

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

<p>GARRET REEVES,</p> <p>Claimant,</p> <p>vs.</p> <p>PLYMOUTH COUNTY SOLID WASTE,</p> <p>Employer,</p> <p>IMWCA,</p> <p>Insurance Carrier,</p> <p>Defendants.</p>	<p>File No. 21006846.02</p> <p>ARBITRATION DECISION</p> <p>Headnote: 1803</p>
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**I. STATEMENT OF THE CASE.**

Claimant Garret Reeves seeks workers' compensation benefits from the defendants, employer Plymouth County Solid Waste (County) and insurance carrier IMWCA. The undersigned presided over an arbitration hearing on February 14, 2023. Reeves participated personally and through attorney Al Sturgeon. The defendants participated by and through attorney Ryan Clark. The case was fully submitted with the filing of the parties' post-hearing briefs on April 3, 2023.

**II. ISSUES.**

Under Iowa Administrative Code rule 876—4.19(3)(f), the parties jointly submitted a hearing report defining the claims, defenses, and issues submitted to the presiding deputy commissioner. The hearing report was approved and entered into the record via an order because it is a correct representation of the disputed issues and stipulations in this case. The parties identified the following disputed issues in the hearing report:

- 1) Did the stipulated work injury of January 13, 2021, cause Reeves to sustain sequela?
- 2) What is the nature and extent of permanent disability, if any, caused by the stipulated work injury?
- 3) Is Reeves entitled to future care with Dr. Donlin?

- 4) Is Reeves entitled to taxation of costs against the defendants?

### **III. STIPULATIONS.**

In the hearing report, the parties entered into the following stipulations:

- 1) An employer-employee relationship existed between Reeves and the County at the time of the alleged injury.
- 2) Reeves sustained an injury on January 13, 2021, which arose out of and in the course of his employment with the County.
- 3) The alleged injury is a cause of temporary disability during a period of recovery, but Reeves's entitlement to temporary or healing period benefits is no longer in dispute.
- 4) The commencement date for permanent partial disability (PPD) benefits, if any are awarded, is September 22, 2021.
- 5) At the time of the stipulated injury:
  - a) Reeves's gross earnings were \$909.01 per week.
  - b) Reeves was married.
  - c) Reeves was entitled to three exemptions.
- 6) Prior to hearing, the defendants paid to Reeves five weeks of compensation at the rate of \$607.34 per week.

The parties' stipulations in the hearing report are accepted and incorporated into this arbitration decision. The parties are bound by their stipulations. This decision contains no discussion of any factual or legal issues relative to the parties' stipulations except as necessary for clarity with respect to disputed factual and legal issues.

### **IV. GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT.**

Iowa Code section 85.34(2)(x) requires, "In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" 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." The commissioner has promulgated Iowa Administrative Code rule 876—2.4, which adopts the Fifth Edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment (Guides)* for rating permanent impairment when determining functional disability under section 85.34(2). In accordance with section 85.34(2) and rule

876—2.4, this decision utilizes the Fifth Edition of the *Guides* and all references herein are to that edition unless otherwise noted.

## **V. FINDINGS OF FACT.**

The evidentiary record in this case consists of the following:

- Joint Exhibits JE-1 through JE-2;
- Claimant's Exhibits 1 through 4 and 6 through 7<sup>1</sup>;
- Defendants' Exhibits A through M; and
- Hearing testimony by Reeves, Sheila Reeves, and Alan Herbold, a County employee who supervised Reeves.

After careful consideration of the evidence and the parties' post-hearing briefs, the undersigned enters the following findings of fact.

At the time of hearing, Reeves was 50 years of age. (Hrg. Tr. p. 14) Reeves participated in special education in school and typically received Cs and Ds before dropping out of high school in the twelfth grade. (Hrg. Tr. p. 26) He ultimately obtained his GED. (Hrg. Tr. p. 26) Reeves obtained a commercial driver's license (CDL), but had not obtained any postsecondary certificates or credentials as of the hearing date in this case. (Hrg. Tr. pp. 26, 29–30)

On November 30, 2011, Reeves sustained a right-shoulder injury that consisted of a complete rotator cuff tear while working at Wells Enterprises, Inc. (Hrg. Tr. p. 71; Ex. A, pp. 2–4, 12) Ryan Meis, M.D., provided care and ultimately performed surgery to repair it. (Hrg. Tr. p. 15; Ex. A, pp. 3–7) Reeves underwent an independent medical examination (IME) with Sunil Bansal, M.D., who examined Reeves and recorded the following measurements reflecting the range of motion in his right shoulder:

Flexion:	170, 168, and 170 degrees
Abduction:	160, 158, and 158 degrees
Adduction:	33, 31, and 30 degrees
External Rotation:	90, 87, and 88 degrees
Extension:	40, 42, and 38 degrees
Internal Rotation:	31, 32, and 30 degrees

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<sup>1</sup> Reeves withdrew Exhibit 5. (Hrg. Tr. p. 6)

(Ex. A, pp. 10–11) Dr. Bansal utilized these measurements and the *Guides* to opine the right-shoulder injury caused Reeves to sustain an 8 percent impairment to the right upper extremity, or 5 percent to the whole body, and assigned permanent work restrictions necessitated by the right arm injury that consisted of no lifting greater than 25 pounds occasionally, 15 pounds frequently, or 10 pounds above shoulder height. (Ex. A, p. 13; Ex. B, pp. 17–18)

Dr. Meis was the treating physician for both shoulder injuries. (Ex. B, p. 17) He opined that the injury to Reeves's right shoulder caused him to sustain a 4 percent whole body impairment and assigned no work restrictions. (Ex. B, p. 17) Dr. Meis further opined Reeves sustained a 3 percent whole body impairment from the left shoulder injury. (Ex. B, p. 17) It is unclear based on the record evidence whether Dr. Meis based his functional impairment ratings on any measurements.

Ultimately, Reeves and the defendants entered into a compromise settlement under Iowa Code section 85.35(3) that covered both the injury to his right shoulder of November 30, 2011, and an injury to his left shoulder dated September 13, 2013. (Ex. B, p. 17) The defendants agreed that Reeves sustained industrial disability because of the two shoulder injuries he sustained at work but disputed the extent of that disability. (Ex. B, pp. 17–18) The parties settled the claims relating to Reeves's two shoulder injuries for \$124,000.00. (Ex. B) The settlement does not include a breakdown of how the total amount was distributed between the two injuries. (Ex. B) The Commissioner issued an order approving the parties' compromise settlement. (Ex. B, p. 20)

Reeves started working on his family's farm in 2012, after his father died and left his mother as the sole owner. (Hrg. Tr. p. 27) The farm consists of about 600 acres of primarily soybeans and corn. (Hrg. Tr. p. 28) He worked on the farm while holding other, full-time employment such as that with the County. (Hrg. Tr. p. 29)

The County hired Reeves in 2017. (Hrg. Tr. p. 29) He was one of five people working at the landfill. (Hrg. Tr. pp. 29–30) Reeves started out earning \$17.00 per hour, received regular pay increases, and was earning \$23.93 per hour at the time of injury. (Hrg. Tr. p. 31)

Kent Herbold is the manager of the Plymouth County Landfill. (Hrg. Tr. p. 114) At the time of hearing, he had held that position for about 4 years. (Hrg. Tr. p. 114) Reeves was a County employee at the time Herbold began work as a manager. (Hrg. Tr. pp. 114–15) Herbold was Reeves's supervisor at all times material hereto. (Hrg. Tr. pp. 114–15)

On January 13, 2021, Reeves was working to grind down a weld in the maintenance shop. (Hrg. Tr. pp. 31–32) At hearing, claimant's counsel (Q) asked Reeves (A) about the incident, and he testified as follows:

Q: What happened on January 13th of 2021?

A: I was in our maintenance shop, and we were repairing a door for one of our rollout containers, and I -- Kent Herbold accidentally weld[ed] the platform he had the door on, so I had to break that, grind that, [ and] weld [it] back down. Typically[,] when there's a weld like that you can weld it down to get it to a fine crack.

If you've welded before, you can pop that weld off and finish doing it. So I had a pry bar in my left hand, I had a hammer in my right, and I was hitting on the crack trying to finish breaking that weld apart. And one of the last spins, obviously, I felt this sharp pain go through the shoulder, and I knew -- from past experience I knew something was definitely wrong. That's when I went over and talked to the secretary.

Q: How much exertion did you use when you were trying to pry that off?

A: Not -- not what you would think. It was a very -- just a general -- from years of experience as far as working with metals and the farming aspect of it, it doesn't take a lot after you see that weld. So I wasn't swinging my full weight of the arm of my body to break it.

Q: Was it a substantial effort?

A: No. It was just enough. I thought it was just enough to break it, but it didn't. It did the opposite of what it should have done.

Q: What'd you feel right away?

A: Oh, sharp pain in the shoulder and then a tingling all the way down the arm.

Q: Prior to that incident, did you ever have that kind of symptom?

A: No, nothing.

Q: What about your previous injury when you got hurt?

A: Yes. At Wells there was. That was a different scenario. As far as that one, I was pulling a wrench down when my partner saw that my biceps gave way and then my hand let loose and then it tore my shoulder.

Q: But prior to that day, when was the last time you had that sensation in your shoulder?

A: I hadn't.

Reeves reported the injury to the office secretary shortly after it occurred because his supervisor was not available at the time. (Hrg. Tr. pp. 33–34) Reeves finished his shift. (Hrg. Tr. p. 34) Later that day, his supervisor discussed the injury with him. (Hrg. Tr. p. 34) The defendants arranged for care the next day at Floyd County Hospital in Le Mars. (Hrg. Tr. p. 34; Ex. JE-2, pp. 1–6)

DeeAne Otto, A.R.N.P., noted Reeves complained of right shoulder pain that radiated down his right arm to his right hand. (Ex. JE-2, p. 1) Otto assigned work restrictions and set a follow-up appointment. (Ex. JE-2, p. 3) At that appointment, Otto noted Reeves was continuing to experience pain at about a two out of ten, had stopped radiating down his arm, no longer kept him awake at night, and worsens with overhead movement. (Ex. JE-2, pp. 4) Otto ordered an x-ray, prescribed physical therapy, continued work restrictions, and scheduled a follow-up for three weeks later. (Ex. JE-2, p. 6) The x-ray suggested a chronic rotator cuff injury/tear and degenerative changes in the shoulder. (Ex. JE-2, pp. 7–8)

Otto next saw Reeves on February 18, 2021. (Ex. JE-2, p. 9) He complained of sharp pain with movement; however, at rest, it was a one out of ten. (Ex. JE-2, p. 9) Otto noted Reeves felt he was slowly getting better and credited physical therapy as helpful. (Ex. JE-2, p. 9) Otto referred him to Dr. Meis. (Ex. JE-2, p. 11)

Dr. Meis was concerned Reeves “may have re-torn his rotator cuff,” and ordered magnetic resonance imaging (MRI) “to evaluate for a re[-]tear,” noting that “there is some concern that a re-repair may be more difficult or even not possible depending on the size and amount of atrophy that may or may not be present.” (Ex. JE-1, pp. 2–3) Thus, before the MRI, Dr. Meis believed Reeves may have torn his rotator cuff and the initial treatment he considered was a second surgery to repair the torn rotator cuff, similar to what Reeves underwent after the 2011 tear, depending on the severity of the tear as shown by the MRI. Dr. Meis also assigned work restrictions of no lifting above the head. (Hrg. Tr. p. 35; Ex. JE-1, pp. 4–5; JE-2, pp. 12–13)

Herbold testified that Reeves’s attitude worsened after the work injury, while he was working with restrictions. (Hrg. Tr. p. 118) Herbold testified that Reeves requested a meeting with him and the other employees at the landfill, which Herbold arranged, and they talked about issues. (Hrg. Tr. pp. 119–20)

On April 5, 2021, the County issued Reeves a written warning regarding his attitude. (Hrg. Tr. p. 119; Ex. I, p. 52) The warning states (*sic*):

Garret, it is obvious that your attitude is affecting your job performance. It is affecting the attitudes of the other employees also. Instead of being a team player you choose to do your own thing instead of working together.

Example would be today instead of arranging the transfer station you drove off to pick up paper. Another example would be when I told you to back the semi out and bring the excavator in. You stated that you were waiting for Edward to back the truck out. Then I proceeded to get in the

semi and switch the trailers out. When you commented (Somebody else can do that, I have had enough) this comment is not acceptable. (You do have to keep in mind you are on light duty.) As your supervisor I am trying to keep your tasks within your restrictions.

Garret this seems to be continuing and reoccurring situation with your moods, and it makes it difficult and stressful at the workplace. I know you can do what is necessary to improve this.

Garret your attitude and job performance must improve or there will be further disciplinary action up to and possible termination.

(Ex. I, p. 52) Reeves refused to sign the written reprimand. (Ex. I, p. 52)

Reeves saw his personal physician, Dr. Weber, regarding mental health complaints. Dr. Weber prescribed and referred Reeves to Dee Jay Donlin, Ph.D, LP, for care. Reeves saw Dr. Donlin for the first time on April 21, 2021, identifying complaints that included anxiety about his future with respect to his job and being able to pay his bills. (Ex. 3, pp. 3, 5) Dr. Donlin diagnosed Reeves with a moderate single episode of major depressive disorder. (Ex. 3, p. 6) There is no reference to any family issues, such as any health issues experienced by Reeves's daughter, in Dr. Donlin's notes from this visit. (Ex. 3, pp. 3-12)

On May 20, 2021, Reeves returned to see Dr. Weber and reported the medication was helpful at alleviating his worries on some days. (Ex. 3, p. 15) However, he also shared with Dr. Donlin that he felt his job with the County was in jeopardy because he was being set up to be fired at work. (Ex. 3, p. 15)

On May 26, 2021, Reeves returned to see Dr. Meis at CNOS. (Ex. JE-1, pp. 6-7) The MRI showed "a very large tear of his rotator cuff involving the supra and infraspinatus with partial subscapularis tear." (Ex. JE-1, p. 6) The MRI report also found a labral tear involving the superior labrum and inferior labrum. (Ex. JE-2, p. 14)

On examination during the May 26, 2021 appointment, Dr. Meis noted in pertinent part:

[H]e has no obvious atrophy or asymmetry. He moves the shoulder with a fairly smooth fluid cadence at the lower levels and actually has well-maintained motion. He can forward elevate to 165 degrees and abduct 160 degrees. He can touch the back of his neck, internally rotates to the upper lumbar levels with discomfort. Empty can testing is 4+/5, external rotation is 4/5, and internal rotation is 5/5 with negative belly press test.

(Ex. JE-1, p. 7) There is no indication Dr. Meis assessed Reeves's right shoulder adduction, flexion, extension, internal rotation or external rotation. There is an insufficient basis in the evidence from which to conclude Dr. Meis used a goniometer when assessing Reeves's abduction.

Dr. Meis opined the tear was not repairable via surgery. (Ex. JE-1, p. 6) In his view, the tear required conservative treatment. (Ex. JE-1, p. 6) In the notes from the exam, Dr. Meis describes his care plan thusly:

I had a similar conversation with [Reeves] today that we had last time. He is frustrated with his shoulder, but he is a bit nervous in terms of knowing what [to do]. We will help to guide him through this process the best that we can. He really needs to find a way to quit smoking, as at some point he either needs to become rotator cuff independent with his shoulder, which is a possibility as we work through these next few months that we might see him start to have a little bit less pain. He has excellent range of motion and if he has some slight strength deficits but has reasonable pain control, the best thing to do would be to avoid further surgery and try to survive in that fashion until some day he likely would be a candidate for a reverse arthroplasty. The other option would be to consider a superior capsular reconstruction. These are very difficult to get to heal. He is young and healthy, but as a smoker it would be an absolute contraindication to try to get cadaveric tissue to heal in his shoulder back to bone in a smoker. We are already fighting a slight uphill battle due to his diabetes. We will advance the restrictions slightly and plan on seeing him back in the clinic in 2 months.

(Ex. JE-1, p. 7)

Reading Dr. Meis's initial "concern that a re-repair may be more difficult or even not possible depending on the size and amount of atrophy that may or may not be present" and the conclusion after the MRI that it was "not repairable," surgery on the torn rotator cuff similar to what Reeves underwent after the 2011 injury was not feasible because of the nature of the tear. Dr. Meis then considered a superior capsular reconstruction, which are difficult to get to heal. Dr. Meis ruled out such a procedure because Reeves is a smoker and has diabetes, which means it would be even harder for him to properly heal after the procedure than a non-smoker without diabetes. This left the course of care for Reeves to attempt to become rotator cuff independent. (Ex. JE-1, p. 6)

Dr. Meis gave Reeves temporary work restrictions that were to last two months and consisted of no lifting more than 15 pounds, occasionally pushing and pulling, and occasionally reaching above shoulder level. (Ex. JE-1, p. 8) Up until that point, the County had accommodated Reeves's work restrictions due to the work injury to his right shoulder. Herbold knew of the work restrictions Dr. Meis assigned to Reeves because of the stipulated work injury. (Hrg. Tr. p. 118) He worked with Reeves to accommodate the work restrictions. (Hrg. Tr. p. 118) During the winter months, the County was able to accommodate Reeves's work restrictions because the landfill is not as busy. (Hrg. Tr. pp. 120–21)

The month of May is the beginning of the busy season at the landfill. (Hrg. Tr. p. 120) The County concluded that because of the size of its five-person workforce



(including Reeves), it was unable to continue to accommodate his work restrictions due to operational needs. (Hrg. Tr. pp. 120–22) Herbold testified, “So it just got to be where if one of us is gone, you know, we have to have an employee that’s able to be a full-time employee with total ability to do the job.” (Hrg. Tr. p. 121) Consequently, the County hired another worker to perform the job duties Reeves had performed before the stipulated work injury and the work restrictions it caused. (Hrg. Tr. pp. 121–22)

The County informed Reeves that it could no longer accommodate the work restrictions necessitated by the work injury. (Hrg. Tr. pp. 49–50, 121) At hearing, Herbold testified that the County did not terminate Reeves’s employment. (Hrg. Tr. p. 121) He explained during his hearing testimony, “I like Garret, and I liked working with Garret, and I’m the type of person who would like to have – go the other direction than to fire people.” (Hrg. Tr. p. 128)

Reeves is the father of 6 daughters. (Hrg. Tr. pp. 25) One of his daughters had a heart issue that required her to be hospitalized Memorial Day weekend of 2021 because she had fluid on her heart. (Hrg. Tr. pp. 55, 111–12) As detailed above, her health issues occurred after the onset of Reeves’s mental health issues and after he first sought out care for his mental health issues. Reeves’s daughter recovered and no longer required hospitalization. (Hrg. Tr. p. 55)

There is no indication in the records relating to Dr. Donlin’s care that Reeves discussed his daughter’s temporary health condition during their sessions. As of the time of hearing, his daughter was no longer experiencing these health issues. The weight of the evidence establishes that the health issues Reeves’s daughter experienced were a temporary aggravating factor for his mental health condition. It is more likely than not this past episode was not a significant factor in his ongoing symptoms, and it no longer affected his mental health at the time of hearing.

The defendants have provided no documentation reflecting any leave of absence on which it might have placed Reeves. Nor did Herbold testify that the County placed Reeves on leave. And there is no basis in the evidence from which to conclude the County instructed Reeves to report back to it if he was released to return to work without limitation. If the County placed Reeves on a leave of absence pending his release to full duty work, it likely would have given him such instructions. Moreover, the County sent correspondence to Reeves regarding the termination of his health insurance, which is something employers do when the employment relationship ends. Thus, the record shows it is more likely than not the County did not place Reeves on a leave of absence.

In effect, the County eliminated Reeves’s hours and, by extension, his pay. This constitutes a substantial change in the terms and conditions of Reeves’s employment with the County that rises to the level of constructive discharge. The weight of the evidence establishes the County constructively terminated Reeves by refusing to accommodate his work restrictions and reducing his hours to nothing. Further, the evidence establishes it is more likely than not the work restrictions caused by the stipulated work injury were a motivating factor in the County’s decision.

Reeves saw Dr. Donlin on June 24, 2021. (Ex. 3, p. 20) He told Dr. Donlin that the County informed him it could no longer accommodate his work restrictions and he had not worked since. (Ex. 3, p. 21) Dr. Donlin's notes reflect that Reeves shared he was "often able to manage his anxiety until he has to go to the landfill," which sometimes caused him to feel "overwhelmed." (Ex. 3, p. 21) Dr. Donlin documented the treatment plan for Reeves thusly:

Garret will attempt to be aware of different perspectives. He will continue to be aware of thinking distortions that are contributing to negative emotions. He will attempt to focus on things that he can control. He will continue with regulation strategies.

(Ex. 3, p. 22) They scheduled another appointment for August. (Ex. 3, p. 25)

The County asked for clarification on June 28, 2021, whether the restrictions applied to both work and nonwork activities and Dr. Meis said they applied to all activities. (Ex. JE-1, p. 9) On July 28, 2021, Dr. Meis assigned Reeves temporary work restrictions that included lifting and carrying between 11 and 19 pounds frequently, pushing and pulling frequently, and reaching above the shoulder occasionally. (Ex. JE-1, p. 10)

Reeves returned to see Dr. Donlin on August 4, 2021, and reported that he remained very concerned about his financial situation. (Ex. 3, p. 28) The County sent correspondence informing him that it was discontinuing his health insurance and he had the right to continue his coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). (Ex. 3, p. 28) He also began the process of hiring an attorney to pursue a workers' compensation claim. (Ex. 3, p. 28)

Dr. Donlin noted that they reviewed the importance of Reeves understanding that the emotions he experiences are largely caused by the way he is thinking. (Ex. 3, p. 28) They discussed ways of changing his perspective, including "the possibility that this is an opportunity for him to make a career change." (Ex. 3, p. 28) Reeves told Dr. Donlin that "given the hostility that he experienced at the landfill he did not feel it was a reasonable working environment for him even though the pay and insurance was a positive." (Ex. 3, p. 28) The pair discussed Reeves looking for other employment options. (Ex. 3, pp. 28–29)

Defense counsel wrote Dr. Meis a check-box letter dated September 8, 2021, which asks a series of questions, provides a blank for Dr. Meis to indicate he agrees or disagrees, and has space for comments. (Ex. JE-1, pp. 11–13) Dr. Meis signed and dated his responses September 10, 2021. (Ex. JE-1, pp. 11–13) He indicated his agreement with the statement that, "Given Mr. Reeves' significant smoking history, diabetes and preexisting right shoulder pathology, you believe his only real option is to get better without further surgery." (Ex. JE-1, p. 11)

Dr. Meis also indicated agreement with the following assertion:

While you indicated the hammering duties toward the end of January may have caused him to notice pain, you explained that Mr. Reeves' current tear and pathology is something that would have occurred over a number of years. That is, the hammering or work activity reported by the patient more likely than not resulted in only a temporary aggravation of the preexisting and underlying right shoulder pathology.

(Ex. JE-1, p. 12)

Dr. Meis also signed off on his agreement with the following proposition:

You clarified that the restrictions you imposed at his last visit this July were meant to be temporary in nature. On the issue of restrictions, I shared with you those from Dr. Sunil Bansal back in January of 2016. Dr. Bansal was Mr. Reeves' IME physician for the 2011 injury. At that time, Dr. Bansal restricted Mr. Reeves to no lifting greater than 25 lbs. occasionally, 15 lbs. frequently, 10 lbs. above shoulder level occasionally and no frequent overhead lifting – all as concerns the right arm. As his primary treating physician for that prior injury, you would not have imposed restrictions quite as severe back then, but also have every reason to expect that any permanent restrictions down the road will not exceed those from Dr. Bansal in 2016.

(Ex. JE-1, pp. 12–13) Thus, Dr. Meis opined that at some point in the future, Reeves would not require permanent work restrictions more significant than those Dr. Bansal assigned in 2016.

CNOS continued to treat Reeves after Dr. Meis's September 10, 2021 responses to the check-box letter. On September 22, 2021, Reeves saw Nichole Friessen, P.A.-C., at the LeMars Clinic. (Ex. JE-1, p. 14) She noted he "has done well becoming rotator cuff independent." (Ex. JE-1, p.14) Friessen also recorded he had complaints of clicking and popping in the right shoulder, numbness into the forearm, lack of endurance when attempting to work overhead, and difficulty holding a drill and working overhead. (Ex. JE-1, p. 14)

Friessen examined Reeves and noted:

Upon examination today of his right shoulder, his flexion is excellent to 165 degrees, active abduction to 160 degrees. External rotation with his arm adducted to 90 degrees is 90 degrees. Internal rotation with his arm in the same position is to 50 degrees. Shoulder extension is to 50 degrees. Abduction strength is 5-/5, forward flexion 5/5, internal rotation 5/5, external rotation 5/5.

(Ex. JE-1, p. 15) There is an insufficient basis in the evidence from which to conclude Friessen used a goniometer to conduct these measurements. Nor does the evidence in

the record support the conclusion that Friessen measured Reeves's right shoulder adduction.

Friessen opined Reeves had done "an excellent job of regaining range of motion and strength" and that "we are not surprised that he lacks endurance while working up overhead and advised him that oftentimes this is a complaint of someone who has undergone superior capsular reconstruction." (Ex. JE-1, p. 15) Friessen concluded surgery was unlikely to offer him much improvement, declared him to have reached maximum medical improvement (MMI), and released him to return to work without any restrictions. (Ex. JE-1, pp. 15–16)

On October 1, 2021, Reeves saw Dr. Donlin, who noted:

[Reeves] stated that he has recently seen Dr. Meis and he "released me and said my shoulder was irreparable." [Reeves] believes that that means he could return to work but he remains very ambivalent because of the anticipated hostile work environment. He stated that a part of him wants to return to work despite that environment "because it is a pride thing."

[Reeves] has been looking for some other job opportunities and in fact recently had an interview.

(Ex. 3, p. 34)

Reeves also told Dr. Donlin that he was "back to the beginning" with respect to his anxiety. (Ex. 3, p. 34) The medication he was taking was no longer mitigating his symptoms as it had previously. (Ex. 3, p. 34) Dr. Donlin and Reeves developed a plan for Reeves to contact Dr. Weber regarding his medication management and make adjustments. (Ex. 3, p. 34)

Reeves next saw Dr. Donlin on November 2, 2021. (Ex. 3, pp. 37–41) He reported that he obtained a second opinion on his shoulder and the doctor recommended surgery. (Ex. 3, p. 39) Reeves also told Dr. Donlin his attorney was arranging for him to see a third doctor regarding his shoulder. (Ex. 3, p. 39) Reeves had almost completed the harvest on his family farm and felt it was "very beneficial to have his time occupied by the harvest rather than thinking of the landfill." (Ex. 3, p. 39) He also felt changing his medication from sertraline to escitalopram had been helpful. (Ex. 3, p. 39)

On December 13, 2021, Reeves returned to Dr. Donlin. (Ex. 3, p. 44) Dr. Donlin noted Reeves was experiencing anxiety when talking to his attorney and job-seeking. (Ex. 3, p. 44) He had an interview for a job that resulted in an offer, but he turned it down because of the uncertainty regarding his injured shoulder. (Ex. 3, p. 44) Reeves reported that his medication change continued to be quite helpful. (Ex. 3, p. 44)

The defendants arranged for Reeves to undergo an IME by Robert Arias, PhD, a neuropsychologist, on January 13, 2022. (Ex. C, p. 26) Dr. Arias is not a Medical Doctor

(M.D.) or Doctor of Osteopathic Medicine (D.O.). (Ex. D) He obtained his Master of Arts with a major in clinical psychology and Doctor of Philosophy with a major in clinical psychology at the University of Nebraska, Lincoln. (Ex. D, p. 29) He is a clinical psychologist by trade. (Ex. D)

Dr. Arias did not meet with Reeves in person for his examination. (Hrg. Tr. p. 54) Instead, he met with Reeves over Zoom for about 15 minutes. (Hrg. Tr. p. 54) After that, another individual asked Reeves a series of questions. (Hrg. Tr. p. 54)

Dr. Arias issued an IME report signed and dated January 24, 2022. (Ex. C, pp. 26–28) In the report, Dr. Arias noted Reeves “had a daughter hospitalized in May 2021 with fluid on her heart. He states that she remains a severe concern for him with regard to her health. He rated the concern as a 10/10 in severity.” (Ex. C, p. 26) Dr. Arias did not discuss how the improvement in the health of Reeves’s daughter affected it as a factor impacting his mental health. (Ex. C, pp. 26–28) Nonetheless, Dr. Arias concluded, “The primary stressor in this individual’s life includes his daughter’s health problems, which he rated as a ‘10/10’ concern for him.” (Ex. C, p. 26)

Dr. Arias further found, “these results empirically revealed overreporting of somatic symptomatology in a manner that indicates non-credible symptoms. These findings were noted in his MMPI-2-RF results. Otherwise, the clinical history does not indicate a mental disorder causally-related to the alleged injury on January 13, 2021.” (Ex. C, p. 26) Dr. Arias does not explain how the records relating to Dr. Donlin’s care support this assertion. Nor does he explain why he found Reeves to be truthful about the health of his daughter—a non-work-related factor in his mental health—yet he overreported his symptoms. Taken as a whole, Dr. Arias’s report raises more questions than it answers and is of little value in determining how, if at all, the stipulated work injury has affected Reeves’s mental health.

Claimant’s counsel wrote Dr. Donlin a letter dated January 18, 2022, with a series of questions regarding Reeves’s mental health. (Ex. 3, pp. 48–49) Dr. Donlin responded with a letter dated January 27, 2022. (Ex. 3, pp. 50–51) Dr. Donlin stated his diagnoses of Reeves at the time was major depressive disorder, single episode, and moderate and generalized anxiety disorder. (Ex. 3, p. 50) He opined that the work injury Reeves sustained at the County “was a substantial contributor to current symptoms” because Reeves “demonstrated significant mood and anxiety issues due to concerns regarding his ability to be able to perform work-related duties as well as because of how he perceived he was being treated at the facility following the injury.” (Ex. 3, p. 50) In Dr. Donlin’s opinion, “Symptomology significantly increased after the injury.” (Ex. 3, p. 50)

Dr. Donlin further stated that Reeves’s mental condition would impair his ability to return to work at the County because, at the time, he saw his work environment there as “hostile.” (Ex. 3, p. 51) He felt he had been “mistreated and devalued, which contributes to increased mood and anxiety symptoms.” (Ex. 3, p. 51) Claimant’s counsel requested that Dr. Donlin use the *Guides* to evaluate any permanent impairment Reeves had due to the mental health injury, but he declined because, “The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), dropped the multi-axial diagnostic

system, including the Global Assessment of Functioning Scale (GAF),” which meant he had not used the global rating system for many years and did not feel qualified to offer a rating. (Ex. 3, p. 51) In the letter, Dr. Donlin did not state whether Reeves had sustained a permanent impairment or disability from the mental health conditions he diagnosed. (Ex. 3, pp. 50–51)

Reeves saw Dr. Donlin in March of 2022. Records from this visit are not in evidence. But Dr. Donlin referenced the visit in a later treatment note. (Ex. 3, p. 54)

Claimant’s counsel arranged for Reeves to undergo an independent medical examination with Kunal Patra, M.D., a board-certified psychiatrist. (Ex. 2, p. 1) As part of the evaluation, Dr. Patra reviewed the history of Reeves’s mental complaints, including a discussion with Reeves and review of pertinent medical records. (Ex. 2, pp. 1–12) He also performed assessments of Reeves that included Patient Health Questionnaire-9 (PHQ-9), Generalized Anxiety Disorder-7 (GAD-7), Structured interview of Reported Symptoms-2d Edition (SIRS-2), and Personality Assessment Inventory (PAI). (Ex. 2, p. 2)

Reeves scored 12 on PHQ-9, suggesting the presence of moderate clinical depression. (Ex. 2, p. 13) He scored a 13 on the GAD-7 suggesting the presence of moderate anxiety. (Ex. 2, p. 13) Dr. Patra considered these scores when diagnosing Reeves.

According to Dr. Patra, SIRS-2 “is a well-validated single-purpose psychological measure for the assessment of feigned mental disorders (FMD) in clinical, forensic, and correctional settings.” (Ex. 2, p. 14 (citing Rogers, R., Payne, J.W., Berry, D. T. R., & Granacher, R. P., Jr., “Use of the SIRS in Compensation Cases: An Examination of Its Validity & Generalizability,” *Law & Human Behavior*, 33(3), 213–24 (2009))). Dr. Patra interpreted Reeves’s performance on the SIRS-2 to show genuine reporting of mental health issues. (Ex. 2, p. 14)

The PAI is a 344-item self-report instrument with the examinee answering the items on a four-point scale. (Ex. 2, p. 14) It is comprised of 22 nonoverlapping scales that measure constructs related to profile validity, psychiatric diagnoses, treatment-related issues, and interpersonal style. (Ex. 2, p. 14) Dr. Patra found Reeves’s PAI responses were “within acceptable limits” when evaluated across four validity scales (ICN, INF, NIM, and PIM) designed to assess factors (e.g., failure to complete test items, carelessness, reading difficulties, confusion, exaggeration, malingering, or defensiveness) that could distort the results of the self-report questionnaire and indexes and interpretative procedures constructed to supplement these scales. (Ex. 2, p. 14) On whether Reeves attended appropriately and responded consistently to the content of PAI test items, Dr. Patra found:

Mr. Reeves’ scores on these scales suggest that he attended to item content in responding to PAI items; however, there might have been some idiosyncratic responses to particular items that could affect test results. Thus, the interpretive hypotheses that follow in this report should be

reviewed cautiously. The degree to which response styles might have affected or distorted the report of symptomatology on the inventory was also assessed. Certain of these indicators fell outside of the normal range, suggesting that the respondent might not have answered in a completely forthright manner; the nature of his responses might lead the evaluator to form a somewhat inaccurate impression of the client based upon the style of responding described below.

With respect to positive impression management, there was no evidence to suggest that Mr. Reeves was unduly defensive or motivated to portray himself as being relatively free of common shortcomings or minor faults.

With respect to negative impression management, there were indications that Mr. Reeves tended to endorse items that presented an unfavorable impression. This pattern did not necessarily indicate a level of distortion that rendered the test results invalid, though the clinical scale elevations were likely to overrepresent the extent and degree of significant test findings in certain areas. It was likely that these unusual endorsements were the result of confusion or careless responding, a tendency noted previously. Elevations in this range could also indicate a “cry for help” or an extremely negative evaluation of oneself and one’s life.

The PAI clinical profile for Mr. Reeves was marked by significant elevations across several scales, indicating a broad range of clinical features and increasing the possibility of multiple diagnoses. The configuration of the clinical scales suggests a person with significant thinking and concentration problems, accompanied by resentment and suspiciousness. Mr. Reeves is likely to be chronically tense and pessimistic about the future.

(Cl. Ex. 2, pp. 14–15)

Dr. Patra based his diagnoses of Reeves’s mental health conditions on his review of the pertinent medical records, his in-person evaluation of him on April 13, 2022, and on his review of Reeves’s PAI responses, concluding Reeves has major depressive disorder, single episode, moderate intensity, and generalized anxiety disorder. (Ex. 2, pp. 15–16) He further found that the stipulated work injury was a substantial causal, contributing, or aggravating factor in the development of Reeves’s “current depressive episode,” opining:

Mr. Reeves’ alcohol intake likely has contributed to his current major depressive episode. A family history of suicide might have made Mr. Reeves more vulnerable to developing an emotional disorder when experiencing significant life adversity, such as the one he experienced after the January 13, 2023 work injury.

(Ex. 2, pp. 16–17) Dr. Patra further opined that Reeves’s conditions were causally related to the pain in his injured shoulder, the physical limitations caused by the work injury, the impact those limitations had on his perceived work environment, and ultimately his employment status with the County. (Ex. 2, pp. 16–17)

Dr. Patra found Reeves’s prognosis for his work-related mental health conditions to be “guarded.” (Ex. 2, p. 20) He recommended “Reeves needs to follow up with a psychiatrist for more aggressive medication management with polypharmacy to treat his mood and anxiety issues, needs to see his counselor on a more frequent basis and utilize cognitive behavioral therapy tools, and stop drinking alcohol.” (Ex. 2, p. 20) Dr. Patra did not opine as to whether Reeves’s mental health diagnoses were permanent in nature. (Ex. 2)

Dr. Patra concluded that Reeves’s mental health conditions would impair his ability to return to work with the County. (Ex. 2, pp. 21–22) However, as found above, the employment relationship between Reeves and the County had ended by the time of Dr. Patra’s report because the County discharged Reeves due to his limited functional capacity from the shoulder injury. While Reeves is eligible for rehire, the evidence shows that returning to work at the landfill is not a viable proposition due to the permanent work restrictions necessitated by the physical injury to his shoulder.

With respect to whether Reeves’s mental health conditions would affect his ability to work on a regular basis, Dr. Patra opined that his symptoms “make it difficult for him to push himself to obtain and maintain employment.” (Ex. 2, p. 22) He further found that Reeves’s inability to find work after the County discharged him “is not only because of his concern about what he can or cannot do because of the chronic right shoulder injury but also because of his emotional difficulties, which have held him back from feeling confident to obtain employment.” (Ex. 2, p. 22) According to Dr. Patra, Reeves’s “ongoing anxiety about how his superiors at a future job might treat him has also acted as a barrier to him being able to obtain employment.” (Ex 2, p. 22)

On the question of work restrictions, Dr. Patra opined:

Mr. Reeves’ current presentation with his major depressive disorder and generalized anxiety disorder, arising from the January 13, 2021 work injury, makes it likely that he will require some workplace accommodations, at least initially, such as some flexibility with attendance, ability to work part-time to start with for a couple of weeks to help him ease into a schedule, and flexibility with work production expectations.

(Ex. 2, p. 22)

Claimant’s counsel arranged for Reeves to undergo an IME with Dr. Bansal on September 9, 2022. (Ex. 1, p. 1) Dr. Bansal performed a records review and examination of Reeves, then issued an IME report. (Ex. 1) The report includes Dr. Bansal’s answers to a series of questions posed by claimant’s counsel regarding Reeves’s right shoulder injury. (Ex. 1, pp. 8–10)



In Dr. Bansal's IME report, he describes Reeves's condition as follows:

Mr. Reeves states that his left shoulder is no worse since the time of my last evaluation in January 2016, but his right shoulder is now very painful. Any movement of his right arm will send a shock pain through his shoulder and arm.

He is able to raise his right arm just to shoulder level, depending on the position of his arm. He can only reach behind him to the lower part of his back. He has difficulty just lifting a gallon of milk with his right arm, and cannot lift anything overhead because his arm will not get that high. With his left arm, he is able to lift about 20 pounds occasionally, and 10 pounds more frequently.

(Ex. 1, p. 6)

On examination, Dr. Bansal noted diffuse tenderness to palpation. (Ex. 1, p. 6) He recorded Reeves's range of motion in the right shoulder thusly:

Flexion:	141 degrees
Abduction:	119 degrees
Adduction:	31 degrees
External Rotation:	53 degrees
Extension:	40 degrees
Internal Rotation:	32 degrees

(Ex. 1, p. 6)

Dr. Bansal diagnosed Reeves with "a large complete tear of the rotator cuff involving the supraspinatus, infraspinatus, and subscapularis with retraction, muscle body atrophy, and effusion" and a "[l]abral tear involving the superior and inferior labrum." (Ex. 1, p. 8) He asserts that Reeves had a poor prognosis. (Ex. 1, p. 8) On the question of whether the stipulated work injury of January 13, 2021 "was at a minimum a significant contributing factor to his new shoulder injury," Dr. Bansal opined:

Yes.

At the time of his injury, Mr. Reeves was employed by [the County]. On January 13, 2021, he sustained an injury to his right shoulder. He was holding a pry bar with his left hand, and swinging a hammer with his right hand to strike the pry bar to try to break a weld. As he struck the bar, the hammer bounced off the bar and he felt a sudden jolt of pain go through his right arm and shoulder.

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On January 13, 2021, Mr. Reeves' right shoulder was jerked back sharply from the recoil of the hammer striking the pry bar, reinjuring his rotator cuff.

It should be noted that the shoulder is a ball and socket joint. However, the socket is very shallow, making it quite susceptible to injury. The shoulder itself has a relatively immobile scapula and clavicle and a mobile humeral head interface at the shoulder joint. Consequently, the humeral head may move suddenly in relation to the rest of the shoulder joint, especially from the jerking motion, causing an acute injury to the rotator cuff and attached muscles.

(Ex. 1, p. 8)

Claimant's counsel asked Dr. Bansal to use the *Guides* to rate Reeves's impairment of the right shoulder. (Ex. 1, p. 8) In response, Dr. Bansal utilized the range of motion measurements recounted above and Figures 16-40 through 16-46 of the *Guides* to assign upper extremity impairments of 3 percent for flexion, 3 percent for abduction, 1 percent for adduction, 1 percent for external rotation, 1 percent for extension, and 4 percent for internal rotation. (Ex. 1, p. 9) Dr. Bansal then combined those values for a total 13 percent upper extremity impairment. (Ex. 1, p. 9)

Claimant's counsel asked Dr. Bansal to re-evaluate the permanent work restrictions he assigned Reeves in 2016. (Ex. 1, p. 9) In response, Dr. Bansal opined that the work restrictions for the right arm "are changed secondary to his significant decrease in functionality." (Ex. 1, p. 9) Dr. Bansal opined Reeves required permanent work restrictions for the right upper extremity of no lifting greater than 10 pounds and no lifting over shoulder level. (Ex. 1, p. 9)

Claimant's counsel also asked Dr. Bansal to respond to Dr. Meis's opinion that the hammering Reeves performed on January 13, 2021 "more likely than not resulted in only a temporary aggravation of the pre-existing and underlying right shoulder pathology." (Ex. 1, pp. 9-10) Dr. Bansal opined as follows:

A temporary exacerbation versus a permanent aggravation presupposes that the former returns to the pre-injury baseline level after a reasonable time period. Mr. Reeves' pre[-]January 31, 2021 baseline has been well established by numerous visits, showing a fairly productive right shoulder. It has been over a year and a half with no further treatment planned, and Mr. Reeves is clearly not at his preinjury baseline. He now qualifies for a total shoulder replacement, with the only hesitation being his young age.

(Ex. 1, p. 10)

In response to claimant's counsel's question about future care, Dr. Bansal opined that Reeves required a total right shoulder replacement. (Ex. 1, p. 9) He further stated that it "is the only option that has the ability to provide a level of functional restoration."

(Ex. 1, p. 9) In Dr. Bansal's view, Reeves's low functioning level outweighed any concern about his age. (Ex. 1, p. 9)

Defense counsel spoke with Dr. Meis about Reeves's injury and care and forwarded to him a copy of Dr. Bansal's September 9, 2022 IME report. (Ex. JE-1, p. 17) He then followed up with another check-box letter dated October 5, 2022. (Ex. JE-1, pp. 17–20) Defense counsel again composed summaries of medical opinions and for each provided a space for Dr. Meis to indicate whether he agreed or disagreed with the summary and to provide additional information. (Ex. JE-1, pp. 17–20)

Dr. Meis indicated he agreed with the following from defense counsel:

Simply put, and consistent with your 9/10/2021 report, you reiterated that the reported mechanism of injury of swinging a hammer at work on 1/13/21 would not be consistent with Mr. Reeves' subsequent right shoulder findings or pathology.

(Ex. JE-1, p. 17) He provided the additional comment that "the appearance of the rotator cuff on the MRI was clearly consistent with a chronic tear." (Ex. JE-1, p. 17)

Moreover, Dr. Meis agreed with the following and did not provide additional comment:

You last saw Mr. Reeves on 7/28/21, and he was subsequently seen by your PA at CNOS on 9/22/21. As per those most recent exams, the condition of his right shoulder did not differ materially from prior to 1/13/2021. What is more, and contrary to what Dr. Bansal put in his report, Mr. Reeves' range of motion was normal, his strength was good, and he was happy with the same. To the extent Dr. Bansal found otherwise, it would most likely be based on subjective report by the patient, as those are not things that would anatomically worsen or decrease over time.

(Ex. JE-1, p. 18)

In the check-box letter, defense counsel also wrote:

We also discussed Dr. Bansal's rating of 13% to the right upper extremity, and the fact that he had rated Mr. Reeves' shoulder at 8% back on 1/18/16 secondary to his 11/30/11 injury at Wells. After reviewing his numbers, you thought Dr. Bansal's current rating would most likely represent an overall rating for the shoulder; that is, only 5% of Dr. Bansal's rating would be attributable to the current, alleged injury. However, in your opinion, any worsening of Mr. Reeves' right shoulder would more likely than not be related to the natural progression of his preexisting condition, his diabetes and chronic smoking. To be clear, you do not believe the 1/13/21 work activity(ies) resulted in any material worsening of Mr. Reeves' right shoulder condition or pathology.

(Ex. JE-1, p. 18) Without any supplemental comment, Dr. Meis checked that he agreed with this assertion. Thus, the record is unclear with respect to what “natural progression of his preexisting condition” means independently or with respect to his diabetes and chronic smoking. For example, does the “natural progression” relate to Reeves’s use of the shoulder to perform tasks? If so, how would his work for the County impact the natural progression? Dr. Meis’s check-box-letter opinion does not say.

Elsewhere in the check-box letter, Dr. Meis agreed with defense counsel’s assertion, based on their earlier discussion, that there is no anatomical reason for Dr. Bansal altering Reeves’s work restrictions from no lifting more than 25 pounds to no lifting more than 10 pounds. (Ex. JE-1, pp. 18–19) He also agreed with defense counsel’s articulation of his position with respect to total shoulder replacement at present: “Given his good strength and range of motion findings, relatively young age and chronic smoking history, this would in fact not be a good idea or option.” (Ex. JE-1, p. 19) Defense counsel’s statement, which Dr. Meis adopted by checking a blank to indicate his agreement, further provides that other surgical interventions would be inappropriate because Reeves is a chronic smoker. (Ex. JE-1, p. 19)

Defense counsel shared the IME reports by Dr. Bansal and Dr. Patra with Dr. Arias and requested he review them and provide an updated opinion. (Ex. C, p. 23) In response, Dr. Arias authored a letter dated September 27, 2022. (Ex. C, pp. 23–25) In the letter, Dr. Arias summarized Dr. Bansal’s report but did not address his opinions. (Ex. C, p. 23) Rather, Dr. Arias focused on Dr. Patra’s opinions.

Dr. Arias opined, “Notably, the validity data for the SIRS-2 are problematic and raise questions regarding admissibility.” (Ex. C, p. 23) This is because, according to Dr. Arias, “Few studies have examined the ability of the SIRS instruments to identify feigned cognitive impairment and most have involved the differentiation between actual and feigned mental retardation. SIRS measures have generally performed poorly in these investigations (Boone, K. *Clinical Practice of Forensic Neuropsychology*, 2013, page 84).” (Ex. C, p. 23)

Dr. Arias was also critical of the PAI, writing:

With regard to the PAI, the reference noted above (page 138), it was noted that “PAI over-report studies involving simulators and normal controls show more marked effect sizes than studies employing known groups and actual patient comparison samples, and also at times result in findings opposite to those observed in known-group studies...as such, simulation studies of the PAI appear to have limited application in clinical practice.” In contrast, the MMPI-2-RF and the other MMPI tests are widely regarded as the gold standard for assessment of psychological functioning and symptom validity.

(Ex. C, pp. 23–24) Dr. Arias did not provide any citations in support of his assertions regarding the MMPI tests. (Ex. C)

Dr. Arias pointed out that Reeves asserted he did not consume alcohol during their conversation. (Ex. C, p. 24) Thus, it appears that Dr. Arias's opinions were based in part on an inaccurate understanding of Reeves's alcohol consumption. Dr. Arias also attacked Dr. Patra's opinions with respect to Reeves's work environment, noting that he found the primary factor in Reeves's mental health complaints was his daughter's temporary health issues from May 2021. (Ex. C, p. 24) He then criticized the PHQ-9 and GAD-7 due to their lack of validity controls. (Ex. C, p. 24) Dr. Arias concluded, "After reviewing these records, the opinions expressed by me in my January 13, 2022, evaluation remain unchanged." (Ex. C, p. 25)

Reeves saw Dr. Donlin for the first time in about seven months on October 11, 2022. (Ex. 3, pp. 52–56) They discussed the litigation of Reeves's workers' compensation case, including his forthcoming deposition, the idea of which caused him distress. (Ex. 3, p. 54) Reeves reported "episodic significant anxiety when dealing with his legal situation as well as when he thinks about his former employer. He is [sic] recently had to bring material to the landfill which caused increased anxiety." (Ex. 3, p. 54)

Reeves was dissatisfied with the care Dr. Meis had provided because of his ongoing symptoms. (Hrg. Tr. pp. 97, 104–105) He saw Kirk Hutton, M.D., on February 6, 2023, who examined him and opined he needed a right shoulder replacement. (Hrg. Tr. p. 97; Ex. 7) Dr. Hutton felt it best to pursue a formal physical therapy regimen and to consider a reverse total shoulder replacement if that was unsuccessful. (Ex. 7, p. 5) Dr. Hutton did not identify Reeves's smoking habits or diabetes as reasons not to pursue such a surgery. (Ex. 7; Hrg. Tr. p. 67)

Reeves and his wife, Sheila, had been married for over 30 years at the time of hearing. (Hrg. Tr. p. 107) Sheila credibly testified at hearing that Reeves had a generally positive disposition before the stipulated work injury and his positivity held the family together while they were raising their 5 daughters. (Hrg. Tr. pp. 107–108) After the injury, in Sheila's credible telling, Reeves became more negative and would regularly make remarks that he was worthless and should be traded in because he was no good due to his physical limitations. (Hrg. Tr. pp. 107–108) She also credibly testified that his condition improved with medication, but his moods take a turn for the worse if he does not take his medication. (Hrg. Tr. p. 108)

The evidence shows that Reeves sustained a work injury to his right shoulder in 2011 that included a large and complete rotator cuff tear involving the supraspinatus, infraspinatus, and subscapularis. Dr. Meis performed successful surgery to repair the tear. After Reeves reached MMI following the surgery, Dr. Meis opined Reeves had sustained 4 percent impairment to the whole body from the right-shoulder injury and required no work restrictions because of it. After an IME, Dr. Bansal opined Reeves sustained a 5 percent whole body impairment stemming from the right-shoulder injury and required permanent work restrictions of no lifting greater than 25 pounds occasionally or 15 pounds frequently with his right arm and no lifting more than 10 pounds above the shoulder level with his right arm occasionally.

The timeline of Dr. Meis's opinions regarding work restrictions makes Dr. Bansal's opinion more persuasive in the current case. As Dr. Bansal explains, the temporary exacerbation opinion Dr. Meis articulated requires Reeves to have returned to his pre-injury baseline. There is an insufficient basis in the record from which to conclude Reeves returned to his pre-2021 shoulder injury baseline.

First, there is the physical injury: Dr. Meis repaired Reeves's torn rotator cuff after the 2011 right shoulder injury. After the 2021 injury, it was torn again. The tear was so significant that Dr. Meis ruled out a second surgical repair similar to the one he performed after the 2011 injury. There is no indication in the record that the rotator cuff in Reeves's right shoulder repaired itself so that it was no longer torn. In fact, Dr. Meis cites as a primary factor in Reeves's improvement the fact that his body was becoming "rotator cuff independent" in the right shoulder. The weight of the evidence establishes the right rotator cuff Dr. Meis repaired after the 2011 injury continued to be torn and did not return to its anatomical baseline from the time period after Dr. Meis surgically repaired it and before Reeves tore it again while working for the County in 2021.

Next, there is the question of permanent impairment under the *Guides*. The legislature codified a requirement in Iowa Code section 85.34(2)(x) that "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*]." Therefore, the undersigned places weight on how closely an expert adheres to the *Guides* when opining on permanent impairment or disability.

The *Guides* define "permanent impairment" as "a loss, loss of use, or derangement of any body part, organ system, or organ function." *Guides*, p. 2. The *Guides* further provide, "Loss, loss of use, or derangement implies a change from a normal or 'preexisting' state." *Id.* The evaluation of permanent impairment under the criteria in the *Guides* focuses on objective measurements. See id. This is true for the evaluation of permanent impairment to the shoulder.

Chapter 16 of the *Guides* addresses the upper extremities. See Guides, p. 433. The *Guides* include the shoulder as part of the upper extremity, representing 60 percent of the upper extremity function. *Guides*, p. 474. "An impairment evaluation is based on the examiner's actual findings." *Id.* at 435. "A complete and detailed examination of the upper extremities is necessary for accurate impairment evaluation." *Id.*

Section 16.4i sets forth the framework for assessing shoulder motion impairment. *Id.* at p. 474. The process for evaluating shoulder impairment under the *Guides* requires using a goniometer to measure flexion, extension, abduction, adduction, and internal and external rotation. *Id.* Under the *AMA Guides*, "The shoulder has three functional units of motion, each contributing a relative value to its function." *Id.* Flexion and extension make up one such unit, abduction and adduction another, and internal and external rotation is the third. See id.

"The *Guides* refers to the use of goniometers or inclinome[te]rs to measure joint motion. Except in the spine, in which the inclinometer is the device of choice, either the

inclinometer or the goniometer can be used to reliably measure joint motion, depending on the preference and experience of the examiner.” Id. at 593. In the sections on measuring shoulder range of motion, the *Guides* advises doctors to use a goniometer to measure each functional unit and record the “actual goniometer readings.” Id. at 475, 476, 478. Figures 16-38, 16-41, and 16-44 include illustrations of how to use the goniometer when measuring each functional unit. See id.

The *Guides* contain pie charts with impairment curves for each functional unit of motion. Id. at 475–79, Figures 16-40, 16-43, 16-46. To determine the impairment of an individual’s shoulder, the examining physician must perform and record the actual range-of-motion measurements, using a goniometer, then apply the various impairment pie charts in the *Guides*. Id. at 475. “The upper extremity impairment resulting from abnormal shoulder motion is calculated from the pie charts by *adding* directly the upper extremity impairment values contributed by each motion unit.” Id. at 475 (emphasis in original). Failure to measure and include each range-of-motion measurement results in an incomplete assessment of the shoulder’s range of motion that makes it impossible to correctly utilize the charts in the *Guides* for determining the functional impairment of a shoulder. See id. at 475–79.

As the treating physician, Dr. Meis had the opportunity to use the *Guides* to evaluate extent of permanent impairment but did not do so. In the check-box letter Dr. Meis affirms his agreement with statements authored by defense counsel. While the letter references assessments of range of motion, Dr. Meis did not use the *Guides* to evaluate what, if any, permanent impairment Reeves sustained from the new tear to his rotator cuff. The failure to follow the process for evaluating permanent impairment set forth in the *Guides* and mandated by statute makes Dr. Meis’s opinion that Reeves sustained no permanent impairment or disability to his right shoulder resulting from the work injury unavailing in this case. Consequently, Dr. Bansal’s opinions on permanent impairment, which were rendered in accordance with the process set forth in the *Guides*, and causation are adopted.

Next, there is the question of causation with respect to permanent disability. Reeves had a previous injury to the shoulder that caused permanent disability and entered into a settlement with Wells regarding it. However, Reeves also sustained an injury to his left shoulder that caused permanent disability. Thus, Wells and Reeves entered into a settlement that covered two shoulder injuries, not just one injury to the right shoulder. However, other than the opinions on permanent functional impairment, the documents provide little basis for identifying how much of the overall settlement amount was for the permanent industrial disability caused by each shoulder injury respectively.

The defendants attack Dr. Patra’s opinions because his report does not indicate that Reeves discussed his daughter’s health with Dr. Patra and her health was a significant stressor at the time Dr. Arias talked to Reeves before testing. However, Dr. Patra reviewed Dr. Arias’s report and summarized it in his own report, demonstrating that he was aware of the fact that the health of Reeves’s daughter was a significant stressor on or about September 27, 2022. (Ex. 2, pp. 6–7) Moreover, Reeves credibly

testified that his daughter's health was a significant stressor but ceased being so after her health improved. (Hrg. Tr. pp. 54–55, 68) Thus, the timing of the health issues Reeves's daughter experienced and the subsequent improvement of her health do not undermine the credibility of Dr. Patra's opinions because the timeline establishes it is more likely than not these health issues were a temporary aggravating factor that was not impacting Reeves's mental health either at the time of Dr. Patra's examination or at the time of hearing.

Rather, the temporary health issues experienced by Reeves's daughter around the time Dr. Arias talked to Reeves and oversaw his testing undermines the credibility of his opinions. Dr. Arias opined Reeves's complaints were not credible and that, if they were, they were entirely attributable to his daughter's health. What Dr. Arias does not discuss is why Reeves would make up a significant stressor other than his work injury during an IME relating to his workers' compensation claim. Rather, it is more likely than not that the health of Reeves's daughter was a significant stressor for him on or about January 13, 2022. But this stressor was temporary because the health of Reeves's daughter subsequently improved. After her health improved, it was no longer a mental health stressor. These facts render Dr. Arias's opinion unavailing because it is based on a temporary aggravating factor that was not present at the time of Dr. Patra's examination of Reeves or the time of hearing. I therefore give Dr. Arias's opinions little weight.

The undersigned finds Dr. Patra's opinion more credible than that of Dr. Arias because it is based on a more complete and accurate understanding of Reeves's mental health condition. The weight of the evidence shows that the stipulated work injury to Reeves's shoulder was a significant contributing factor in causing his depression and anxiety. The medical bills in Exhibit 5 are for care relating to these conditions.

Reeves's depression and anxiety are related to his employment with the County. However, the evidence does not show that they are permanent conditions. Dr. Donlin did not opine on permanent disability. Dr. Patra provided a functional impairment rating using the *Guides*, which provide a framework for evaluating impairment in activities of daily living excluding work. *Guides*, p. 4. However, Dr. Patra did not opine on the question of permanency or provide his reasoning with respect to whether Reeves's conditions are permanent. (Ex. 2)

With respect to work restrictions, Dr. Patra concluded Reeves "will require some workplace accommodations, at least initially." (Ex. 2, p. 22) Thus, it is more likely than not Reeves will require temporary work restrictions when rejoining the workforce. However, Reeves has not shown by a preponderance of the evidence that he will require permanent work restrictions relating to his mental health conditions. The evidence shows only that it is possible that he may require permanent work restrictions relating to his mental health diagnoses, not that it is probable.

Reeves has made efforts to find a new job since the County discharged him. He applied for a job with a gas company and the company offered him a job. (Hrg. Tr. pp.



60–61) Reeves ultimately declined the job because of his concerns about his physical ability to perform the job duties. (Hrg. Tr. p. 61)

Exhibit M consists of snippets of surveillance video footage depicting Reeves at the County landfill. One of the videos shows Reeves operating an excavator while still employed, which is in line with his temporary and permanent work restrictions. Another shows him carrying a 5-gallon barrel of oil with his left arm, which is in line with his temporary and permanent work restrictions. Others show him removing trash from a pickup truck, carrying the trash, and disposing of it in receptacles at the dump. It is unclear, based on the footage, how much the objects Reeves is shown carrying weighed, but his body movements do not suggest they are very heavy. Another depicts him carrying a 5-quart container with his right arm, but it is unclear how full it is or how much it weighs. The video footage is of limited probative value in this case.

At the time of hearing, Reeves worked on his family farm, which his mother owns and lives on after his father passed away. (Hrg. Tr. pp. 27, 92) He prepares equipment for spring planting and the fall harvest. (Hrg. Tr. pp. 27–28) Family members help him perform some of the duties. (Hrg. Tr. pp. 28, 92–93)

## **VI. CONCLUSIONS OF LAW.**

In 2017, the Iowa legislature amended the Iowa Workers' Compensation Act. See 2017 Iowa Acts, ch. 23. The 2017 amendments took effect on July 1, 2017. Id. at § 24(1); see also Iowa Code § 3.7(1). Because the injury at issue in this case occurred after July 1, 2017, the Iowa Workers' Compensation Act, as amended in 2017, applies. See Stiles v. Annett Holdings, Inc., No. 5064673, 2020 WL 6037539 \*2 (Iowa Work. Comp. Comm'r, App., Oct. 2, 2020).

### **A. Causation.**

An employer covered by the Iowa Workers' Compensation Act must “provide, secure, and pay compensation according to the provisions of this chapter for any and all personal injuries sustained by an employee arising out of and in the course of the employment, and in such cases, the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury.” Iowa Code § 85.3(1). “[W]here an accident occurs to an employee in the usual course of his employment, the employer is liable for all consequences that naturally and proximately flow from the accident.” Oldham v. Scofield & Welch, 266 N.W. 480, 482, opinion modified on denial of reh'g, 222 Iowa 764, 269 N.W. 925 (Iowa 1936). This includes, but is not limited to, a mental health condition caused by a work injury. See Coghlan v. Quinn Wire & Iron Works, 164 N.W.2d 848, 852–53 (Iowa 1969).

“[T]he burden of proof is on the claimant to prove some employment incident or activity was a proximate cause of the health impairment on which he bases his claim.” Anderson v. Oscar Mayer & Co., 217 N.W.2d 531, 535 (Iowa 1974). “[A] possibility is insufficient; a probability is necessary.” Id. The claimant must prove causation by a

preponderance of the evidence. See, e.g., St. Luke's Hosp. v. Gray, 604 N.W.2d 646, 652 (Iowa 2000) (citing Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 150 (Iowa 1996)).

“Whether an injury has a direct causal connection with the employment or arose independently thereof is essentially within the domain of expert testimony.” IBP, Inc. v. Harpole, 621 N.W.2d 410, (Iowa 2001) (quoting Dunlavey v. Econ. Fire & Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995)). The agency, “as the fact finder, determines the weight to be given to any expert testimony.” Sherman v. Pella Corp., 576 N.W.2d 312, 321 (Iowa 1998). The agency must weigh the evidence in a case and accept or reject an expert opinion based on the entire record. Dunlavey, 526 N.W.2d at 853. The agency may accept or reject an expert opinion in whole or in part. Sherman, 576 N.W.2d at 321.

### **1. Shoulder.**

As found above, Dr. Bansal's opinion on causation is more persuasive than that of Dr. Meis. The evidence shows Reeves sustained a torn rotator cuff while working at Wells that Dr. Meis surgically repaired. Reeves then re-tore his rotator cuff while performing job duties for the County. The record shows it is more likely than not Reeves sustained an injury to his right shoulder arising out of and in the course of his employment with the County.

### **2. Mental.**

As found above, Reeves met his burden of proof on the question of whether his mental health conditions are sequelae to the work injury he sustained to his right shoulder while working for the County. The weight of the evidence shows his work injury caused or, at a minimum, was a significant contributing factor in the development of his depression and anxiety.

## **B. Permanent Disability.**

Workers' compensation is “a creature of statute.” Darrow v. Quaker Oats Co., 570 N.W.2d 649, 652 (Iowa 1997). This means an injured employee's “right to workers' compensation is purely statutory.” Downs v. A & H Const., Ltd., 481 N.W.2d 481 N.W.2d 520, 527 (Iowa 1992). And “it is the legislature's prerogative to fix the conditions under which the act's benefits may be obtained.” Darrow, 570 N.W.2d at 652.

The Iowa Supreme Court has held:

The legislature enacted the workers' compensation statute primarily for the benefit of the worker and the worker's dependents. Therefore, we apply the statute broadly and liberally in keeping with the humanitarian objective of the statute. We will not defeat the statute's beneficent purpose by reading something into it that is not there, or by a narrow and strained construction.

Gregory v. Second Inj. Fund of Iowa, 777 N.W.2d 395, 399 (Iowa 2010) (quoting Holstein Elec. v. Breyfogle, 756 N.W.2d 812, 815–16 (Iowa 2008) (citations omitted)).

“Although the workers’ compensation statute is to be liberally construed in favor of the worker, the statute is not to be expanded by reading something into it that is not there.” Downs v. A & H Const., Ltd., 481 N.W.2d 520, 527 (Iowa 1992) (citing Cedar Rapids Community School Dist. v. Cady, 278 N.W.2d 298 (Iowa 1979)). “To determine legislative intent, we look to the language chosen by the legislature and not what the legislature might have said.” Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, (Iowa 2016) (citing Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 337 (Iowa 2008)). The “broad purpose of workers’ compensation” is “to award compensation (apart from medical benefits), not for the injury itself, but the disability produced by a physical injury.” Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, (Iowa 2010) (citing 4 Arthur Larson & Lex K. Larson, Larson’s Workers’ Compensation Law § 80.02, at 80–2 (2009)). With the 2017 amendments, the legislature altered how this is done under the Iowa Workers’ Compensation Act. Multiple of these legislative changes are at issue in the current case.

The Iowa Workers’ Compensation Act creates two types of injuries: those to scheduled members itemized in the statutory schedule and those to unscheduled members that the statute does not mention. See Simbro v. Delong’s Sportswear, 332 N.W.2d 886, 887 (Iowa 1983) (citing Graves v. Eagle Iron Works, 331 N.W.2d 116, 117–18 (Iowa 1983)); see also Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 14–15 (Iowa 1993). The permanent disability resulting from an injury to scheduled member is compensated based on functional disability. See Blizek v. Eagle Signal Co., 164 N.W.2d 84, 85–86 (Iowa 1969); see also Miller v. Lauridsen Foods, Inc., 525 N.W.2d 418, 420–21 (Iowa 1994). And the permanent disability caused by an injury to an unscheduled member is based on industrial disability, which consider the impact on the worker’s earning capacity. See Simbro, 332 N.W.2d at 887.

### **1. Shoulder.**

Before the 2017 amendments, permanent disability caused by an injury to a worker’s shoulder was determined using the industrial analysis. See Chavez v. MS Tech. LLC, 972 N.W.2d 662, 666–67 (Iowa 2022). The legislature added the shoulder to the statutory schedule with the 2017 amendments. See 2017 Iowa Acts ch. 23, § (now codified at Iowa Code § 85.34(2)(n)). Because of this change, the permanent disability caused by a work injury to a shoulder on or after July 1, 2017, is determined based only on functional disability. See Chavez, 972 N.W.2d at 666–70. The impact on worker’s earning capacity is no longer considered. See Miller, 525 N.W.2d at 420–21.

Dr. Bansal’s opinion on permanent disability is more compelling than that of Dr. Meis. Therefore, Reeves has met his burden of proof on permanent disability. The weight of the evidence shows that as of the date of hearing, he had a 13 percent functional impairment to his right shoulder. The injury also caused the need for permanent work restrictions.

## **2. Mental.**

As found above, the work injury Reeves sustained to his right shoulder caused sequelae in the form of depression and anxiety. However, Reeves failed to meet his burden of proof on the question of permanency. Dr. Donlin issued no opinion on permanency. And while Dr. Patra assessed the permanent functional impairment, he did not opine on why the conditions are more likely than not permanent in nature. Therefore, the weight of the evidence does not support the determination that Reeves's depression or anxiety is permanent in nature. This determination precludes application of an industrial disability analysis.

## **3. Successive Disability.**

The defendants argue in their post-hearing brief, under the section regarding the extent of permanent disability, that Dr. Bansal's evaluation of functional impairment after the 2011 injury Reeves sustained to his right shoulder at Wells must be subtracted from the 13 percent impairment he found after the stipulated work injury at issue in this case. (Def. Brief, p. 14) This argument requires a successive disabilities analysis under Iowa Code section 85.34(7).

In 2017, the legislature amended section 85.34(7) to remove sections governing the apportionment process for preexisting disabilities. See 2017 Iowa Acts ch. 23, §§ 13–14. As amended, section 85.34(7) now provides:

An employer is liable for compensating only that portion of an employee's disability that arises out of and in the course of the employee's employment with the employer and that relates to the injury that serves as the basis for the employee's claim for compensation under this chapter, or chapter 85A, 85B, or 86. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment from a prior injury with the employer, to the extent that the employee's preexisting disability has already been compensated under this chapter, or chapter 85A, 85B, or 86. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.

How section 85.34(7) governs successive disabilities after the 2017 amendments is currently up in the air as exemplified by the recent case Brunk v. Glenwood Resource Ctr, No. 19003535.02, 2023 WL 2376894, \*3–\*4 (Iowa Workers' Comp. Comm'r, Feb. 27, 2023) (App. Dec.). In Brunk, the Commissioner reversed an arbitration decision, which relied on the Commissioner's appeal decision in Rife v. P.M. Lattner Mfg. Co., No. 1652412.02, 2021 WL 3849591 (Iowa Workers' Comp. Comm'r, Aug. 20, 2021) (Arb. Dec.), aff'd 2022 WL 265661 (Iowa Workers' Comp. Comm'r, Jan. 21, 2022) (App. Dec.) regarding the applicability of section 85.34(7) after the 2017 amendments. Id. at \*5. In reversing the arbitration decision, the Commissioner relied on the district court ruling on judicial review in Rife that reversed the Commissioner's interpretation of

section 85.34(7). Id. (citing P.M. Lattner Mfg. Co. v. Rife, No. CVCV063141, Ruling on Judicial Review (Aug. 15, 2022)). The Court of Appeals then affirmed the district court's ruling with respect to how section 85.34(7) applies to the successive disabilities in that case. See 2023 WL 3862594, \*4–\*5 (Table) (Slip Copy) (Iowa App. June 7, 2023). At present, the case is pending before the Iowa Supreme Court after it granted further review.

While the Commissioner's appeal decision in Brunk may be on shaky ground in terms of its precedential value because it relies on a district court ruling on judicial review that is currently pending before the Iowa Supreme Court, it is nonetheless binding agency precedent in the current case. In Brunk, the Commissioner concluded section 85.34(7) "did not limit the credit of a prior industrial award for an unscheduled loss before 2017 to a subsequently functional loss of an unscheduled body part." Brunk, 2023 WL 2376894 at \*7. In concluding that the employer was entitled to a credit for industrial disability benefits paid for a pre-2017 shoulder injury with respect to a post-2017 back injury, he Commissioner further reasoned:

Before the 2017 amendments, Iowa Code section 85.34(2) included the enumerated scheduled losses in subparagraph (a) through (t), and unscheduled losses in subparagraph (u). At that time unscheduled losses were compensated industrially, not functionally in the event of a claimant returned to work earning the same or greater wages. With the 2017 amendments, unscheduled functional losses are included in the same subsection as unscheduled industrial losses, Iowa Code section 85.34(2)(v), in relation to 500 weeks of benefits. Under the plain text of the statute viewed in the light of the intent to avoid double recoveries, I find defendants are entitled to a credit for the prior 2013 industrial loss for the unscheduled loss to claimant's shoulder with respect to the 2019 unscheduled functional loss to his back. Because claimant's 2019 injury resulted in an eight percent functional loss entitling claimant to 40 weeks of permanent partial disability benefits which does not exceed the prior 22.5 percent industrial loss entitling claimant to 112.5 weeks of permanent partial disability benefits, claimant is not entitled to any additional permanent partial disability benefits in this case.

Id.

The facts in this case are somewhat different from those in Rife or Brunk. Here, Reeves sustained the initial shoulder injury while working for a different employer. That injury was included in a settlement that covered two separate shoulder injuries, each triggering an industrial disability analysis under the law that governed at the time. The record in this case does not allow the undersigned to determine what share of the overall settlement is attributable to the permanent disability caused by each individual shoulder injury. Moreover, as discussed above, the record in this case does not support findings that trigger an industrial disability analysis and the undersigned has made no findings with respect to how the shoulder injury has impacted Reeves's earnings capacity.

However, the functional impairment caused by each shoulder injury can be discerned. In the current case, Dr. Bansal's opinion that the injury at the center of this case caused Reeves to sustain a 13 permanent impairment is the most persuasive. After Reeves's earlier injury, Dr. Bansal opined Reeves sustained an 8 percent functional impairment.

The defendants argue that, under section 85.34(7), as amended, they are not liable for the 8 percent impairment caused by Reeves's injury at Wells. Rather, they contend they are liable only for the 5 percent impairment representing difference between the earlier impairment and the 13 percent caused by the stipulated injury he sustained with the County. The undersigned agrees. Because Dr. Bansal's opinion with respect to causation and impairment are most persuasive in this case, there exists sufficient evidence to do the math to ensure the defendants are not liable for compensating Reeves's "preexisting disability that arose out of and in the course of employment with a different employer," as required by the statutory text.

Subtracting the impairment caused by the work injury in this case from that caused by his 2011 injury at Wells, 13 minus 8 equals 5. Reeves has sustained a 5 percent functional impairment that is attributable to the injury he sustained working at the County. Multiplying 5 percent by 400 equal 20. Reeves is therefore entitled to 20 weeks of PPD benefits.

#### **C. Rate.**

The parties stipulated Reeves's gross earnings on the stipulated injury date were \$909.01 per week. They also stipulated he was married and entitled to three exemptions at the time. Based on the parties' stipulations, Reeves's workers' compensation rate is \$607.34 per week.

#### **D. Medical Benefits.**

Under Iowa Code section 85.27(1)(a), the defendants are responsible for furnishing care and all reasonably necessary transportation expenses incurred for such services relating to compensable injuries under Iowa Code chapter 85 and 85A. The evidence shows that the work injury Reeves sustained to his right shoulder while working for the County was a significant factor in causing his depression and anxiety. The County is therefore responsible for reasonable care necessitated by these conditions. The care Reeves has received from Dr. Donlin is reasonable, as is the medication he has been prescribed for the conditions diagnosed by Dr. Donlin. The County must reimburse Reeves for the cost of the treatment he has received from Dr. Donlin, the medication prescribed for the conditions diagnosed by Dr. Donlin, and reasonable future care for these conditions such as ongoing treatment with Dr. Donlin and prescription medication. It would be unreasonable to disrupt the doctor-patient relationship between Reeves and Dr. Donlin as of the time of hearing.

**E. Costs.**

“All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commission.” Iowa Code § 86.40. “Fee-shifting statutes using ‘all costs’ language have been construed ‘to limit reimbursement for litigation expenses to those allowed as taxable court costs.’” Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 846 (Iowa 2015) (quoting Riverdale v. Diercks, 806 N.W.2d 643, 660 (Iowa 2011)). Statutes and administrative rules providing for recovery of costs are strictly construed. Id. (quoting Hughes v. Burlington N. R.R., 545 N.W.2d 318, 321 (Iowa 1996)).

Because Reeves prevailed on the disputed issues of whether his depression and anxiety stem from the work injury to his right shoulder, whether the work injury caused permanent functional impairment to his right shoulder, and whether he is entitled to medical benefits for his mental sequelae, the \$103.00 filing fee and convenience fee is taxed against the defendants under Iowa Administrative Code rule 876—4.33(7).

**VII. ORDER.**

Based on the above findings of fact and conclusions of law, it is ordered:

- 1) The defendants shall pay to Reeves 20 weeks of permanent partial disability benefits at the rate of six hundred seven and 34/100 dollars (\$607.34) per week from the stipulated commencement date.
- 2) The defendants shall pay accrued weekly benefits in a lump sum.
- 3) The defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.
- 4) The defendants are to be given the credit for benefits previously paid for the stipulated amount.
- 5) The defendants shall file subsequent reports of injury as required by Rule 876 IAC 3.1(2).
- 6) The defendants shall pay the medical expenses in Exhibit 5 and for future care with Dr. Donlin relating to Reeves's depression and anxiety.
- 7) The defendants shall pay to Reeves one hundred three and 00/100 dollars (\$103.00) for the filing fee.

Signed and filed this 16<sup>th</sup> day of October 2023.

A handwritten signature in black ink, appearing to read "Ben Humphrey", is written over a horizontal line.

BENJAMIN G. HUMPHREY  
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Al Sturgeon (via WCES)

Ryan Clark (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.