BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BENJAMEN MCFARLAND, Claimant, vs. TERPSTRA PLUMBING, HEATING, & COOLING, Employer, FEDERATED RESERVE INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 20004873.01 ARBITRATION DECISION Headnotes: 1803

I. STATEMENT OF THE CASE.

Claimant Benjamen McFarland seeks workers' compensation benefits from the defendants, employer Terpstra Plumbing, Heating, and Cooling (Terpstra) and insurance carrier Federated Reserve Insurance Company (Federated). The undersigned presided over an arbitration hearing on November 8, 2022. McFarland participated personally and through attorney Nathaniel Boulton. Terpstra participated as the legal representative of Terpstra. The defendants participated by and through attorney Rene Charles LaPierre.

II. ISSUES.

Under rule 876 IAC 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) What is the nature and extent of permanent disability caused by the stipulated work injury?

2) Is McFarland entitled to taxation of the costs against the defendants?

III. STIPULATIONS.

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

1) An employer-employee relationship existed between McFarland and Terpstra at the time of the alleged injury.

2) McFarland sustained an injury on July 5, 2019, which arose out of and in the course of his employment with Terpstra.

3) The alleged injury is a cause of temporary disability during a period of recovery, but McFarland's entitlement to temporary or healing period benefits is no longer in dispute.

4) The alleged injury is a cause of permanent disability.

5) The commencement date for permanent partial disability (PPD) benefits, if any are awarded, is February 26, 2020.

6) At the time of the stipulated injury:

    a) McFarland's gross earnings were $1,000.63 per week.

    b) McFarland was single.

    c) McFarland was entitled to one exemption.

7) Prior to hearing, the defendants paid to McFarland 25 weeks of compensation at the rate of $654.75 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. FINDINGS OF FACT.

The evidentiary record in this case consists of the following:

- Joint Exhibits JE-1 through JE-14;
- Claimant's Exhibits 1 through 2;
- Defendants' Exhibits A through G; and
- Hearing testimony by McFarland.

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

McFarland was forty-six years of age at the time of hearing. (Hrg. Tr. p. 9) He was born in Des Moines, Iowa, and lived in Stuart and Grinnell until he moved to Colorado. (Hrg. Tr. p. 9) McFarland moved from Iowa to Colorado in August of 2021. (Hrg. Tr. p. 9)

McFarland graduated from Grinnell High School. (Hrg. Tr. p. 10) McFarland took emergency medical technician (EMT) classes and obtained a credential in that field. (Hrg. Tr. p. 10) He also took classes at a community college. (Hrg. Tr. p. 10)

McFarland has a master plumber certification. (Hrg. Tr. p. 10) This is the level above journeyman. (Hrg. Tr. p. 78) He worked as a plumber for another company for a year before Terpstra hired him. (Hrg. Tr. p. 10–11) McFarland worked there until his wife at the time and he bought a restaurant in Grinnell. (Hrg. Tr. p. 11) The restaurant did not work out, so McFarland returned to work for Terpstra in or around the spring of 2015. (Hrg. Tr. p. 11)

McFarland worked with Mike and Brenda. (Hrg. Tr. p. 11–13) He worked on service calls, installation, and did some sales work. (Hrg. Tr. pp. 12–13) The physical requirements varied by the job and required him to do what needed to be done to complete a job, whether it be replacing a furnace, carrying an old water heater out of a basement, working over his head on a ladder, crawling in a crawl space, working in a hole, laying on the floor in what is essentially a reverse plank while working on a kitchen sink repair, or digging a drain in a residential basement. (Hrg. Tr. pp. 13–14)

McFarland's work for Terpstra included lifting weights that ranged between 150 and 200 pounds. (Ex. 1, p. 1) The heaviest item McFarland lifted by himself was a water heater that weight approximately 200 pounds. (Ex. 1, p. 1) When working on an installation, McFarland did not often sit. (Ex. 1, p. 1) However, when driving between jobs, McFarland would sit. (Ex. 1, p. 1)

McFarland earned about $25.00 per hour while working full time for Terpstra. (Hrg. Tr. pp. 14–15) That worked out to one thousand dollars each week before taxes. (Hrg. Tr. p. 14) McFarland testified he would have moved on to another job if Terpstra had not given him requested pay raises between the date of injury and the date of hearing. (Hrg. Tr. pp. 16–17)

Terpstra offered health insurance as part of a group plan. (Hrg. Tr. p. 15) McFarland did not know if there was a retirement plan. (Hrg. Tr. pp. 15–16) Terpstra also provided a Chevrolet pickup truck to McFarland and paid for gas. (Hrg. Tr. p. 15) McFarland could use the truck to commute to jobs and for personal errands. (Hrg. Tr. pp. 15–16)

Before the stipulated work injury, McFarland suffered issues with his back and left leg. (Hrg. Tr. p. 70; Ex. JE-14, p. 177) The parties have stipulated that McFarland sustained an injury to his back while performing job duties for Terpstra on July 5, 2019. The doctors who have authored expert opinions in this case agree that the stipulated work injury caused McFarland permanent disability. No doctor has opined that the

stipulated work injury was at least a significant factor in causing McFarland permanent functional impairment. Therefore, the weight of the evidence establishes that the stipulated work injury McFarland sustained on July 5, 2019, more likely than not caused permanent functional impairment.

On July 5, 2019, McFarland went to install a furnace and air-conditioning system in a bar and grill in Montezuma, Iowa. (Hrg. Tr. p. 18) The job required removing a furnace that weighed about 350 pounds. (Hrg. Tr. p. 18) McFarland and Mike were removing the furnace and an air-conditioning coil from a platform. (Hrg. Tr. p. 18)

While removing an air-conditioning coil, the furnace began to fall off the platform. (Hrg. Tr. p. 19) McFarland grabbed the furnace so that it would not fall on Mike and caught with his body bent in a twisted position. (Hrg. Tr. p. 19) They were able to keep the furnace from falling. (Hrg. Tr. pp. 19–20) McFarland felt warmth in his back, went outside to collect himself, and then returned to finish the job. (Hrg. Tr. p. 20) After completion of the job, McFarland went home for the day. (Hrg. Tr. p. 20)

Brenda called McFarland the next morning for a job, and he answered while still in bed. (Hrg. Tr. pp. 20–21) He noticed he was sorer and had more stiffness than was typical. (Hrg. Tr. p. 21) By the time McFarland walked to his truck to drive to the job, he was having problems moving his legs. (Hrg. Tr. p. 21) McFarland went back inside, took a hot shower, and took over-the-counter anti-inflammatory medication as well as some "nerve medicine." (Hrg. Tr. p. 21) McFarland was able to complete the job that day despite his symptoms. (Hrg. Tr. p. 21)

That night after work, McFarland experienced muscle cramps and spasms in his back and stiffness and tingling in his legs. (Hrg. Tr. pp. 21–22) His symptoms led him to see his personal physician the following Monday. (Hrg. Tr. p. 22) Ultimately, McFarland reported the injury to Terpstra and the defendants provided care under Iowa Code section 85.27.

The defendants authorized care with Ryan Albright, M.D., for McFarland's injury. (Hrg. Tr. p. 25) McFarland saw Dr. Albright on July 8, 2019. (JE-1, p. 1) Dr. Albright noted McFarland shared "he had an acute worsening of his pain last week after being asked to hold up a furnace and keep it from falling down some stairs." (JE-1, p. 1)

On July 12, 2019, McFarland followed up with Dr. Albright, who noted back pain that was "moderate in severity, constant in nature and has a pressure-like and sharp quality." (JE-1, p. 3) Dr. Albright also recorded the pain shot intermittently into the back of McFarland's legs. (JE-1, p. 3) Dr. Albright released McFarland to return to work on July 15, 2019, with restrictions that including no lifting more than 20 pounds, no pushing or pulling more than 40 pounds, and no using ladders. (JE-1, p. 4)

Terpstra did not have much in the way of light-duty work because it was a small operation that specialized in plumbing, heating, and cooling. (Hrg. Tr. p. 32) Terpstra was motivated for McFarland to return to service calls, so they often asked him to try performing work to see if he could do it. (Hrg. Tr. p. 32)

McFarland would perform service calls outside his restrictions in order to ensure he would get hours. (Hrg. Tr. p. 33) To lessen the physical demands of the job, he did things like remove tools out of his bag to lighten it for carrying. (Hrg. Tr. p. 33) But this also meant more trips to the van for tools when performing a job. (Hrg. Tr. p. 33)

McFarland also requested that Terpstra hire his stepson as a helper. (Hrg. Tr. pp. 33–34) Terpstra did so for jobs that required heavier job duties. (Hrg. Tr. pp. 33–34) But his son was unable to perform much work without McFarland providing direction. (Hrg. Tr. p. 34)

McFarland requested other accommodations for the physical limitations caused by the work injury. (Hrg. Tr. p. 34) He asked for a mechanical lift to help load and unload items from his truck, but Terpstra refused. (Hrg. Tr. p. 34) He also inquired about an electric stair cart to transport heavy items up and down stairs; Terpstra would not agree to purchase such a cart. (Hrg. Tr. p. 34)

McFarland returned to see Dr. Albright on July 22, 2019. (JE-1, p. 5) He described his pain as somewhat improved but persistent with sharp bilateral back pain that was moderate in severity and worse when standing or walking. (JE-1, p. 5) Rest helped relieve the pain. (JE-1, p. 5) McFarland also complained of weakness in his legs when walking over about 100 feet in distance. (JE-1, p. 5) Dr. Albright continued McFarland's work restrictions from July 12 and added additional restrictions of no repetitive upper extremity twisting and no continuous walking for more than 100 feet. (JE-1, p. 6)

On July 29, 2019, McFarland underwent magnetic resonance imaging (MRI) of his lumbar spine at Pella Regional Health Center. (JE-2, pp. 12–13) Lee Henry, D.O., interpreted the MRI to show:

- Posterior bulging disc and degenerative disc disease at L4-5;
- Left foraminal narrowing at L4-5 secondary to posterior bulging disc and facet hypertrophy;
- No critical nerve root impingement or edema;
- No evidence of disc herniation; and
- No canal stenosis. (JE-2, p. 13)

McFarland next saw Dr. Albright on August 7, 2019, when he shared he was doing mainly administrative work at Terpstra. (JE-1, p. 7) Dr. Albright noted McFarland's pain continued and he had no new complaints or symptoms. (JE-1, p. 7) They discussed different types of treatment for his pain, including massage, acupuncture, biofeedback, and physical therapy, but McFarland did not want to take the time to undergo such care. (JE-1, p. 8) Dr. Albright instructed McFarland to follow-up on an as-

needed basis. (JE-1, p. 8) Dr. Albright continued McFarland's work restrictions on September 4, 2019. (JE-1, p. 9)

On August 16, 2019, McFarland began physical therapy at Total Rehab in Grinnell. (JE-3, p. 14) McFarland experienced mixed results with his symptoms during his time participating in physical therapy. (JE-3, pp. 14–47) Initially, McFarland would feel good after a physical therapy appointment only to have his symptoms return, often from performing physical activities at work. (JE-3, pp. 14–47)

On September 25, 2019, McFarland saw Daniel Miller, D.O., an occupational medicine specialist, for the first time. (JE-4, p. 48) Dr. Miller noted McFarland had complaints of back pain, "stingers" down the back of both legs into both feet, muscle spasms in his back and both legs, leg stiffness, and difficulty operating his legs with prolonged walking. (JE-4, p. 48) Dr. Miller assigned work restrictions of no lifting over 20 pounds, no pushing or pulling over 40 pounds, no repetitive bending or twisting, no climbing ladders, and sitting, standing, and walking as tolerated. (JE-4, p. 50) He also directed McFarland to ice and heat the affected area three times daily for 20 minutes. (JE-4, p. 50)

As McFarland continued with physical therapy, he felt soreness and fatigue after appointments. (JE-3, pp. 14–47; Hrg. Tr. p. 25) McFarland thought that was part of the process, but his providers told him that if exercises were causing him increased pain, they needed to stop doing them. (Hrg. Tr. p. 25) Nonetheless, he continued his physical therapy. (JE-3, pp. 14–47)

McFarland continued to see Dr. Miller and they decided to maintain conservative care in the form of medication and physical therapy. (JE-4, pp. 51–56) McFarland reported worsening symptoms on December 11, 2019, so Dr. Miller prescribed Prednisone, which had been beneficial previously. (JE-4, pp. 57–58) After a December 30, 2019 appointment, Dr. Miller opined McFarland was at maximum medical improvement (MMI) because "all reasonable modalities have been tried without results that were hoped for" and requested a functional capacity examination (FCE), which McFarland underwent on January 29, 2019. (JE-4, p. 60; JE-5, pp. 95–102) Shortly thereafter, McFarland discontinued physical therapy. (JE-3; JE-4, p. 61)

On February 26, 2020, McFarland saw Dr. Miller again. (JE-4, pp. 63–64) Dr. Miller noted tenderness in the paralumbar muscles bilaterally, flexion of ninety degrees with discomfort, extension of ten degrees with mild pain, and side bend rotation of twenty degrees bilaterally with discomfort. (JE-4, p. 63) He also recorded the straight leg test was negative bilaterally and symmetrical reflexes and sensation and strength in McFarland's lower extremities. (JE-4, p. 63)

Dr. Miller found McFarland's FCE was valid and placed him in the heavy physical demand level of work. (JE-4, p. 64) Based on the FCE, he assigned McFarland the following permanent work restrictions:

- Occasionally lifting up to 57.5 pounds from waist to floor;

- Occasionally lifting 47.5 pounds from waist to shoulders;
- Occasionally lifting 42.5 pounds from waist to overhead;
- Occasionally carrying up to 42.5 pounds bilaterally;
- Occasionally pushing up to 72.5 pounds horizontally;
- Occasionally pulling up to 50 pounds horizontally;
- Frequently climbing ladders; and
- Occasionally squatting. (JE-4, p. 64)

McFarland continued to follow-up with Dr. Miller with complaints of ongoing symptoms. (JE-4, pp. 65–68) On April 22, 2020, Dr. Miller opined that he did not believe McFarland was a candidate for surgery despite his ongoing symptoms. (JE-4, p. 68) He felt they needed to find a regiment that offered the greatest amount of pain relief with little or no medications. (JE-4, p. 68)

The defendants inquired about what, if any, permanent impairment McFarland had sustained. (JE-4, p. 68) Dr. Miller opined "within a reasonable degree of medical certainty, that [McFarland] has a permanent aggravation of his pre-existing spondylosis of the lumbar spine." (JE-4, p. 68) He also used Table 15-3 on page 384 of the Fifth Edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (*Guides*) to place McFarland in the diagnosis-related estimate (DRE) lumbar category II and opined he had a five percent impairment to the whole person. (JE-4, p. 68)

McFarland's symptoms worsened while he was working at Terpstra. (Hrg. Tr. p. 35) Because of concerns about opioids, McFarland and his doctors tried other types of drugs to address the pain. (Hrg. Tr. pp. 23, 35–36) Some of them had undesirable side effects such as kidney issues, cognitive issues, and troubles staying awake while driving at night. (Hrg. Tr. pp. 22–23) McFarland tried other avenues, such as yoga, to alleviate his ongoing symptoms, but had little success. (Hrg. Tr. pp. 36–37)

McFarland was able to take action to mitigate his symptoms. Sitting on a bucket relieved some of the stress on his back. (Hrg. Tr. pp. 34–35) McFarland also found that sitting in the company truck on the heated seats helped keep his pain level lower. (Hrg. Tr. p. 33–34) McFarland was under the impression sitting on a bucket or using the heated seats to reduce his symptoms was okay with Terpstra. (Hrg. Tr. p. 35)

McFarland continued to see Dr. Miller for his ongoing symptoms. (JE-4, p. 69) Dr. Miller believed McFarland was on too many medications and attempted to reduce the number of prescriptions he had. (JE-4, pp. 76, 78) Dr. Miller and McFarland continued to work to find a prescription medication regimen that consisted of as few prescriptions as possible with the maximum amount of symptoms reduction. (JE-4, pp. 78, 80, 82, 84, 86, 88, 90)

Claimant's counsel arranged for McFarland to undergo an independent medical examination (IME) with John Kuhnlein, D.O., an occupational medicine specialist, on November 4, 2020. (Ex. 1) As part of the evaluation process, Dr. Kuhnlein learned of McFarland's medical history during an in-person examination and review of medical records. (Ex. 1, pp. 1–8) Dr. Kuhnlein issued an IME report dated November 24, 2019. (Ex. 1)

Dr. Kuhnlein diagnosed McFarland with chronic musculoskeletal low back pain with features consistent with radiculitis. (Ex. 1, p. 8) He opined that the stipulated work injury materially aggravated McFarland's pre-existing low back condition. (Ex. 1, p. 8) Dr. Kuhnlein concluded McFarland reached MMI on February 26, 2020, and that his subsequent care was of a maintenance nature. (Ex. 1, p. 8)

On the question of permanent impairment caused by the stipulated work injury, Dr. Kuhnlein utilized the *Guides* to opine:

> In this particular case, with the pre-existing condition's aggravation in essentially the same distribution as before with more severe symptoms, I believe that the DRE method is indicated. Turning to Table 15-3, page 384, I would place Mr. McFarland into DRE Lumbar Category II and assign 7% whole person impairment. This would be an overall impairment, including the pre-existing condition. Apportionment may be indicated.

(Ex. 1, pp. 8–9)

Dr. Kuhnlein did not assert that the entirety of the 7 percent impairment rating he assigned McFarland was due to the stipulated work injury. He states that this rating includes McFarland's pre-existing condition, and that apportionment may be appropriate. In contrast, Dr. Miller linked the entirety of the 5 percent whole person impairment rating he gave McFarland was due to the aggravation of his pre-existing condition by the stipulated work injury. Therefore, Dr. Miller's opinion on permanent impairment is most persuasive.

Dr. Kuhnlein also prescribed the following permanent work restrictions:

- Occasionally lifting up to 30 pounds from floor to waist;
- Occasionally lifting up to 40 pounds from waist to shoulder;
- Occasionally lifting up to 20 pounds over the shoulder relating to the "moment arm" phenomenon;
- Occasionally lifting up to 30 pounds when reaching away from the axial plane;
- Sitting, standing, and walking on an as needed basis with the ability to change positions for comfort;
- Occasionally bend at the waist, crawl, kneel, stoop, or squat;

- Occasionally climb stairs;
- Occasionally work at or above shoulder height;
- No working on a ladder or at height for any significant length of time; and
- Stretch breaks while traveling. (Ex. 1, p. 9)

Ultimately, McFarland's employment with Terpstra came to an end. He was working with a young man Terpstra had hired as an apprentice. (Hrg. Tr. p. 37) They were assigned an installation job. (Hrg. Tr. p. 37) While McFarland's coworker was performing some work, McFarland went to the truck to sit on a heated seat to alleviate his back symptoms and check emails. (Hrg. Tr. p. 38)

Tim arrived at the job site, alleged McFarland sat in the truck for fifteen minutes, and made a comment to McFarland about sitting in the truck. (Hrg. Tr. pp. 38–39) McFarland took issue with Tim's tone and comments, the two exchanged words heatedly, and McFarland collected his tools and left the job site. (Hrg. Tr. p. 39) McFarland returned to the office and spoke with Brenda about the tension between him and Tim. (Hrg. Tr. p. 40) He told Brenda he would return the next day to discuss accommodations until he could find another job within his physical limitations. (Hrg. Tr. pp. 40–41)

During the next day's meeting, Tim informed McFarland that as far he was concerned, McFarland had quit his job the day before. (Hrg. Tr. p. 41) McFarland apologized for losing his temper and Tim said something along the lines of, "Let's get to work." (Hrg. Tr. p. 41) McFarland asked Tim if Terpstra would accommodate his work restrictions until he could find another job. (Hrg. Tr. p. 41) Tim replied, "I'm not paying somebody to sit around on a fucking bucket." (Hrg. Tr. p. 41)

While McFarland had decided to find a less physically demanding job before his conversation with Tim, it motivated him to end the employment relationship. (Hrg. Tr. p. 43) Tim's response caused McFarland to recognize he was beating himself up physically and emotionally working for Terpstra and he could not do it anymore. (Hrg. Tr. p. 41) He left the office, went home, cleaned out the company truck, got help to fill the truck bed with items he had borrowed from Terpstra, and then returned the truck to Terpstra with the items in it. (Hrg. Tr. pp. 41–42)

Because of their issues finding a viable pain medication regimen for McFarland, on February 3, 2021, Dr. Miller recommended he see a pain specialist because he was beyond his level of medical expertise. (JE-4, pp. 92, 94) McFarland went to Central States Pain Clinic, but the pain management was ineffective. (JE-7, pp. 120–23, 128–29; Hrg. Tr. p. 25) McFarland also tried other types of conservative care, including massage, muscle manipulation, and traction, but they did not reduce his pain. (Hrg. Tr. pp. 25–26) Chiropractic care likewise resulted in minimal benefit. (JE-6, pp. 103–108)

Ultimately, providers performed imaging that showed his spine was unstable. (Hrg. Tr. pp. 26–27) They referred him to a surgeon. (Hrg. Tr. p. 27) However, because McFarland was moving from Iowa to Colorado, they decided to wait until after he was established in Colorado to find him a surgeon there. (Hrg. Tr. p. 27)

In Colorado, McFarland saw Konrad Nau, M.D. (JE-9) Dr. Nau has kept McFarland under work restrictions that include no lifting, carrying, pushing, or pulling more than 35 pounds. (JE-9) This is in line with McFarland's lived experience and the self-limitation he uses in his daily life according to his credible hearing testimony. (Hrg. Tr. p. 54)

In Colorado, McFarland received injections to address his symptoms. (Hrg. Tr. p. 29) The results have not lasted long. (Hrg. Tr. pp. 29–30) McFarland's relief subsides after days or weeks, depending on his activity level. (Hrg. Tr. pp. 29–30) Even walking behind a self-propelled lawnmower will cause his pain to increase shortly after an injection. (Hrg. Tr. p. 30)

At the time of hearing, McFarland described his symptoms as stable because his work duties were more predictable and within his physical limitations. (Hrg. Tr. p. 45) He was preparing for the possibility of surgery by participating in physical therapy and losing weight. (Hrg. Tr. p. 28) McFarland had an appointment to determine if he is a candidate for surgery. (Hrg. Tr. p. 28) McFarland hopes to be able to undergo surgery and rehabilitate his back so that he can return to his pre-injury activity level at work and in his free time. (Hrg. Tr. p. 28)

McFarland was using prescription muscle-relaxers. (Hrg. Tr. p. 45) He nonetheless experiences tingling and burning in the toes on his right foot, his right calf, and in the hamstring area of his right leg. (Hrg. Tr. p. 46) McFarland's symptoms are worse when he is not using muscle-relaxers in such situations so that he has cramping and pain in both legs. (Hrg. Tr. pp. 46–47)

Dahl hired McFarland and his job there started on or about June 21, 2021. (Hrg. Tr. p. 67) The job is based in Colorado. (Hrg. Tr. p. 47) McFarland and his family had to move from Grinnell to Colorado. (Hrg. Tr. pp. 47, 51) His family paid a young man to help them move from Iowa to Colorado and for his flight back to Iowa. (Hrg. Tr. p. 51)

At the time of hearing, McFarland was working as a sales manager for the HVAC department. (Hrg. Tr. pp. 47–48) He manages the inventory and works with customers. (Hrg. Tr. p. 48) McFarland spends most of his day in an office chair, but he can use a hot pad or get up and walk around as needed. (Hrg. Tr. p. 48) On occasion, McFarland will go to a job site to observe or help with troubleshooting and other issues. (Hrg. Tr. p. 48) But he does not perform duties of the type he performed at Terpstra. (Hrg. Tr. p. 48)

The position is a salaried position with no overtime, unlike his position at Terpstra. (Hrg. Tr. p. 50) McFarland's first-year salary at Dahl was approximately sixty-two thousand dollars. (Hrg. Tr. p. 63) He makes about eight thousand more dollars per year than he did at Terpstra with the possibility to earn bonuses. (Hrg. Tr. p. 49)

McFarland earned a bonus of twenty thousand dollars in his first year on the job. (Hrg. Tr. p. 63) The bonus brought his overall annual earnings to approximately eighty-two thousand dollars. (Hrg. Tr. p. 64)

McFarland's new job has benefits that include health insurance, to which he contributes just as he did at Terpstra, and retirement plan. (Hrg. Tr. pp. 49, 64) McFarland's new employer provides a vehicle stipend but does not provide a vehicle and gas like Terpstra. (Hrg. Tr. p. 50)

McFarland's earnings do not go as far in Colorado as they did in central Iowa because the cost of living is higher. (Hrg. Tr. p. 49) Housing is more expensive in Colorado than it was in Grinnell. (Hrg. Tr. p. 49) Consequently, his increased earnings do not go as far in Colorado as they would have in Grinnell.

V. CONCLUSIONS OF LAW.

In 2017, the Iowa legislature amended the Iowa Workers' Compensation Act. See 2017 Iowa Acts, ch. 23. The 2017 amendments apply to cases in which the date of an alleged injury is on or after 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. Smidt v. JKB Restaurants, LC, File No. 5067766 (App. Dec. 11, 2020).

A. Effect of Unemployment Insurance Determination.

The defendants offered into evidence as Exhibit A, an unemployment insurance appeal decision issued by an administrative law judge with the department of workforce development under the Iowa Employment Security Law, Iowa Code chapter 96. McFarland had no objection to the exhibit. The undersigned admitted the decision into evidence.

Iowa Code section 96.6(3)(*b*)(4) provides:

> A finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of the department, administrative law judge, or the employment appeal board, is binding only upon the parties to proceedings brought under this chapter, and is not binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of workers' compensation, other state agency, arbitrator, court, or judge of this state or the United States.

Thus, Defendants' Exhibit A, the unemployment insurance appeal decision, has limited effect in this proceeding before the Iowa Workers' Compensation Commissioner. Neither the findings of fact nor the conclusions of law in it are binding on the undersigned. Nonetheless, the findings of fact are generally in line with McFarland's testimony and reinforce the conclusion that he was a credible witness at hearing. The

conclusions of law under the Iowa Employment Security Law are not controlling on the conclusions in this section under the Iowa Workers' Compensation Act, Iowa Code chapter 85.

B. Permanent Disability.

The parties dispute how Iowa Code section 85.34(2)(*v*), as amended in 2017, impacts McFarland's entitlement to benefits. The defendants contend the statute operates to limit McFarland to benefits for only the functional impairment resulting from the stipulated work injury because, after the injury, he returned to work with Terpstra at the same or higher hourly wage. McFarland argues that he is entitled to permanent partial disability benefits for the industrial disability resulting from his work injury because he earned less working at Terpstra after the injury than before and his employment with Terpstra ended before the hearing.[1] Thus, the dispute centers on the impact of McFarland's return to work and separation from employment with Terpstra and requires interpretation of section 85.34(2)(*v*).

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 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 "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). Under Iowa Code section 85.34(2), the method of compensating permanent partial disability caused by a work injury is generally based on whether the injury is to a body part itemized in the statutory schedule. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404, 407 (Iowa 1994). "Scheduled permanent partial disabilities . . . are 'arbitrarily' compensable according to the classifications of section 85.34(2) without regard to loss of earning capacity." Id. (quoting Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 14–15 (Iowa 1993)).

Before 2017, permanent partial disability to an unscheduled body part caused by a work injury was "compensated by the industrial disability method which takes into account the loss of earning capacity." Id. (citing Mortimer, 502 N.W.2d at 14–15). An industrial disability analysis was used regardless of whether the injured employee

[1] McFarland also argues that even though his salary, wages, or earnings at his new job with a different employer are higher than what they were at Terpstra when he sustained the work injury, the agency should consider the cost of living in his new area of residence when determining whether he is "receiv[ing] the same or greater salary, wages, or earnings than [he] received at the time of injury" under section 85.34(2)(*v*). Because the cost of living in Colorado, where he works and resides, is higher than it is in Iowa, McFarland posits, he should be entitled to industrial disability benefits under the amended statute. Because McFarland is entitled to permanent partial disability benefits based on the industrial disability framework under the statutory text, this decision does not address his alternative argument that the statute should be interpreted to require consideration of the cost of living in his area of residence.

returned to work with the defendant-employer or the level of earnings at the time of hearing relative to the date of injury. Mannes v. Fleetguard, Inc., 770 N.W.2d 826, 830 (Iowa 2009) (quoting Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824, 831 (Iowa 1992)); see also Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 158 (Iowa 1996); Arrow-Acme Corp. v. Bellamy, 500 N.W.2d 92, 95 (Iowa App. 1993). With the 2017 amendments, the legislature carved out an exception to this general rule and created a mandatory bifurcated litigation process on the issue of permanent disability under certain circumstances. See 2017 Iowa Acts ch. 23, § 8 (now codified at Iowa Code § 85.34(2)(*v*)). The statute now articulates an exception and the circumstances triggering the bifurcated litigation process as follows:

> If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity. Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee's earning capacity caused by the employee's permanent partial disability.

Iowa Code § 85.34(2)(*v*).

Thus, the 2017 amendments changed the statute so that its text expressly incorporates the agency's review-reopening process to create a mandatory bifurcated litigation process when certain criteria are met. See, e.g., Garcia v. Smithfield Foods, File No. 1657969.01 (Arb. February 16, 2022). Under Iowa Code section 86.14(2), review-reopening is a process by which a determination of compensation is revisited due to a change in the claimant's condition. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 391–95 (Iowa 2009) The bifurcated litigation process created in section 85.34(2)(*v*) allows a claimant to seek a new agency determination of permanent disability using an industrial disability analysis when the defendant-employer terminates the claimant's employment after the initial agency award or approval of the parties' agreement for settlement. Presumably, this is because the defendant-employer's discharge of the claimant after the award or agreement for settlement creates a potential change in the claimant's condition that could trigger reopening the determination of permanent disability. See id.

The parties dispute whether section 85.34(2)(*v*) requires McFarland to follow the bifurcated litigation process to obtain a determination of what, if any, industrial disability he has sustained due to his unscheduled work injury. The defendants believe

McFarland must follow it because he returned to work with Terpstra at the requisite earnings level after the stipulated work injury. McFarland disagrees because Terpstra terminated his employment before the hearing.

The legislature has not empowered the agency to interpret the Iowa Workers' Compensation Act, but the agency necessarily must do so when performing its quasi-judicial function as tribunal for workers' compensation contested case proceedings. See Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 518–19 (Iowa 2012); see also Iowa Ins. Inst. v. Core Group of Iowa Ass'n for Justice, 867 N.W.2d 58, 68 (Iowa 2015). To determine McFarland's entitlement to permanent partial disability (PPD) benefits in this case, it is necessary to first determine whether McFarland must use the bifurcated litigation process under the statute given the timing of Terpstra's termination of his employment. Therefore, this decision must interpret section 85.34(2)(*v*).

The defendants ask the agency to use one sentence of section 85.34(2)(*v*). Read alone, this sentence states that an injured employee is entitled only to PPD benefits for functional impairment if the employee "returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury." Iowa Code § 85.34(2)(*v*). As the defendants point out, the sentence contains no express requirement that the injured worker remain employed after returning to work at the requisite earning level. But the analysis of this statutory provision does not end with the punctuation that concludes this sentence.

Iowa statutes are interpreted as a whole, not in part. See, e.g., Doe v. State, 943 N.W.2d 608, 610 (Iowa 2020). When interpreting the text of a provision in the Iowa Code, courts and the agency must "take into consideration the language's relationship to other provisions of the same statute and other provisions of related statutes." Id. Therefore, the entirety of section 85.34(2)(*v*) and its interplay with the rest of the Iowa Workers' Compensation Act must be considered, not just one sentence. The next sentence of section 85.34(2)(*v*) states an injured employee who "returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer" may seek reopening of the agency award or an agreement for settlement on the question of permanent disability.

The Commissioner considered the interplay of these two new sentences in Martinez v. Pavlich, Inc., File No. 5063900 (App. July 30, 2020). In Martinez, the claimant voluntarily quit employment with the defendant-employer and accepted a position with a different employer at higher pay. Id. While the nature of the employment separation differs from the one in this case, Martinez is nonetheless guiding. Id. The Commissioner considered how the two sentences cited by the parties in this case should be construed and found:

> [W]hen the two new provisions . . . are read together, as they are set forth in the statute, it appears the legislature intended to address *only the scenario* in which a claimant initially returns to work with the defendant-

> employer or is offered work by the defendant-employer at the same or greater earnings but is later terminated by the defendant-employer.

Id. at 5 (emphasis added). Put otherwise, the statute requires a bifurcated litigation process on permanent disability only under the circumstances its text expressly details.

Reinforcing the Commissioner's reading is the traditional statutory construction principle of *expressio unius est exclusio alterious*, which holds that legislative intent is expressed by exclusion and inclusion alike with the express mention of one thing implying the exclusion of another. Kucera v. Baldazo, 745 N.W.2d 481, 487 (Iowa 2008). In section 85.34(2)(*v*), the text expressly requires a bifurcated litigation process only when the claimant returns to employment with the defendant-employer or is offered work by the defendant-employer at the requisite earnings level and is then discharged after an agency award of permanent disability or an agreement for settlement with respect to permanent disability. The statute contains no mention of any other circumstances that mandate a bifurcated litigation process to determine the extent of permanent disability. The legislature could have included such language in the statute but did not. This choice implies that the requirement for a bifurcated ligation process only applies when the defendant-employer discharges the claimant after the agency issues an award or approves the parties' agreement for settlement on the question of permanent disability based on functional impairment.

Relatedly, the Iowa Workers' Compensation Act "is not to be expanded by reading something into it that is not there." Downs, 481 N.W.2d at 527 (citing Cedar Rapids Cmty. Sch. Dist. v. Cady, 278 N.W.2d 298 (Iowa 1979)). Because the statutory text does not include an express requirement for a bifurcated litigation process when the defendant-employer terminates the claimant's employment before hearing, it would be legal error to expand the circumstances under which section 85.34(2)(*v*) requires such a process by reading something into its text that is not there. Compounding the legal error that such an interpretation would constitute is the fact it would undermine an important purpose of the Iowa Workers' Compensation Act.

In Zomer v. West River Farms, Inc., 666 N.W.2d 130 (Iowa 2003), the Iowa Supreme Court considered the Commissioner's authority to reform a workers' compensation insurance policy. Even though this opinion construed the scope of the Commissioner's authority under section 85.21, its reasoning applies here. Id. at 132–33. The court drew on longstanding precedent as the foundation of its holding:

> The fundamental reason for the enactment of this legislation is to avoid litigation, lessen the expense incident thereto, minimize appeals, and afford an efficient and speedy tribunal to determine and award compensation under the terms of this act.
>
> "It was the purpose of the legislature to create a tribunal to do rough justice—speedy, summary, informal, untechnical. With this scheme of the legislature we must not interfere; for, if we trench in the slightest degree upon the prerogatives of the commission, one

> encroachment will breed another, until finally simplicity will give way to complexity, and informality to technicality."

Id. at 133 (quoting Flint v. City of Eldon, 183 N.W. 344, 345 (1921) (citation omitted)).

The court concluded a "bifurcated litigation process" that is drawn out "is a far cry from the efficient and speedy remedy envisioned by the general assembly when it adopted the workers' compensation act." Id. at 133–34. The court held it would be erroneous "to read into the statute a limitation on the [C]ommissioner's authority to decide claims for compensation, particularly when to do so would defeat one of the primary purposes of the statute—the provision of a prompt and adequate remedy." Id. Applying Zomer here, expanding the circumstances in which a bifurcated litigation process is required under section 85.34(2)(*v*) requires reading something into the statute that is not there and would result in a longer, drawn-out process that would hinder the agency's ability to provide a prompt and adequate remedy, which would defeat one of the primary purposes of the Act.

Lastly, reading the requirement for a bifurcated litigation process to apply only under the circumstances expressly stated in section 85.34(2)(*v*) is consistent with Iowa Supreme Court precedent requiring the agency and courts to "apply the workers' compensation statute broadly and liberally in keeping with its humanitarian objective: the benefit of the worker and the worker's dependents." Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 257 (Iowa 2010). Applying the statute as written allows a claimant to receive a final determination on permanent disability when the issue is ripe for determination. Getting such a determination via a single contested case proceeding before the agency means the claimant will receive payment of all PPD benefits to which the claimant is legally entitled sooner in time and without having to go through litigation of a second contested cast proceeding. Therefore, the result of adhering to the statutory text is beneficial to the injured worker and the worker's dependents.

Circling back to the agency appeal decision in Martinez, the Commissioner specifically considered whether the statute mandates a bifurcated litigation process when the claimant quits employment with the defendant-employer and then gets a job with a different employer with higher earnings. File No. 5063900 (App. July 30, 2020). The Commissioner held reading the statute to require a bifurcated litigation process when the claimant quits employment with the defendant-employer and obtains a new job with higher earnings before hearing would cause absurd results:

> For example, [such an] interpretation would seemingly "reset" claimant's entitlement to benefits and limit them to functional loss any time a claimant returns to work or is offered work at the same or greater wages by any employer. This would make it virtually impossible for defendants to know when to volunteer benefits using the industrial disability method. Furthermore, using claimant's interpretation, a claimant entitled to benefits under subsection 85.34(2)(v) (2019) might be better off not seeking employment after being terminated by a defendant-employer because he or she would potentially risk entitlement to benefits under the industrial

> disability analysis should a different employer offer the same or greater earnings than the claimant was receiving at the time of the injury. Certainly the legislature did not intend to discourage claimants from seeking gainful employment after a work injury.

Id. at 5–6. The Commissioner then concluded, "though claimant in this case was earning greater wages at the time of the hearing than he was when he was injured, I conclude his earlier voluntary separation from defendant-employer removed claimant from the functional impairment analysis and triggered his entitlement to benefits using the industrial disability analysis." Id. at 6.

On judicial review, the district court disagreed with the Commissioner's interpretation of section 85.34(2)(*v*). See Pavlich Inc. et al v. Martinez, Ruling on Petition for Judicial Review, Case No. CVCV060634 (Iowa D. Ct. Polk Co., Apr. 21, 2021). Nonetheless, the district court affirmed the Commissioner's determination of permanent disability. See id. Thus, the district court's analysis of whether section 85.34(2)(*v*) mandates a bifurcated litigation process when the claimant quits employment with the defendant-employer and obtains a job with higher earnings before the hearing is *obiter dicta* and does not control in this case on the question of whether McFarland must go through the bifurcated litigation process outlined in section 85.34(2)(*v*). See Nixon v. State, 704 N.W.2d 643, 648 n. 5 (Iowa 2005) (citing Boyles v. Cora, 232 Iowa 822, 847, 6 N.W.2d 401, 413 (1942)). As Deputy Grell persuasively concluded, "[U]ntil a definitive interpretation is provided by the Iowa appellate courts, [a presiding deputy is] bound by the precedent of this agency found in Martinez." Dague v. Unisys Corporation, File No. 1645503.02 (Arb., Mar. 28, 2022).

For these reasons, section 85.34(2)(*v*) does not require a bifurcated litigation process on the question of a claimant's permanent disability when the employment relationship between the claimant and defendant-employer ends before the agency hears the case. The requirements identified in the statute that trigger the bifurcated litigation process on permanent disability are not met under these circumstances, which means the agency may determine the extent of industrial disability just as it did before the 2017 amendments. Because McFarland quit his job with Terpstra before the hearing in this case, this decision will determine what, if any, industrial disability he sustained because of the stipulated work injury.

The factors considered when determining industrial disability are: functional disability, age, education, qualifications, work experience, inability to engage in similar employment, earnings before and after the injury, motivation to work, personal characteristics, and the employer's inability to accommodate the functional limitations. See id.; Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 526 (Iowa 2012); IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 632–33 (Iowa 2000); Ehlinger v. State, 237 N.W.2d 784, 792 (Iowa 1976).

McFarland sustained a functional impairment of 5 percent to the whole body. His postsecondary education includes an EMT credential, but the permanent work restrictions necessitated by the work injury would prevent him from being able to lift

weights of the type typically required from EMT workers. This precludes him from using this specialized knowledge moving forward in his working life.

The permanent work restrictions caused by the stipulated work injury also prevent him from leveraging his past work experience. He would be unable to return to his job at Terpstra or similar employment. This limits his opportunities in the labor market, especially in his new home state of Colorado.

The record shows McFarland is motivated to work. After McFarland returned to work with Terpstra, he regularly violated his work restrictions and worked through pain to perform job duties. After quitting, he moved to another state to take a job. Relatedly, the record shows it is more likely than not McFarland had no plans to retire until it is common to do so, in his 60s.

Whether the defendant-employer is able to maintain the claimant's employment after the assignment of work restrictions is

> Another important factor in the consideration of permanent and total disability cases is the employer's ability to retain the injured worker with an offer of suitable work. The refusal or inability of the employer to return a claimant to work in any capacity is, by itself, significant evidence of a lack of employability. Clinton v. All-American Homes, File No. 5032603 (App. April 17, 2013); Western v. Putco Inc., File Nos. 5005190 /5005191 (App. July 29, 2005); Pierson v. O'Bryan Brothers, File No. 951206 (App. Jan. 20, 1995); Meeks v. Firestone Tire & Rubber Co., File No. 876894 (App. Jan. 22, 1993); see also Larson, Workers' Compensation Law, Section 57.61, pps. 10-164.90-95; Sunbeam Corp. v. Bates, 271 Ark 385, 609 S.W.2d 102 (1980); Army & Air Force Exchange Service v. Neuman, 278 F.Supp. 865 (W.D. La 1967); Leonardo v. Uncas Manufacturing Co., 77 R.I. 245, 75 A.2d 188 (1950). An employer knows the demands that are placed on its workforce. Its determination that the worker is too disabled for it to employ is entitled to considerable weight. If the employer in whose employ the disability occurred is unwilling or unable to accommodate the disability, there is no reason to expect some other employer to have more incentive to do so.

McNitt v. Nordstrom, Inc., File No. 5065697 (Rehrg. July 20, 2020) (aff'd and adopted as final agency decision, App. Aug. 7, 2020).

Here, Terpstra took multiple steps to accommodate McFarland's permanent work restrictions. Nonetheless, to do the job, McFarland worked outside his restrictions. To deal with the pain caused by the stipulated work injury, he took breaks in the form of sitting on a bucket and sitting on the heated seats in the company truck. This caused conflict with Terpstra ownership. Ultimately, Bryan confronted him about sitting in the truck, which led to the meeting at which Bryan said, "I'm not paying you to sit on a fucking bucket." This shows that Terpstra had a limited willingness to accommodate McFarland's work injury and resultant work restrictions.

Nonetheless, McFarland has been able to find a new job that is less physically demanding. His earnings in this job are higher than what he earned at Terpstra. While these earnings may not go as far due to the higher cost of living in Colorado, this is not a consideration when determining permanent partial disability under the industrial disability framework under the Iowa Workers' Compensation Act.

McFarland has met his burden of proof on the question of permanent disability under the Iowa Workers' Compensation Act. The evidence shows it is more likely than not the stipulated work injury caused industrial disability. The factors discussed above establish McFarland has sustained a 30 percent permanent partial disability to the whole body. Multiplying 30 percent by 500 weeks equals 150 weeks of benefits, subject to the stipulated credit for benefits previously paid.

C. Rate.

The parties stipulated McFarland's gross earnings on the stipulated injury date were $1,063.00 per week. They also stipulated he was single and entitled to one exemption at the time. Based on the parties' stipulations, McFarland's workers' compensation rate is $650.02 per week.

D. Costs.

Iowa Code section 86.40 gives the agency the discretion to tax costs. "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 McFarland prevailed on the disputed issue of permanent disability, the following costs are taxed against the defendants:

- Attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, 876 IAC 4.33(1);
- Transcription costs when appropriate, 876 IAC 4.33(2);
- Costs of service of the original notice and subpoenas, 876 IAC 4.33(3);
- Witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, 876 IAC 4.33(4);
- 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, 876 IAC 4.33(5);

- Reasonable costs of obtaining no more than two doctors' or practitioners' reports, 876 IAC 4.33(6);

- Filing fees when appropriate, including convenience fees incurred by using the payment gateway on the Workers' Compensation Electronic System (WCES), 876 IAC 4.33(7); and

- Costs of persons reviewing health service disputes, 876 IAC 4.33(8).

VI. ORDER.

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

1) The defendants shall pay to McFarland 150 weeks of permanent partial disability benefits at the rate of six hundred fifty and 02/100 dollars ($650.02) per week from the commencement date of February 26, 2020.

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 of 25 weeks at the rate of six hundred fifty-four and 75/100 dollars ($654.75).

5) The defendants shall file subsequent reports of injury as required by Rule 876 IAC 3.1(2).

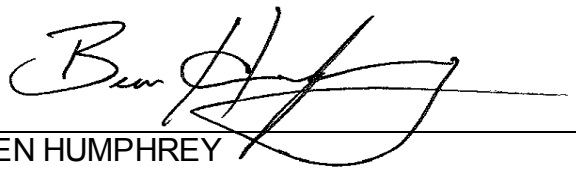
6) The defendants shall pay to McFarland the following amounts for the following costs:

    a. One hundred three and 00/100 dollars ($103.00) for the filing fee;

    b. Three hundred seventy-five and 00/100 dollars ($375.00) for the cost of the expert report by Dr. Kuhnlein;

7) The parties shall be responsible for paying their own hearing costs. Each party shall pay an equal share of the cost of the transcript.

Signed and filed this 17th day of July, 2023.



BEN HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Nathaniel Boulton (via WCES)

Rene Charles LaPierre (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.