 2019 and issued her report on January 21, 2020. (Ex. E) Sellner noted Dr. Bansal assigned Thompson a sedentary level restriction with occasional lifting up to ten pounds with rare bending and twisting, and Dr. Mooney assigned Thompson a twenty pound lifting restriction using an abdominal support device and finding he could perform light-duty work, with no other restrictions, noting his pre-existing diabetes and prior right shoulder injury may limit some activities of normal work. (Ex. E, p. 19) At the time of her analysis, Thompson was still employed by Winnebago, on leave, given Winnebago could not accommodate his restrictions. (Ex. E, p. 21)

Sellner noted Thompson is able to perform work in the light to medium demand level. (Ex. E, p. 21) Sellner inquired whether Thompson would be willing to accept vocational services from her and he indicated he would work with her to explore opportunities, but he remained employed by Winnebago and he hoped Winnebago would have something for him and he did not want to terminate his employment because he enjoyed his job and light-duty work. (Ex. E, p. 21) Sellner noted Thompson has acquired skills that are within the sedentary to light work field along with education, noting viable jobs he could pursue include light production work, residential supervisor, retail manager, customer service, front desk, night auditor, routing clerk, transporter (driver), security receptionist, gate guard, and entry-level sales that are positions available in his geographic area. (Ex. E, p. 21)

Phil Davis, M.S., conducted a vocational analysis for Thompson on January 28, 2020. (Ex. 2) Davis noted Dr. Choi imposed a lifting restriction of ten pounds with a

recommendation of further evaluation by a physiatrist, Dr. Mooney assigned a twenty pound lifting restriction, and Dr. Bansal assigned Thompson a sedentary level restriction with occasional lifting up to ten pounds with rare bending and twisting. (Ex. 2, p. 18) Davis documented Winnebago had stopped accommodating Thompson's restrictions and that Winnebago would contact him if they had a position available within his restrictions. (Ex. 2, pp. 18-19) Davis noted Thompson had been terminated by Mosaic because Mosaic could not accommodate his restrictions. (Ex. 2, p. 19)

Davis noted the majority of Thompson's past work was within the medium classification and taking into consideration the restrictions set forth by Drs. Choi, Mooney, and Bansal, Thompson is limited to work in the sedentary physical demand level. (Ex. 2, pp. 19-20) Davis opined Thompson was 100 percent physically unable to perform the essential functions required of his past work, as supported by his termination from Mosaic and Winnebago's inability to accommodate his restrictions. (Ex. 2, p. 20) Davis did not identify any transferable skills Thompson currently possesses, opined Thompson has sustained a ninety percent loss of access to the labor market and he would require further education or training to obtain full-time employment, and supported Thompson's application for Social Security Disability Insurance. (Ex. 2, p. 20)

Thompson applied for Social Security Disability Insurance benefits. (Tr., p. 47) The week of the hearing the Social Security Administration approved his application. (Tr., p. 48)

Thompson testified that as of the date of the hearing his seroma has been drained five or six times since his surgery. (Tr., p. 35) Thompson relayed the seroma is being drained every three months. (Tr., p. 35) Thompson reported he has constant pain in his abdomen and eventually he has to have his seroma drained. (Tr., p. 42) Thompson testified he has difficulty sleeping and is lucky to sleep two hours per night. (Tr., p. 42) Thompson reported sitting or walking too long affects his abdominal pain. (Tr., p. 49)

Thompson has not looked for work since his light-duty work with Winnebago ended in February 2019. (Tr., pp. 45-46, 61) Thompson testified he has not looked for work because Colleen with Winnebago told him there was nothing available for someone who can only lift ten pounds. (Tr., p. 62)

Dr. Conte conducted an independent medical examination of Thompson for Winnebago on February 26, 2020, and issued his report on March 6, 2020. (Ex. I) Dr. Conte opined the mechanism of injury Thompson described occurred at work is reasonable and likely the cause of herniation and worsening of his pre-existing condition, which had improved since surgery. (Ex. I, p. 38) Dr. Conte observed no evidence of a recurrent abdominal herniation on examination, but noted a small effusion about the lower left midline on examination with some tenderness in the area. (Ex. 1, p. 38) Dr. Conte opined Thompson was smoking heavily, which was decreasing the ability of his seroma to heal, but also noted the seroma had been decreasing in size with the

most recent interventions. (Ex. 1, pp. 38-39) Dr. Conte recommended Thompson be weaned off of narcotics as the seroma resolves. (Ex. 1, p. 39) Dr. Conte deferred providing a rating to Thompson under the AMA Guides until his seromas are resolved, and recommended a twenty-five pound weight restriction given Thompson did not have any structural loss of integrity of his abdominal wall. (Ex. 1, p. 39)

Heideman, CRNA, issued a letter stating he believed a ten pound lifting restriction was appropriate and in line with previous recommendations due to Thompson's abdominal hernia condition. (Ex. 8, p. 66) Heideman noted Thompson had been receiving pain treatment for his chronic pain conditions and "[t]he withdrawal of his seroma in his abdomen is performed by a different provider but his medication and other injections" were performed at Heideman's clinic. (Ex. 8, p. 66)

On March 30, 2020, Dr. Choi issued an opinion for Thompson. (Ex. 8, p. 67) Dr. Choi opined:

Mr. Thompson had the index surgery done on May 25, 2018 using pro-grip mesh, which is a permanent mesh material. The mesh is positioned at the extra-peritoneum space and then followed by myofascia flap elevation and advancement to cover the mesh material. The seroma appeared to be developed it in the subcutaneous space which may or may not have any communication with the mesh material. As long as the seroma is not infected, it should not have functional impact on his GI function or overall health. It certainly may result in ongoing discomfort or even limited activity level.

Regarding the permanency of this seroma, it is more likely to resolve it during the early course of its development. At this point, almost 2 years out, it is likely that the seroma will develop a capsule with cells lining the seroma wall, which will continue to secrete serous fluid. This means the seroma will likely remain permanent.

(Ex. 8, p. 67) Dr. Choi documented two options for managing the condition, which he noted he had discussed with Thompson, and he offered to see Thompson again. (Ex. 8, p. 67)

CONCLUSIONS OF LAW

I. Applicable Law

This case involves the issue of extent of disability and the recovery of costs and interest interest under Iowa Code sections 85.34, 86.40, and 535.3. In March 2017, the legislature enacted changes (hereinafter "Act") relating to workers' compensation in Iowa. 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 section 85.34 apply to

injuries occurring on or after the effective date of the Act. This case involves a work injury occurring after July 1, 2017, therefore the new provisions of the law involving extent of disability 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. Extent of Disability

Winnebago found it could not accommodate Thompson's work restrictions when he reached maximum medical improvement in February 2019. At the time of the hearing Thompson was not working. Thompson contends he is permanently and totally disabled. Winnebago rejects his assertion.

This is not a case of functional loss given Winnebago subjected Thompson to layoff when it determined it could not accommodate his restrictions when Dr. Choi found he reached maximum medical improvement and he has not returned to employment. Iowa Code § 85.34(2)(v). Therefore, compensation "shall be paid" in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(v). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34(2).

"Industrial disability is determined by an evaluation of the employee's earning capacity." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 852 (Iowa 2011). In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee's "ability to be gainfully employed." Id. at 138. The deputy workers' compensation commissioner is also to consider the number of years in the future it is reasonably anticipated the claimant would work at the time of the injury. Iowa Code § 85.34(2)(v).

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). When considering the extent of disability, the deputy commissioner considers all evidence, both medical and nonmedical. Evenson v. Winnebago Indus., Inc., 881 N.W.2d 360, 370 (Iowa 2016).

The Iowa Supreme Court has held, "it is a fundamental requirement that the commissioner consider all evidence, both medical and nonmedical. Lay witness

testimony is both relevant and material upon the cause and extent of injury.” Id. at 369 (quoting Gits Mfg. Co. v. Frank, 855 N.W.2d 195, 199 (Iowa 2014)).

In Iowa, a claimant may establish permanent total disability under the statute, or through the common law odd-lot doctrine. Michael Eberhart Constr. v. Curtin, 674 N.W.2d 123, 126 (Iowa 2004) (discussing both theories of permanent total disability under Idaho law and concluding the deputy’s ruling was not based on both theories, rather, it was only based on the odd-lot doctrine). Under the statute, the claimant may establish the claimant is totally and permanently disabled if the claimant’s medical impairment together with nonmedical factors totals 100 percent. Id. The odd-lot doctrine applies when the claimant has established the claimant has sustained something less than 100 percent disability, but is so injured that the claimant is “unable to perform services other than ‘those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist.’” Id. (quoting Boley v. Indus. Special Indem. Fund, 130 Idaho 278, 281, 939 P.2d 854, 857 (1997)).

“Total disability does not mean a state of absolute helplessness.” Walmart Stores, Inc. v. Caselman, 657 N.W.2d 493, 501 (Iowa 2003) (quoting IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 633 (Iowa 2000)). Total disability “occurs when the injury wholly disables the employee from performing work that the employee’s experience, training, intelligence, and physical capacities would otherwise permit the employee to perform.” IBP, Inc., 604 N.W.2d at 633.

Two occupational medicine physicians have provided permanent impairment ratings pursuant to independent medical examinations in this case, Dr. Mooney, who Winnebago retained and Dr. Bansal, who Thompson retained. Dr. Mooney assigned Thompson a permanent partial impairment rating of thirteen percent of the whole person because he has frequent discomfort precluding heavy lifting, but not hampering most activities of daily living, and assigned restrictions of no lifting above twenty pounds with use of an abdominal device, noting Thompson’s pre-existing diabetes may interfere with prolonged standing and walking and his prior right shoulder injury may interfere with overhead or above shoulder tasks. (Ex. B, pp. 5-6) Dr. Bansal assigned a nineteen percent whole person impairment and assigned Thompson a sedentary level restriction with occasional lifting of ten pounds with rare bending or twisting. (Ex. 1, pp. 13-14)

The deputy commissioner, as the trier of fact, must “weigh the evidence and measure the credibility of witnesses.” Pease, 807 N.W.2d at 844-45. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert’s education, experience, training, and practice, and “all other factors which bear upon the weight and value” of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). In weighing the expert opinions, I find Dr. Mooney’s opinion more persuasive than Dr. Bansal’s opinion.

Dr. Bansal reviewed medical records from Drs. Rowe and Choi, which detail Thompson's complicated surgical history. However, in the "Prior Injuries" analysis section of his report, Dr. Bansal notes "Mr. Thompson underwent an inguinal hernia repair in 1992, on the opposite side. He recovered following this hernia surgery without any difficulties. He had no problems digesting food prior to his recent hernia surgery." (Ex. 1, p. 11) In his analysis, Dr. Bansal does not discuss all of the prior surgeries and Thompson's complicated medical history, also noted by Dr. Conte in his report. (Ex. 1, p. 11) Dr. Rowe noted Thompson had a history of undergoing a perforated diverticulitis surgery, colostomy takedown, incarcerated right inguinal hernia surgery, and an incarcerated hernia in the right groin that needed a midline incision in 2015 that had a hard time healing. (JE 3, p. 36) Dr. Choi noted the following history:

[o]riginally, he underwent Hartman's procedure for perforated diverticulitis about 25 or 30 years ago at an OSH followed by reversal. He then underwent an incisional hernia repair with mesh in 1992 done in Mason City, Iowa. He has also had open right inguinal hernia repair with mesh in 2015. He then noticed a bulge in his abdomen in November 2017. The bulge causes him constant pain that is sometimes sharp and sometimes pressure quality. The pain is worst in his LLQ and sometimes radiates down into his left leg. Overeating makes the pain worse. The pain times keeps him up at night. He also notes a chronic nonhealing wound next to his umbilicus for the past 3 years. The wound occasionally drains.

(JE 5, p. 46)

The only physician to recommend bending and twisting restrictions is Dr. Bansal. When he determined Thompson had reached maximum medical improvement Dr. Choi imposed a ten pound lifting restriction on Thompson, but deferred Thompson's permanency rating and restrictions to physical medicine and rehabilitation. Dr. Choi did not recommend any bending or twisting restrictions. Dr. Conte most recently examined Thompson and recommended a twenty-five pound weight restriction given Thompson did not have any structural loss of integrity of his abdominal wall, which is consistent with Dr. Mooney's opinion. (Ex. I, p. 39) For these reasons I find Dr. Mooney's impairment rating most persuasive and adopt his restrictions as Thompson's permanent restrictions.

At the time of the hearing Thompson was sixty-one. (Tr., p. 10) Thompson did not graduate from high school and later earned a G.E.D. (Ex. G, p. 26; Tr., p. 11) Thompson pursued additional education, earning an Associate of Applied Science Degree in business administration, and a Bachelor of Science degree in management. (Ex. G, p. 26; Tr., pp. 11-12) While Thompson has not used his degrees for employment, his ability to obtain a Bachelor of Science degree twelve years ago, as a nontraditional student, shows he has the ability for retraining.

Thompson's past work exceeds his permanent twenty pound lifting restriction. When Dr. Choi found Thompson had reached maximum medical improvement

Winnebago informed Thompson it could not accommodate his need for light-duty work. Mosaic also terminated Thompson because it could not accommodate him. Thompson has sustained a significant disability, but I do not find he has proven he is permanently and totally disabled.

Thompson had not applied for any employment from February 2019 through the date of the hearing in March 2020. He has not shown he is motivated to work.

The parties provided competing vocational opinions. Davis opined Thompson had sustained a ninety percent loss of access to the labor market and that he would require further education or training to obtain full-time employment, noting Thompson is only capable of engaging in sedentary work. (Ex. 2, p. 20) The medical evidence supports Thompson is capable of engaging in sedentary to light work. In rendering his opinion Davis did not identify any transferable skills Thompson currently possesses. (Ex. 2, p. 20) Sellner noted Thompson has acquired skills that are within the sedentary to light work field along with his education, noting viable jobs he could pursue include light production work, residential supervisor, retail manager, customer service, front desk, night auditor, routing clerk, transporter (driver), security receptionist, gate guard, and entry-level sales, which are positions available in his geographic area. (Ex. E, p. 21) I agree with Sellner Thompson has transferable skills from his past relevant work as a manager for Lake Oasis and as the owner of a bar and grill. Thompson has experience with hiring and supervising employees, customer service, maintaining inventory, and maintaining financial records that could transfer to other sedentary and light positions consistent with his restrictions, which is further supported by his educational achievement.

I do not find Thompson is permanently and totally disabled under the statute. I also find Thompson has not established he is permanently and totally disabled under the odd-lot doctrine. Thompson has not applied for any employment and he did not present any evidence of the labor market where he lives. According to Sellner's report, there are positions in Thompson's geographic area he is capable of engaging in that are within his restrictions. Based on all of the factors of industrial disability, I find Thompson has sustained an eighty percent industrial disability.

III. Costs

Thompson seeks to recover the \$100.00 filing fee, \$6.80 for service, and \$1,000.00 cost of Davis's vocational report. (Ex. 7) 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 IAC 4.33(6), provides

[c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by

Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

I find under the rule, Thompson is entitled to recover the \$100.00 filing fee and the \$6.80 service fee. Davis prepared a rebuttal opinion for Thompson after Sellner provided her vocational opinion. Davis's bill is itemized. He charged \$1,000.00 for the report. I find Thompson should be able to recover the cost of the report.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendant shall pay the claimant four hundred (400) weeks of permanent partial disability benefits at the stipulated rate of four hundred eighty-five and 09/100 dollars (\$485.09) per week, commencing on the stipulated commencement date of February 4, 2019.

Defendant is entitled to a credit for benefits paid to date.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. Sanchez v. Tyson, File No. 5052008 (Apr. 23, 2018 Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue).

Defendant shall reimburse the claimant one hundred and 00/100 dollars (\$100.00) for the filing fee, six and 80/100 dollars (\$6.80) for service, and one thousand and 00/100 dollars (\$1,000.00) for Davis's report.

Defendant 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 22nd day of May, 2020.


HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James M. Ballard (via WCES)

Lindsey E. Mills (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.