BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ERIC ZALAZNIK, Claimant, vs. JOHN DEERE DUBUQUE WORKS OF DEERE & COMPANY Employer, Self-Insured, Defendant.	File Nos. 5066386, 5067224.01 ARBITRATION DECISION Head Note Nos: 1703, 1803, 2501

STATEMENT OF THE CASE

Claimant, Eric Zalaznik, filed petitions in arbitration seeking workers' compensation benefits from John Deere Dubuque Works of Deere & Company (Deere), self-insured employer. This matter was heard on January 29, 2021, with the final submission date of February 26, 2021.

The record in this case consists of Joint Exhibits 1-8, Claimant's Exhibits 1-6, Defendant's Exhibits A-L, and the testimony of Claimant.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

FILE NUMBER 5066386 (DOI 09/05/2017)

1. Whether the injury resulted in a permanent disability, and if so;

2. The extent of claimant's entitlement to permanent partial disability benefits.

3. Whether Iowa Code section 85.34(7) is applicable.

4. Costs.

FILE NUMBER 5067224.01 (DOI 05/15/2018)

1. The extent of claimant's entitlement to permanent partial disability benefits.

2. Whether this is a causal connection between the injury and the claimed medical expenses.

3. Whether Iowa Code section 85.34(7) is applicable.

4. Costs.

FINDINGS OF FACT

Claimant was 46 years old at the time of the hearing. Claimant graduated from high school. Claimant went to a community college but did not graduate.

Claimant has worked as a laborer for construction and plumbing companies. He worked at biodiesel plants. Claimant worked as a painter in his own business. Claimant began with Deere in April of 2011. (Ex. A, p. 3)

Claimant's prior medical history is relevant. Claimant sustained a work-related bilateral elbow injury in May of 2012. Claimant underwent left elbow surgery in October of 2013 and July of 2015. He had right elbow surgery in January of 2014. (Ex. 1, p. 15; Ex. A, p. 4) Claimant received 50 weeks of permanent partial disability benefits for the injury.

Claimant also had a right shoulder injury in January of 2013. Claimant had right shoulder surgery in May of 2015. (Ex. A, p. 5) Claimant received 100 weeks of permanent partial disability benefits for that injury. (Ex. A, p. 18; Ex. B, p. 23)

Claimant was an inspector at the Deere plant in department 818. That job required him to do visual and hands-on inspections of Deere crawlers. (TR p. 13) While stepping off a crawler, claimant had a misstep to the ground. Claimant said he felt a jolt in his low back resulting in immediate pain down his low back and left leg. (TR pp. 15-16; Ex. 1, p. 21; JE 2, p. 26)

Claimant underwent conservative care of Medrol Dosepaks and epidural steroid injections (ESI). (Ex. 1, pp. 21-22; JE 4) Claimant saw Chad Abernathey, M.D., in December of 2017, and surgery was recommended at that time. (Ex. 1, p. 22)

On January 11, 2018, claimant underwent a partial hemilaminectomy and a diskectomy. Surgery was performed by Dr. Abernathey. (JE 5, p. 40)

Claimant returned to Dr. Abernathey on February 23, 2018. At that time Dr. Abernathey released claimant to return to work on March 5, 2018. (Ex. 1, p. 22)

On or about May 15, 2018, claimant was testing crawlers by manually jacking the cab off the crawler. Claimant said he did this jacking of the cab for a number of crawlers and gradually he injured his right shoulder. (TR pp. 21-22)

On May 15, 2018, claimant was evaluated at Spine and Sport Chiropractic Center. Claimant had pain in the front of the right shoulder. He was assessed and treated for right shoulder pain. (JE 2, pp. 27-28)

In an August 8, 2018 letter, Dr. Abernathey indicated that claimant was at maximum medical improvement (MMI) as of August 8, 2018. He found claimant had a 7 percent whole person impairment regarding his back injury. (JE 5, p. 41)

Claimant testified the last time he saw Dr. Abernathey was in February of 2018. (TR p. 17)

On January 14, 2019, claimant was evaluated by Brendan Patterson, M.D., at the University of Iowa Hospitals and Clinics (UIHC) for right shoulder pain. A symptom drawing made by claimant for that exam indicated pain in the right shoulder, biceps and neck. (JE 7, pp. 51-52)

Claimant returned to Dr. Patterson on April 3, 2019. Claimant had right shoulder pain, neck pain and some radicular symptoms. Claimant's MRI was reviewed, which showed a possible SLAP lesion. Dr. Patterson recommended referral to the UIHC Spine Clinic. He was given a subacromial injection. (JE 7, pp. 53-55)

On May 14, 2019, claimant had a cervical MRI. The MRI showed multilevel neural foraminal narrowing and a small annular tear at the C5-6 level. (JE 3, p. 30)

On June 6, 2019, claimant was seen by Timothy Miller, M.D. Claimant was given a cervical ESI. (JE 3, p. 31)

Claimant returned to Dr. Patterson on July 11, 2019. Claimant was recommended to have an orthopedic neurosurgeon evaluation for his cervical spine. (JE 7, pp. 56-58)

On July 25, 2019, claimant had a second cervical ESI performed by Dr. Miller. (JE 3, p. 33)

On July 29, 2019, claimant was seen by Dr. Abernathey for neck and shoulder pain. Claimant was referred to Dr. Abernathey for an opinion regarding cervical findings on the MRI. Dr. Abernathey found that claimant's degenerative changes in the cervical spine were minimal in nature. He opined that most of claimant's problems were with the claimant's shoulder. (JE 5, pp. 42-43)

In an August 2, 2019 letter, Lawrence Hutchison, M.D., opined that claimant's work incident of May 15, 2018, substantially aggravated his pre-existing shoulder condition. (JE 8, p. 91)

On December 5, 2019, claimant was evaluated by Andrew Pugely, M.D., for an independent medical evaluation (IME) regarding the cervical spine. Dr. Pugely noted the findings on the MRI at the C3-C5 levels were chronic degenerative changes not related to the shoulder injury. He opined claimant's neck symptoms were work related.

Dr. Pugely recommended against cervical surgery. Dr. Pugely did not believe claimant's neck complaints could be separated from his shoulder injury. (JE 7, pp. 64-69)

Claimant returned to Dr. Patterson on January 8, 2020. Shoulder surgery was discussed and chosen as a treatment option. (JE 7, pp. 70-71)

Claimant returned to Dr. Patterson on January 8, 2020, for pain in the right shoulder and numbness in the right jaw. Surgery was discussed and chosen as a treatment option. (JE 7, pp. 70-71)

In a January 20, 2020 note, Dr. Pugely noted that it was not possible to separate claimant's neck and shoulder complaints from his May of 2018 injury. He opined that claimant had no permanent impairment regarding his neck condition. (JE 7, p. 72)

On January 23, 2020, claimant underwent rotator cuff repair and biceps tenodesis. Surgery was performed by Dr. Patterson. (JE 7, p. 73)

Claimant returned in follow up with Dr. Patterson on June 24, 2020. Claimant was satisfied with his overall progress and was gaining strength through physical therapy. Claimant had good range of motion. (Ex. 7, pp. 76-77)

Dr. Patterson saw claimant on July 29, 2020. Claimant continued to progress well with physical therapy. Claimant had good range of motion and strength. Claimant asked to return to work without restriction. Claimant was found to be at MMI as of July 29, 2020. Claimant was returned to work without restrictions. Dr. Patterson found claimant had a 4 percent permanent impairment to the upper extremity regarding his shoulder condition. (JE 7, pp. 79-82)

Claimant returned to Dr. Patterson on September 2, 2020. Claimant had great range of motion and strength in the shoulder. Claimant was to continue at work without restrictions. (JE 7, pp. 85-90)

In a December 1, 2020 report, Mark Taylor, M.D., gave his opinions of claimant's condition following an IME. Regarding claimant's lower back, Dr. Taylor opined that claimant had a 19 percent permanent impairment to the body as a whole. He also recommended claimant limit himself to lifting only 40 pounds occasionally. (Ex. 1, pp. 36-41)

Regarding the May 15, 2018 date of injury, Dr. Taylor opined that claimant had an 8 percent permanent impairment to the right upper extremity, converting to a 5 percent permanent impairment of the body as a whole. He also opined that claimant had a 7 percent permanent impairment to the body as a whole regarding his neck condition. (Ex. 1, pp. 36-41)

At the time of hearing claimant was still working as an inspector at Deere. At the time of hearing claimant was still performing the same duties he did at the time of his

injuries in 2017 and 2018. Claimant testified he planned to continue to work at Deere until his retirement. (TR pp. 31-32)

Claimant did not have restrictions at the time of hearing regarding his 2017 and 2018 injuries. (Ex. C, pp. 25-26)

Claimant testified he has lost strength and range of motion in his right shoulder. He testified he has also lost range of motion in his neck. (TR pp. 28-29)

CONCLUSION OF LAW

The first issue to be determined is whether claimant's injury resulted in a permanent disability.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Regarding the September 5, 2017 date of injury to claimant's low back (File Number 5066386), claimant sustained a work-related low back injury. Claimant ultimately underwent a left L4-5 partial hemilaminectomy and diskectomy on January 11, 2018. (JE 5, p. 40) Dr. Abernathey found that claimant had a permanent impairment to the low back. Dr. Taylor also found that claimant had a permanent impairment to the low back. Claimant's unrebutted testimony is that he still has symptoms to his low back caused by the injury. Given this record, claimant has carried his burden of proof that his September 5, 2017 injury resulted in a permanent disability.

The next issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the Legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Regarding the September 15, 2017 date of injury to the low back, as noted above, claimant had back surgery in January of 2018. Dr. Abernathey last examined claimant on February 23, 2018. (Ex. 1, p. 22; TR p. 16) On August 8, 2018, Dr. Abernathey found that claimant had a 7 percent permanent impairment to the body as a whole. (JE 5, p. 41)

Claimant was evaluated on one occasion by Dr. Taylor for an IME. Dr. Taylor found that claimant had a 19 percent permanent impairment to the body as a whole for his September 15, 2017 low back injury. (Ex. 1, pp. 36-41)

Dr. Taylor's opinions regarding permanent impairment are more detailed than those of Dr. Abernathey's. I am able to follow Dr. Taylor's opinion on how he arrived at his finding of permanent impairment. Dr. Abernathey's opinion regarding permanent impairment offers little rationale for his findings. Dr. Abernathey last saw claimant in February of 2018 and issued a permanent impairment rating in August of 2018. Given this record, it is found that the opinions of Dr. Taylor regarding permanent impairment are more convincing than those of Dr. Abernathey. Claimant has a 19 percent permanent impairment to the body as a whole for the September 5, 2017 injury to the low back.

Claimant was 46 years old at the time of hearing. He graduated from high school. Claimant has a 13 percent permanent impairment to his right upper extremity and a 3 percent permanent impairment to his left upper extremity from a prior work

injury. He also has an 8 percent permanent impairment to the body as a whole for a work-related shoulder injury. (Ex. A, p. 13; Ex. B, p. 22)

Claimant has a 19 percent permanent impairment to body as a whole for his September 2017 low back injury. At the time of hearing, claimant was still employed with Deere and working as an inspector. When all relevant factors are considered, it is found that claimant has a 40 percent industrial disability relating to his September 5, 2017 date of injury.

Regarding the May 18, 2018 injury to the shoulder and neck, defendant again contends that claimant's neck injury should not be considered in this matter as claimant failed to timely plead a neck claim in his petition (Defendant's post-hearing brief, pp. 5-6) At hearing, defendant objected to claimant raising a neck injury in this matter. Defendant's objections were overruled at hearing. (TR p. 9)

It is true that claimant did not formally indicate a "neck" injury in his petition. However, as discussed at hearing, and as detailed in the record, claimant was treated on multiple occasions in this file for a neck condition. Claimant was treated by Dr. Patterson and Dr. Miller. (JE 3, 7) Claimant had a cervical MRI. (JE 3, p. 30) Defendant had claimant evaluated for an IME by their own expert for an opinion regarding the cervical spine. (JE 7, pp. 64-69) Claimant filed a petition for alternate medical care for a neck injury in this case. Given this record, there is no prejudice in allowing claimant to claim a neck injury regarding the May 15, 2018 date of injury.

Three experts have opined regarding the permanent impairment associated with claimant's May 15, 2018 date of injury. Dr. Pugely opined that claimant had no permanent impairment regarding his cervical spine injury. (JE 7, p. 72) Dr. Pugely's opinions regarding permanent impairment are problematic. There is no reference to any methods, measurements or testing that Dr. Pugely used to arrive at his opinion of permanent impairment. I have no idea how Dr. Pugely arrived at his finding of permanent impairment for claimant. Based on this, the opinions of Dr. Pugely regarding permanent impairment to the cervical spine are found not convincing.

Dr. Patterson treated claimant for his shoulder condition and performed surgery. Dr. Patterson opined that claimant had a 4 percent permanent impairment to the upper extremity, converting to a 2 percent permanent impairment to the body as a whole. (JE 7, pp. 79-84)

Dr. Taylor evaluated claimant once for an IME. He opined that claimant had an 8 percent permanent impairment of the right shoulder, converting to a 5 percent permanent impairment of the body as a whole. He also found that claimant had a 7 percent permanent impairment regarding his cervical spine. (Ex. 1, p. 40)

Dr. Taylor's opinions regarding permanent impairment to the shoulder are more detailed than those of Dr. Patterson. I am able to follow how Dr. Taylor arrived at his values for the extent of claimant's permanent impairment to the shoulder. Based on

this, it is found that Dr. Taylor's opinions regarding permanent impairment to the shoulder are more convincing than those of Dr. Patterson.

Claimant had a 7 percent permanent impairment for the neck injury and a 5 percent permanent impairment to the body as a whole for his shoulder. Based on the combined values charts of the Guides, page 604, claimant has a 12 percent permanent impairment to the body as a whole for the May 15, 2018 date of injury.

As detailed above, claimant was 46 years old at the time of the hearing. He has a 13 percent permanent impairment to the right upper extremity, a 3 percent permanent impairment to his left upper extremity, and an 8 percent permanent impairment to the body as a whole for prior work-related injuries. He has a 19 percent permanent impairment to the body as a whole for his September 5, 2017 injury. Claimant has a 12 percent permanent impairment to the body as a whole for his May 2018 date of injury. As noted, claimant is still employed with Deere as an inspector. When all of the factors are considered, it is found that claimant has a 50 percent industrial disability relating to his May 15, 2018 date of injury.

The next issue to be determined is if apportionment under Iowa Code section 85.34(7) is applicable.

Prior to the legislature's amendments in 2017, Iowa Code section 85.34(7) stated, in relevant part:

> 7. SUCCESSIVE DISABILITIES.
>
> a. An employer is fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer. 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.
>
> b. (1) If an injured employee has a preexisting disability that was caused by a prior injury arising out of and in the course of employment with the same employer, and the preexisting disability was compensable under the same paragraph of subsection 2 as the employee's present injury, the employer is liable for the combined disability that is caused by the injuries, measured in relation to the employee's condition immediately prior to the first injury. In this instance, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer.
>
> (2) If, however, an employer is liable to an employee for a combined disability that is payable under subsection 2, paragraph "u", and the employee has a preexisting disability that causes the employee's earnings

> to be less at the time of the present injury than if the prior injury had not occurred, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer minus the percentage that the employee's earnings are less at the time of the present injury than if the prior injury had not occurred.
>
> c. A successor employer shall be considered to be the same employer if the employee became part of the successor employer's workforce through a merger, purchase, or other transaction that assumes the employee into the successor employer's workforce without substantially changing the nature of the employee's employment.

Iowa Code section 85.34(7) currently reads:

> 7. Successive disabilities.
>
> 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.

When comparing the two versions, the 2017 amendments revised subpart (a), and removed subparts (b) and (c) from Iowa Code section 85.34(7).

Claimant argues that apportionment is not appropriate because the changes made to section 85.34(7) stripped the section of any mechanism of apportioning any of claimant's numerous prior disabilities. Claimant offers little argument to support this position.

When interpreting statutory provisions, our goal is to determine and effectuate the legislature's intent. Auen v. Alcoholic Beverages Div., Iowa Dept. of Commerce, 679 N.W.2d 586, 590 (Iowa 2004) To determine legislative intent, we look to the language chosen by the legislature and not what the legislature might have said. Absent a statutory definition, we consider statutory terms in the context in which they appear and give each its ordinary and common meaning. Ramirez–Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 770 (Iowa 2016) We "may not extend, enlarge or otherwise change the meaning of a statute" under the guise of construction. Auen, 679

N.W.2d at 590. In interpreting statutes, we generally "give weight to explanations attached to bills as indications of legislative intent." Homan v. Branstad, 887 N.W.2d 153, 166 (Iowa 2016).

Unlike when the initial successive disabilities statute was adopted in 2004, the general assembly did not include a statement of intent within the 2017 amendments. Thus, this Agency does not have a clear directive from the legislature regarding its intent in amending Iowa Code section 85.34(7). As such, this Agency must rely on the plain language and legislative history of the statute for guidance.

I recognize that the 2017 revisions to Iowa Code section 85.34(7) do not have a statement of intent within the 2017 amendments.

Iowa Code section 85.34(7) does indicate that the . . . employer is liable for compensating only that portion of an employee's disability . . . that relates to the injury that serves as a basis for the employee's claim for compensation . . . " Iowa Code section 85.34(7). In short, the plain language meaning of the statute indicates that an employer is only liable for compensation of the disabilities relating to the injury that is being litigated.

When Iowa Code section 85.34(7) was adopted in 2004, the legislature included an "intent" provision, in section 20 of that bill, that states:

> LEGISLATIVE INTENT. It is the intent of the general assembly that this division of this Act will **prevent all double recoveries and all double reductions** in workers' compensation benefits for permanent partial disability. This division modifies the fresh start and full responsibility rules of law announced by the Iowa supreme court in a series of judicial precedents.
>
> (H.F. 2581)(Emphasis added.)

Based on the plain language meaning of the statute, it does not appear that the intent of Iowa Code section 85.34(7) (2017) has changed to suddenly allow double recoveries. Based on this, it is found that apportionment under Iowa Code section 85.34(7) is applicable in this case.

Regarding the September 2017 date of injury, claimant was paid 150 weeks of permanent partial disability benefits regarding his prior injuries of May of 2012 (File Number 5049263) and his January of 2013 date of injury (File Number 5049378). This decision found that claimant had a 40 percent industrial disability regarding the September 5, 2017 date of injury (File Number 5066386). Based on this, under Iowa Code section 85.34(7), defendant shall pay claimant 50 weeks of permanent partial disability benefits for the September 5, 2017 date of injury (40 percent x 500 weeks - 150 weeks).

Regarding the May 15, 2018 date of injury (File Number 5067224.01), claimant was paid 150 weeks for his prior injuries of May of 2012 and January of 2013. He has also been awarded 50 weeks of permanent partial disability benefits for the September 5, 2017 date of injury. Based on this, under Iowa Code section 85.34(7), defendant shall pay claimant 50 weeks of permanent partial disability benefits for the May 15, 2018 date of injury (50 percent x 500 weeks - 150 weeks - 50 weeks).

The next issue to be determined is whether defendant is liable for reimbursement of an IME under Iowa Code section 85.39.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Defendant appears to concede that claimant is due some type of reimbursement for Dr. Taylor's IME. (Defendant's post-hearing brief, p. 9) Defendant contends that they should not have to pay the full cost of Dr. Taylor's IME.

Claimant asked Dr. Taylor to perform an IME on this file for five different dates of injury. Only two of those dates of injury are relevant in these cases. Based on that, defendant is only liable for 40 percent of the cost of Dr. Taylor's report, or $2,502.00 (40 percent x $6,280.50).

The final issue to be determined is whether there is a causal connection between the injury and the claimed medical expenses.

The record suggests that the defendant ultimately assumed liability for claimant's neck injury. As such, defendant is liable for all medical expenses, including medical mileage regarding Exhibits 4 and 5.

ORDER

THEREFORE IT IS ORDERED:

Regarding File Number 5066386 (DOI 09/05/2017)

That defendant shall pay claimant fifty (50) weeks of permanent partial disability benefits at the rate of seven hundred twelve and 46/100 dollars ($712.46) per week commencing on August 8, 2018.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

That defendant shall be given credit for benefits previously paid.

Regarding File Number 5067224.01 (DOI 05/15/2018)

That defendant shall pay claimant fifty (50) weeks of permanent partial disability benefits at the rate of seven hundred thirty-nine and 47/100 ($739.47) per week commencing on July 29, 2020.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

That defendant shall be given credit for benefits previously paid.

That defendant shall pay claimant's medical expenses as detailed in Exhibits 4 and 5.

Regarding both files

That defendant shall pay claimant two thousand five hundred two dollars ($2,502.00) in reimbursement for Dr. Taylor's IME.

That defendant shall pay costs.

That defendant shall file subsequent reports of injury for both dates of injury under Rule 876 IAC 3.1(2).

Signed and filed this 21st day of July, 2021.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)

Dirk Hamel (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.