BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| STEVE SONGER,<br><br>Claimant,<br><br>vs.<br><br>XPO LOGISTICS FREIGHT, INC.,<br><br>Employer,<br><br>and<br><br>INDEMNITY INS. CO. OF NORTH AMERICA,<br><br>Insurance Carrier,<br>Defendants. | File No. 21013046.01<br><br>ARBITRATION DECISION<br><br>Head Notes: 1402.40, 1803, 1804, 2501, 2502 |

## STATEMENT OF THE CASE

Claimant, Steve Songer, filed a petition for arbitration against XPO Logistics Freight, Inc., and Indemnity Insurance Company of North America. This case came before the undersigned for an evidentiary hearing on March 18, 2022, via Zoom.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 9, Claimant's Exhibits 1 through 6, and Defendants' Exhibits A through D. Claimant testified on his own behalf. Claimant also called Heath Jergens and Paul Steinbach to testify. Defendants called Travis Finch to testify. The evidentiary record closed at the conclusion of the evidentiary hearing on March 18, 2022.

Counsel for the parties requested an opportunity to file post-hearing briefs. This request was granted and both parties filed briefs on May 13, 2022. The case was considered fully submitted to the undersigned on that date.

## ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the injury caused permanent disability and, if so, the nature and extent of claimant's entitlement to permanent partial disability benefits;

2. Whether claimant is permanently and totally disabled or an odd-lot employee;

3. The commencement date for permanent partial disability benefits, if any;

4. Whether claimant is entitled to reimbursement of the medical expenses outlined in Exhibit 6;

5. Whether claimant is entitled to reimbursement of an independent medical evaluation pursuant to Iowa Code section 85.39;

6. Whether claimant is entitled to an award of penalty benefits pursuant to Iowa Code section 86.13; and

7. Costs.

## FINDINGS OF FACT

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

Steve Songer, claimant, was 67 years old on the date of the evidentiary hearing. (Hearing Transcript, page 12) He is a high school graduate who attended two semesters at Indian Hills Community College. (Defendants' Exhibit A, Deposition Transcript, page 9)

Mr. Songer's employment history largely consists of manual labor positions. (Exhibit B, pages 18-20) He built and inspected mobile homes from approximately 1983 to 1987. (Ex. B, p. 19) After a brief stint with Hormel Meats, Mr. Songer installed siding, windows, and insulation for Pierce Home Improvements from 1987 to 1988. (Id.) Then, from 1988 to 2001, Mr. Songer worked in Quality Assurance for Excel Corporation in Ottumwa, Iowa. (Ex. B, p. 20) Over the next few years, Mr. Songer worked for Albertson's Grocery, Burger King, and Wal-Mart before accepting a Quality Control position with Home Depot in 2005. (Id.) He worked for Home Depot for approximately six years. (Id.) Immediately prior to working for the defendant employer, Mr. Songer handled sales and installed truck accessories at Total Truck from 2011 to 2015. (Id.)

Mr. Songer began working for the defendant employer as a dock worker in 2015. (Hr. Tr., p. 17) The job entailed unloading freight from one trailer, separating the freight, and loading it back onto a different trailer for transport. (See id.) Mr. Songer spent the majority of his workday operating a forklift; however, he estimated that he spent roughly

a third to a fourth of his day manually handling freight. (Hr. Tr., pp. 18-19) According to Mr. Songer, the freight he handled weighed up to 60 pounds. (See Hr. Tr., p. 19) In addition to the above duties, Travis Finch, Mr. Songer's supervisor, testified it was common for Mr. Songer to train new employees. (Hr. Tr., pp. 90-91)

The parties stipulate that Mr. Songer sustained an injury on October 23, 2019. On the date of injury, Mr. Songer was tasked with unloading three pallets of product. While unloading the pallets, Mr. Songer discovered that one of the three pallets shifted in transit and tipped over. (Hr. Tr., p. 21; see Exhibit 1, page 1) The positioning of the pallet made it difficult for Mr. Songer to use his forklift. (Id.) After two failed attempts, a co-worker grabbed an empty pallet and Mr. Songer began transferring boxes from the problem pallet. (Hr. Tr., p. 21) Mr. Songer was able to move the first box without issue; however, he felt a jolt of pain in his back and down his legs while lifting the second box. (Hr. Tr., p. 22) The shocking pain that ran down his legs subsided relatively quickly; however, the low back pain remained. (Hr. Tr., p. 24)

After reporting his injury, the defendant employer directed Mr. Songer to Concentra Occupational Health. (See Joint Exhibit 3, p. 166) Christine Schmitt, NP performed an initial evaluation of Mr. Songer on October 24, 2019. (JE3, p. 166) Mr. Songer reported constant aching and pain in his lower back that went down into his right anterior thigh whenever he moved. (Id.) X-rays revealed degenerative arthritis and degenerative disc disease with neural foramen stenosis and anterior spondylolisthesis at L5-S1. (JE3, p. 167) Ms. Schmitt assessed Mr. Songer with a lumbar strain, degenerative arthritis, and spondylolisthesis. (Id.) She prescribed ibuprofen and referred Mr. Songer to physical therapy. (Id.)

The next day, Mr. Songer was directed to a different clinic and saw Betsy Bolton, PA-C. (JE4, p. 170; see Ex. A, Depo. p. 32) Ms. Bolton assessed Mr. Songer with a low back strain on the right and instructed him to continue taking ibuprofen as needed. (JE4, p. 171) Despite his ongoing pain, Mr. Songer felt that he could complete his job duties. Ms. Bolton agreed and released Mr. Songer back to full duty work, without restrictions. (Id.)

Mr. Songer returned for a follow-up appointment with Ms. Bolton on November 6, 2019. (JE4, p. 172) He provided that while his condition was improving, he continued to experience flare-ups in pain. (Id.) Ms. Bolton's notes reflect Mr. Songer was able to work full duty without difficulty. (Id.)

On or about November 12, 2019, Mr. Songer slipped on ice, fell, and landed on his right buttock and hip. Two days later, he presented to Broadlawns Family Health Clinic and was seen by Preston Sereg, M.D. (JE1, p. 41) Mr. Songer complained of severe and radiating pain. He reported that he was able to ambulate; however, "it is exquisitely painful to do so." (Id.) Dr. Sereg opined that Mr. Songer likely sustained a deep contusion, but he could not rule out a fracture. He ordered imaging of the right hip and SI joint. (JE1, p. 42)

Mr. Songer's x-ray did not demonstrate any fracture or acute process; however, it did demonstrate L5-S1 spondylolisthesis. (JE1, p. 43; see JE1, p. 46)

While claimant admits that he slipped and fell on or about November 12, 2019, he asserts he actually presented to Broadlawns on November 14, 2019, because he was unsatisfied with the care he was receiving from defendants. (Hr. Tr., p. 29) I do not find claimant's testimony regarding the same to be logical or credible. There is no evidence in the record to support a finding that claimant was unsatisfied with the care he was receiving from Ms. Bolton through two medical appointments. Similarly, claimant provided no testimony regarding what care he believed was necessary but was not being provided by defendants. In his post-hearing brief, claimant asserts that he made up his mind to go to Broadlawns for a second opinion regarding his condition as his condition "had not been improving." Such an assertion is not corroborated by the contemporaneous medical records. In fact, Ms. Bolton's medical records provide that claimant reported seeing improvement in his condition and he was able to maintain his full duty work without difficulty. (JE4, p. 172)

Mr. Songer returned to see Ms. Bolton on November 20, 2019. (JE4, p. 173) He described a pain sensation that wrapped around the front of his right thigh and slightly into the left side of his buttocks. (Id.) Mr. Songer told Ms. Bolton that said pain had been present since the date of injury. (Id.) Ms. Bolton continued to allow Mr. Songer to work full duty and referred him to physical therapy. (Id.) There is no evidence that Mr. Songer told Ms. Bolton of his slip and fall on ice.

Later that day, Mr. Songer presented to Broadlawns for a follow-up appointment for his right hip. (JE1, p. 44) Mr. Songer reported an aching and dull pain in his right SI joint and radiating pain down his buttocks and into his thigh. (Id.) He noted that his symptoms flared six to eight times each day, and the flare-ups lasted between 15 and 20 minutes. (Id.) Jamie Strike, M.D. discovered no neurological deficits and opined that Mr. Songer's pain was likely mechanical in etiology. (JE1, p. 46)

On November 27, 2019, Mr. Songer was examined by Tricia Mittra, D.O. at Broadlawns. (JE1, p. 48) He described a four-week history of right hip and lower back pain. (Id.) Mr. Songer also described chronic mild pain from a left-sided kidney procedure, noting the same was the reason he no longer sleeps on his left side. (Id.) Under the "Mechanism of Injury" section, Dr. Mittra noted, "Slipped on ice and landed on bottom, leaning a little toward the right." (Id.)

Mr. Songer achieved all of his short-term physical therapy goals by December 10, 2019. (JE5, pp. 196-197; see JE4, p. 174) The short-term goals included floor-to-waist lifting of 100 pounds, bilaterally, carrying 50 pounds for 10 feet, bilaterally, and pushing 300 pounds for 20 feet, bilaterally. (JE5, pp. 196-197)

An MRI, dated December 19, 2019, revealed Grade 1 anterolisthesis of L5 on S1 with severe spinal canal stenosis and severe facet arthropathy; Moderate to severe right L5-S1 neural foraminal stenosis; Moderate L4-L5 spinal canal stenosis; and Mild L2-L3 and L3-L4 spinal canal stenosis. (JE4, pp. 178-179)

After spending several weeks visiting family in Mexico, Mr. Songer returned to Ms. Bolton for a follow-up appointment on January 20, 2020. He continued to report low back pain, with radiating pain into the right thigh. Ms. Bolton noted that the radiating pain appeared to follow an L5 pattern. (JE4, p. 180) After reviewing the December 19,

2019, MRI, Ms. Bolton diagnosed claimant with a right low back strain, lumbar degenerative disk disease, and grade 1 anterolisthesis of L5 on S1. (Id.) Ms. Bolton opined that the vast majority of his changes on the MRI were degenerative and nonacute. (Id.) In response, claimant remarked that his low back pain did not start until October 23, 2019, when he was lifting boxes at work. Ms. Bolton referred him to a spine specialist for further review and discussion, "with the caveat that changes appear degenerative[.]" (Id.)

Shortly thereafter, the defendants requested a formal causation opinion from Ms. Bolton. (JE4, pp. 181-184) Ms. Bolton summarized claimant's course of treatment and opined that his continued symptoms were consistent with right low back strain, as well as, degenerative changes including severe spinal canal stenosis, foraminal stenosis, anterolisthesis and facet arthropathy. (JE4, p. 183) She further opined that claimant's degenerative changes were likely causing the majority of his then current symptoms; however, she noted that the muscular strain injury from October 23, 2019, could not be entirely excluded as a cause for Mr. Songer's symptoms. (Id.) Lastly, she reiterated that a spine specialist would have better insight on causation and chronicity. (Id.)

Despite a less than definitive causation opinion, further medical treatment, including a referral to a spine specialist, was denied based upon Ms. Bolton's opinions.

After defendants' denial, Mr. Songer presented to Urgent Care at Broadlawns for an evaluation of his ongoing low back pain. He presented to Jennifer Hall, PA-C on February 19, 2020, and brought her up to date on his low back complaints. (JE1, p. 52) He reported ongoing low back pain, with radiating pain in the right buttock and, at times, the right thigh. (Id.) Ms. Hall administered a Toradol injection, prescribed a muscle relaxer, and instructed claimant to follow-up with his family physician. (JE1, p. 54)

As instructed, Mr. Songer presented to Dr. Sereg of Broadlawns Family Health Center on February 28, 2020. (JE1, p. 55) At the appointment, Mr. Songer relayed that he was not sure how much longer he could handle the pain and wanted to do anything necessary to improve his symptoms. (Id.) Dr. Sereg diagnosed claimant with spinal stenosis with radiculopathy and referred him for evaluation by a neurosurgeon. (JE1, p. 57)

On April 7, 2020, Mr. Songer returned to Urgent Care with reports of thoracic back pain. (JE1, p. 59) According to the notes, Mr. Songer fell backwards into a steel pole and hit his thoracic paravertebral muscles three days prior. (Id.) Claimant asserts the incident occurred at work and the pain only lasted a few days. (Ex. A, Depo. pp. 46-47)

Claimant first presented to John Piper, M.D. for a neurosurgical consultation on June 2, 2020. (JE6, p. 207) At the appointment, claimant complained of back pain with radiation down both legs. (Id.) More specifically, claimant complained of radiating pain in his right thigh and burning in his left hip, leg, and foot. (Id.) He considered the left leg symptoms to be "newer." (Id.) Dr. Piper's report provides,

> I was upfront with him that the changes that are certainly present on his imaging are consistent with a chronic underlying degenerative process that

> will probably have periods when it waxes and wanes but is likely to gradually deteriorate over time. Therefore would be hard to attribute these to a specific work injury.

(Id.) After evaluating claimant, Dr. Piper opined that claimant's symptoms were related to his underlying stenosis and spondylolisthesis. (JE6, p. 209) He cautioned that any surgical intervention would be very complex and high risk. (Id.) Dr. Piper ordered a CT scan of the lumbar spine and referred claimant for a consultation with pain management. (Id.)

Mr. Songer experienced an increase in low back pain after lifting heavy steel beams at work on or about July 7, 2020. (See JE1, pp. 62, 64) According to the medical records, claimant's pain radiated down both legs. (JE1, p. 64)

Jun Xu, M.D. administered an epidural steroid injection at L5-S1 on July 24, 2020. (JE6, p. 214)

On September 24, 2020, Mr. Songer reported to Dr. Piper that the ESI did not relieve his symptoms. (JE6, p. 215) Dr. Piper noted that claimant's CAT scan and flexion-extension films were helpful; they revealed no gross instability, but severe facet arthritic changes, worse at L5-S1. (Id.) Dr. Piper discussed the possibility of surgery with claimant, noting that it was very unlikely he would be able to return to work as a forklift driver if he moved forward with a multilevel decompression and fusion. (Id.) Dr. Piper recommended claimant continue to pursue conservative treatment, "until such a time that he feels that he is disabled." (JE6, p. 217)

When the epidural steroid injection did not provide relief, Mr. Songer presented to Timothy Jay, D.O. at Broadlawns Family Health Center on August 6, 2020. (JE1, p. 65) Mr. Songer reported that the pain in his legs had worsened to the point where it was difficult to walk at times. (Id.) He also reported that he had occasionally called into work sick due to his pain levels. (Id.) Dr. Jay increased claimant's gabapentin and referred claimant to physical therapy to see about getting a prescription for a TENS unit. (JE1, p. 67)

Claimant's symptoms briefly improved with gabapentin, a dexamethasone taper, and Osteopathic Manipulative Medicine (OMM); however, he experienced intolerable side effects. (See JE1, p. 87) In October of 2020, the physicians at Broadlawns considered claimant's low back pain to be poorly controlled. (JE1, p. 96) Claimant reported that he was unable to sit for long periods of time due to pain, and he could not wash dishes for his wife because the standing and bending over the sink was "near impossible" for him. (See id.) Claimant was apprehensive to have surgery as he was concerned that it would affect his ability to perform his job and care for his family. (Id.)

An updated MRI, dated November 27, 2020, revealed multilevel degenerative changes within the lumbar spine, with multiple levels of spinal canal stenosis and neural foraminal narrowing. (JE1, p. 109)

Mr. Songer presented to Matthew Biggerstaff, D.O. for a second opinion on his chronic low back and bilateral extremity pain on December 1, 2020. (JE1, p. 110) It is

noted that claimant was tearful throughout the examination. (Id.) Following his examination, Dr. Biggerstaff recommended a spinal cord stimulator trial. (JE1, p. 113)

Mr. Songer was encouraged by the results of the SCS trial and noted "100% reduction" in his pain levels. (JE1, p. 132) Given the success of the trial, a spinal cord stimulator was permanently implanted into claimant's back on April 27, 2021. (JE1, p. 136)

On June 8, 2021, claimant reported to Dr. Biggerstaff that he was still pain free and requested the ability to return to work. (JE1, p. 148) Dr. Biggerstaff allowed claimant to return to work with a 50-pound lifting restriction. (JE1, p. 151) According to his notes, Dr. Biggerstaff initially anticipated lifting all restrictions once claimant was three to six months out from the implantation. (See id.) However, following claimant's August 16, 2021, visit, Dr. Biggerstaff recommended the 50-pound weight restriction be continued for an additional six months. (JE1, p. 155)

After the October 23, 2019, work injury, Mr. Songer returned to his normal, full-time job with the defendant employer for approximately 18 months. (Hr. Tr., pp. 53-54) Travis Finch, claimant's supervisor, testified that he did not notice a drop off in claimant's production following the work injury. Claimant disputed the accuracy of Mr. Finch's testimony, as did the credible testimony of claimant's former co-workers. (Hr. Tr., pp. 55-56, 70-71, 78-80) I accept claimant's testimony that he had to complete tasks differently, ask for help more often, and work slower following his work injury.

Claimant's employment ended when the defendant employer could not accommodate his lifting restrictions following the spinal cord stimulator implantation. (Hr. Tr., pp. 35, 53-54; Ex. A, Depo. pp. 16-17) According to claimant, the defendant employer told him to come back when he was able to work without restrictions. (Ex. A, Depo. p. 17) Instead of attempting a return to work at a later date, claimant decided to retire from the defendant employer. (Id.) Claimant did not perform any sort of job search following his retirement. Instead, he desired to "move forward with retirement." (Ex. A, Depo. p. 18) At his deposition, claimant testified that he intended on working "another year or two, maybe." (Ex. A, Depo. p. 56)

Claimant continues to experience an aching pain in the right side of his lower back. (Ex. A, Depo. p. 59) His symptoms increase if he lifts too much weight, walks too far, sits for too long, or sits in an awkward position. (Ex. A, Depo. p. 57) He estimates that he can walk roughly 10 minutes before he needs to take a break. (Hr. Tr., p. 39) He estimated that he can sit for 30 to 45 minutes before he has to shift his weight away from his right hip. (Hr. Tr., p. 41) Claimant testified he is happy with the decrease in pain he's experienced since the spinal cord stimulator implantation. (See Ex. A, Depo. pp. 54-55)

The parties dispute whether claimant's ongoing, chronic low back condition and need for medical treatment after November 12, 2019, is causally related to the October 23, 2019, work injury. Four physicians addressed the alleged causal connection between claimant's work injury and his current disability.

Claimant's counsel produced a pre-written opinion letter to Dr. Biggerstaff on

December 27, 2021. (JE1, pp. 162-163) In the letter, claimant's counsel asked Dr. Biggerstaff to assume a number of facts. Dr. Biggerstaff was asked to sign the letter if it accurately represented his opinions. The letter first opines that the October 23, 2019, lifting incident constituted a material aggravation, lighting up, or acceleration of claimant's preexisting degenerative condition in his low back. (JE1, p. 162) The letter then opines that said material aggravation necessitated Dr. Biggerstaff's care and treatment. Next, the letter asserts that Mr. Songer has reached maximum medical improvement and that Mr. Songer should permanently avoid activities, work or otherwise, that increase the pain or symptoms in the affected areas. (Id.) Lastly, the letter opines that any specific limitations should be addressed by a functional capacity evaluation. (JE1, pp. 162-163) Dr. Biggerstaff signed the letter on December 27, 2021. (JE1, p. 163)

Defendants conducted a conference call with Dr. Piper in approximately February 2022. (JE6, pp. 218-220) Defense counsel subsequently requested that Dr. Piper confirm his opinions from said conference call in a pre-written letter, dated February 9, 2022. (See id.) Dr. Piper agreed with a general summary of the treatment he provided and the medical opinions he expressed between June 2020 and September 2020. (JE6, p. 218) Dr. Piper agreed that claimant's complaints in the low back and legs could not be stated to a reasonable degree of medical certainty to be causally related, either directly or through a material aggravation, to the alleged October 23, 2019, work injury. (JE6, p. 219) He further agreed that "the work injury may have caused a temporary flare of the condition, but the level of the degenerative condition was to a point claimant would be expected to experience flare ups from time to time, and the actions that caused those flares cannot be viewed as being a substantial factor in bringing about the level of degeneration that was the reason for the need of any surgery or other medical care." (Id.) Lastly, Dr. Piper agreed that any dates of maximum medical improvement, physical restrictions, functional impairment, and recommended future care for Mr. Songer's back and leg complaints would not be causally related to the October 23, 2019, work injury, but would rather be related to the existing degenerative spine condition that developed over several years. (Id.)

Defendants sought an independent medical evaluation with Joseph Chen, M.D. (JE9) The evaluation took place on January 20, 2022. (JE9, p. 257) Dr. Chen opined that claimant sustained a temporary aggravation of his pre-existing degenerative condition on October 23, 2019. (JE9, p. 274) He further opined that a substantial contributing factor to Mr. Songer's current chronic back pain, right hip/buttock pain, and sacroiliac region pain arose on or about November 12, 2019, when he slipped and fell on ice. (Id.) He opined that all medical care after November 12, 2019, was more likely than not causally related to his slip and fall at home as opposed to the October 23, 2019, work injury. (Id.) He placed claimant at MMI for the work injury as of November 6, 2019. (Id.) Despite his causation opinion, Dr. Chen provided that claimant's current condition would warrant a whole person impairment rating of 5 percent and fall under DRE Category II. (JE9, p. 275)

In response, Mr. Songer sought an independent medical evaluation with Jacqueline Stoken, D.O. (JE8) The evaluation took place on January 25, 2022. (JE8, p.

235) Mr. Songer detailed that his pain mildly interferes with traveling up to one hour by car, his relationships, showering, bathing, dressing, and concentrating. He also noted that his pain interferes moderately with lifting 10 pounds, sitting or standing for 30 minutes, sleeping, engaging in social activities, and his daily activities. (JE8, p. 243) Dr. Stoken causally related claimant's low back condition to his work injury on October 23, 2019. (JE8, p. 245) She further found that claimant sustained permanent partial impairment to the body as a whole as a result of the injury. (Id.) Dr. Stoken opined that claimant's condition fits into the DRE Lumbar Category III. She assigned 13 percent whole person impairment due to the lumbar injury with low back pain and persistent lower extremity radiculopathy managed with a spinal cord stimulator. (Id.)

When comparing the expert opinions in this case, I acknowledge defendants' argument that Dr. Stoken did not adequately address claimant's slip and fall on ice in November 2019. It is concerning that Dr. Stoken summarized, but did not address, medical records regarding claimant's slip and fall. It is possible Dr. Stoken did not consider the slip and fall significant enough to comment on the same. It is also entirely possible she misunderstood when the slip and fall occurred in relation to the work injury. To this end, Dr. Stoken summarized the November 2019 medical records under "Broadlawns – Previous Back Issues." (JE8, p. 241)

While Dr. Stoken's report fails to address the November 2019 slip and fall, it is just as easily asserted that Dr. Chen relies entirely too heavily on the slip and fall. Dr. Chen's report exaggerates Dr. Sereg's level of concern while downplaying or entirely overlooking several mitigating factors. For instance, Dr. Chen highlights how claimant's condition was seemingly improving prior to the November 2019 slip and fall. In doing so, he highlights Ms. Bolton's November 6, 2019, medical record. At no point does Dr. Chen discuss the lack of change between Ms. Bolton's November 6, 2019, medical record and Ms. Bolton's November 20, 2019, medical record.

On November 6, 2019, claimant told Ms. Bolton that he was doing better, and he rated his pain 3 out of 10. (JE4, p. 172) He also described experiencing the occasional flare up in pain that increased his pain level to a 6 or 7 out of 10. (Id.) Nevertheless, he was reportedly able to maintain full duty work without difficulty. (Id.) On November 20, 2019, claimant told Ms. Bolton that he felt "about the same" as he did on November 6, 2019, and he rated his pain 3 to 4 out of 10. (JE4, p. 173) It is also noted that claimant did not appear to be in any acute distress, and he "moved about the room with ease today." (Id.) Again, claimant told Ms. Bolton that he was tolerating full duty work. (Id.) As such, Ms. Bolton continued her release of claimant to full duty work. (Id.) There is no indication that claimant's condition substantially changed between November 6, 2019, and November 20, 2019.

Dr. Chen's opinion appears to be based on the fact a slip and fall occurred subsequent to the October 23, 2019, work injury, and because Dr. Sereg was concerned that claimant sustained a deep bruise or possibly a fracture. Dr. Chen's report provides that Dr. Sereg obtained imaging studies of claimant's low back and right hip; however, the report does not discuss the results of the same. For reference, the x-rays collected on November 14, 2019, revealed no fracture or acute process. (JE1, p. 43; see JE1, p. 46) Dr. Chen provides no other explanation for his conclusion that the

slip and fall, rather than the October 23, 2019, work injury, was a substantial contributing factor to Mr. Songer's current chronic back pain, right hip/buttock pain, and SI joint pain.

Claimant testified to the shocks he felt down both legs at the time of injury. He emphasized the fact he had never felt anything similar prior to the date of injury. (Hr. Tr., pp. 24-25) Following the October 23, 2019, work injury, claimant's right leg pain never went away. (Hr. Tr., p. 25) There is no evidence his symptoms completely resolved or returned to a baseline prior to the November 12, 2019, slip and fall. As previously discussed, claimant's pain complaints did not drastically change following the November 12, 2019, slip and fall. Moreover, there is no objective medical evidence establishing a material aggravation occurred on November 12, 2019.

Claimant's testimony is in line with the causation opinions of Drs. Biggerstaff and Stoken. The evidentiary record supports a finding that the October 23, 2019, work injury aggravated and accelerated his underlying condition to the point where it became symptomatic on a continuous basis. As such, I accept the causation opinions of Dr. Stoken. I also accept the opinions of Dr. Biggerstaff to the extent they support the findings and opinions of Dr. Stoken.

The undersigned is cognizant of Dr. Piper's opinions; however, it does not appear as though Dr. Piper's causation opinion conforms to the causation standard for work injuries in the State of Iowa. Defendants' carefully worded, pre-written causation opinion does not address whether the work injury accelerated the degenerative condition. Instead, the pre-written opinion asks whether a flare-up could be viewed as a substantial factor in bringing about the level of degeneration in claimant's lumbar spine. Claimant is not asserting that the October 23, 2019, work injury caused his underlying, pre-existing degenerative spine condition. Rather, claimant is asserting the October 23, 2019, work injury accelerated the degenerative condition and need for medical intervention. The letter to Dr. Piper does not address such an assertion.

Furthermore, Dr. Piper's opinion that any dates of MMI, physical restrictions, functional impairment, and future medical care for Mr. Songer's back and leg complaints would not be causally related to the October 23, 2019, work injury, but would instead be related to the preexisting degenerative spine condition is unhelpful. All physicians and both parties seemingly agree that any surgical intervention would be related to the degenerative condition of claimant's lumbar spine. The fighting issue is whether the work injury aggravated the underlying condition and accelerated the need for surgical intervention. For these reasons, I do not find Dr. Piper's opinions to be helpful in this matter.

Having accepted the causation opinions of Drs. Stoken and Biggerstaff, I find claimant carried his burden of proving he sustained a permanent and material aggravation or worsening of his pre-existing low back condition as a result of the October 23, 2019, work injury.

Dr. Stoken and Dr. Chen are the only two physicians to address the issue of permanent impairment in the evidentiary record. Both physicians assigned permanent impairment pursuant to the AMA Guides to the Evaluation of Permanent Impairment,

Fifth Edition.

Dr. Stoken opined that claimant's condition fits into the DRE Lumbar Category III. She assigned 13 percent whole person impairment due to the lumbar injury with low back pain and persistent lower extremity radiculopathy managed with a spinal cord stimulator. (JE8, p. 245)

Dr. Chen opined that Mr. Songer has some lumbar spine range of motion limitations due to his current condition. (JE9, p. 275) He opined that claimant's condition warrants placement in DRE Lumbar Category II and assigned 5 percent whole person impairment. (Id.)

After reviewing the expert opinions and comparing the same to Table 15-3 on page 384 of the AMA Guides, Fifth Edition, I note that the explanation provided in DRE Lumbar Category III more accurately describes claimant's condition than the explanation provided in DRE Lumbar Category II. The AMA Guides provides:

> In category II, the individual has objective findings but no radiculopathy or alteration of structural integrity, while in category III, radiculopathy with objective verification must be present.

(AMA Guides, p. 383) With this in mind, I accept the permanent impairment rating offered by Dr. Stoken and find that Mr. Songer proved he sustained 13 percent whole person impairment as a result of the October 23, 2019, work injury. (JE8, p. 245)

With respect to physical restrictions resulting from the October 23, 2019, work injury, I note that in the months leading up to the evidentiary hearing, claimant underwent two functional capacity evaluations. (JE5, pp. 198-206; JE7, pp. 221-234) Claimant sought an FCE from Advantage Physical Therapy. The evaluation occurred on January 31, 2022. The report concluded that claimant's functional abilities fell within the United States Department of Labor's Light work category. (JE7, p. 225) More specifically, the report recommended that claimant limit floor-to-waist, waist-to-overhead, and horizontal lifting to 20 pounds on an occasional basis. (JE7, p. 230) The report further recommended that claimant limit pushing and pulling to 30 pounds on a rare basis. (JE7, p. 231)

In comparison, the FCE conducted by Athletico just two days later placed claimant's functional abilities in the Medium work category. (JE5, p. 198) More specifically, the report recommended, in part:

- Floor to waist lifting – 25 lbs., occasionally
- 12" to waist lifting – 35 lbs., occasionally
- Waist to shoulder lifting – 30 lbs., occasionally
- Waist to overhead lifting – 25 lbs., occasionally
- Bilateral carrying – 25 lbs., occasionally
- Horizontal pushing/pulling – 50 lbs. of force, occasionally

(JE5, p. 199) Realistically, the above restrictions would not meet the criteria for placement in the Medium demand work category as Mr. Songer did not demonstrate the ability to lift up to 50 pounds occasionally. (JE5, pp. 199-200)

Unlike the FCE from Advantage Physical Therapy, the February 2, 2022, report provides the amount of weight claimant actually lifted during his evaluation. (JE5, pp. 200-204) Moreover, the lifting restrictions recommended in the February 2, 2022, report appear to be consistent with the amount of weight claimant actually lifted. (Compare JE5, p. 200 with JE5, p. 199) As the February 2, 2022, FCE report actually documented the amount of weight claimant was able to lift, I find the abilities and restrictions noted by the Athletico FCE report most accurately represent Mr. Songer's residual physical abilities.

Both Dr. Stoken and Dr. Chen offered opinions as to claimant's physical restrictions.

After interviewing and examining Mr. Songer, Dr. Stoken adopted the findings and conclusions of the January 31, 2022, functional capacity evaluation as claimant's permanent work restrictions. (JE8, p. 245) I find that Dr. Stoken's imposition of restrictions that are more restrictive than claimant's objectively demonstrated abilities at the February 2, 2022, FCE are not reasonable and necessary.

Dr. Chen is of the opinion that Mr. Songer does not require any permanent work restrictions. (JE9, p. 275) That being said, he also opined that the parameters outlined in the February 2, 2022, FCE report are the result of claimant's underlying degenerative spinal condition and not causally related to the October 23, 2019, work injury. (Id.) Having found that claimant sustained a permanent and material aggravation or worsening of his pre-existing low back condition as a result of the October 23, 2019, work injury, I assign no weight to Dr. Chen's opinions regarding the need for permanent restrictions.

Mr. Songer asserts that he is permanently and totally disabled, or in the alternative, an odd-lot employee. The evidentiary record is not well developed as it pertains to the assertion that claimant is permanently and totally disabled. To make a finding of permanent total disability, it is helpful for this agency to have evidence that a claimant has made an actual, good faith work search. Claimant testified he has not performed any type of job search since his employment ended with the defendant employer in May 2021. (Hr. Tr., pp. 56-57) Claimant did not secure the opinions of a vocational expert. Claimant did not introduce substantial evidence to show that he has no reasonable prospect of steady employment.

Although Mr. Songer has also alleged an odd-lot claim, I find he failed to produce prima facie evidence that he is not employable within any recognized branch of the labor market. I further find that Mr. Songer's restrictions and residual physical abilities permit him to work in the light-to-medium category of work. I find that there remain jobs within the labor market for which he would be qualified and capable of performing.

The claimant has significant permanent impairment and as a result of the work injury he is reliant upon a spinal cord stimulator to reduce his pain. Two physical therapists and Dr. Stoken have recommended permanent lifting restrictions. It is concluded that the claimant has sustained a significant loss of earning capacity as a result of the work injury.

Considering Mr. Songer's age, educational background, employment history, permanent impairment rating and restrictions, lack of motivation to return to the workforce, his proximity to retirement, as well as all other factors of industrial disability as outlined by the Iowa Supreme Court, I find that claimant has proven a 50 percent loss of earning capacity as a result of the October 23, 2019, work injury.

Claimant's entitlement to penalty benefits and costs will be addressed in the Conclusions of Law section.

## CONCLUSIONS OF LAW

The initial disputed issue is whether claimant carried his burden of proving the stipulated work injury caused permanent disability, and if so, the extent of the same.

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).

Having found the medical opinions of Dr. Stoken and Dr. Biggerstaff most convincing in the evidentiary record, I also found that claimant proved a causal connection between his claim of permanent disability and the October 23, 2019, work injury. Therefore, I conclude that claimant has carried his burden of proving entitlement to an award of permanent disability benefits.

Defendants assert that if claimant is found to have a permanent partial disability from his work injury, his entitlement is limited to his functional impairment rating.

Under Iowa Code Section 85.34(2)(v), the permanent partial disability award is limited to a functional impairment calculation when an 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."

Claimant returned to working his same job for the defendant employer following the October 23, 2019, work injury. He earned the same or greater wages for approximately 18 months. Claimant's employment came to an end following his spinal cord stimulator implantation. According to claimant, he told the defendant employer of what he believed to be a permanent 50-pound weight restriction following the implantation. When the employer told claimant it could not accommodate such a restriction, claimant considered himself retired. (Ex. A, Depo. pp. 16-17) In any event, claimant is no longer employed by the defendant employer.

The Iowa Workers' Compensation Commissioner has addressed this issue in a similar case. In Martinez v. Pavlich, Inc., File No. 5063900 (Appeal July 2020), the Commissioner held, "Thus, though claimant in this case was earning greater wages at the time of 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."

Martinez implies, but does not specifically state, that the phrase "termination from employment by that employer" is a broad standard to be interpreted liberally. The standard is not limited to situations in which the employer terminates, or fires, the injured worker. Importantly, the claimant in Martinez was offered work at the same or higher wages and accepted said offer; however, he later terminated his employment with the employer prior to the date of the evidentiary hearing.

Judicial review was taken from the commissioner's decision. The district court disagreed with the Commissioner's interpretation of Iowa Code section 85.34(2)(v) and held that claimant should only be compensated under the functional impairment methodology because the claimant was earning the same or greater wages at the time of the arbitration hearing through a subsequent employer. The Iowa Supreme Court or Court of Appeals have not yet provided a definitive interpretation of this statutory provision.

Until a definitive interpretation is provided by the Iowa appellate courts, I am bound by the precedent of this agency found in Martinez. I conclude that claimant's injury should be compensated using the industrial disability analysis because claimant's employment was terminated with the employer after the injury and after he initially returned to work. Iowa Code section 85.34(2)(v); Martinez v. Pavlich, Inc., File No. 5063900 (Appeal July 30, 2020).

I find claimant's injury is unscheduled and compensated with industrial disability pursuant to Iowa Code section 85.34(2)(v).

Industrial disability is determined by an evaluation of the employee's earning capacity. Cedar Rapids Community School Dist. v. Pease, 807 N.W.2d 839, 852 (Iowa 2011). In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee's "ability to be gainfully employed." Id. at 138. Iowa Code section 85.34(2)(v) now provides that the

undersigned shall also take into account the number of years into the future it was reasonably anticipated that the employee would work at the time of the injury.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code section 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(v). When considering the extent of disability, the deputy commissioner considers all evidence, both medical and nonmedical. Evenson v. Winnebago Industries, Inc., 818 N.W.2d 360, 370 (Iowa 2016).

Mr. Songer asserts he is permanently and totally disabled under both the traditional and odd-lot analyses.

In Iowa, a claimant may establish permanent total disability under the statute, or through the common law odd-lot doctrine. Michael Eberhart Constr. v. Curtin, 674 N.W.2d 123, 126 (Iowa 2004) (discussing both theories of permanent total disability under Idaho law and concluding the deputy's ruling was not based on both theories; rather, it was only based on the odd-lot doctrine). Under the statute, the claimant may establish the claimant is totally and permanently disabled if the claimant's medical impairment together with nonmedical factors totals 100 percent. Id.

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

In Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985), the Iowa court formally adopted the "odd-lot doctrine." Under that doctrine a worker becomes an odd-lot employee when an injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Id., at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not employable in the competitive labor market, the burden to produce evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of facts finds the worker does fall in the odd-lot category, the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106.

Factors to be considered in determining whether a worker is an odd-lot employee include the worker's reasonable but unsuccessful effort to find steady employment, vocational or other expert evidence demonstrating suitable work is not available for the worker, the extent of the worker's physical impairment, intelligence, education, age,

training, and potential for retraining. No factor is necessarily dispositive on the issue. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995).

In this instance, I find that Mr. Songer did not produce sufficient evidence to establish a prima facie case of total disability. I similarly find that Mr. Songer is not an odd-lot employee. Mr. Songer did not produce substantial evidence to establish that he was not employable in the competitive labor market. Nevertheless, claimant has sustained permanent disability and industrial disability must be determined.

Having considered the relevant industrial disability factors outlined by the Iowa Supreme Court, I found that claimant proved he sustained a 50 percent loss of future earning capacity. Pursuant to Iowa Code section 85.34(2)(v), industrial disability is paid in relation to 500 weeks as the disability bears to the body as a whole. A 50 percent loss of earning capacity entitles claimant to an award of 250 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(v).

The parties dispute the proper commencement date for permanent partial disability benefits. The commencement date for permanent partial disability benefits is the date of maximum medical improvement. Iowa Code section 85.34(2) Having accepted the expert opinions of Dr. Biggerstaff, I find that claimant reached maximum medical improvement on December 27, 2021.

Claimant next asserts he is entitled to penalty benefits, contending that defendants unreasonably denied weekly benefits.

Iowa Code section 86.13(4)(a) provides:

> If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.

In Christensen v. Snap-On Tools Corp., 554 N.W.2d 254 (Iowa 1996), and Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229 (Iowa 1996), the supreme court said:

> Based on the plain language of section 86.13, we hold an employee is entitled to penalty benefits if there has been a delay in payment unless the employer proves a reasonable cause or excuse. A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits. A “reasonable basis” for denial of the claim exists if the claim is “fairly debatable.”

Christensen, 554 N.W.2d at 260.

An issue of law is fairly debatable if viable arguments exist in favor of each party.

Covia v. Robinson, 507 N.W.2d 411 (Iowa 1993). An issue of fact is fairly debatable if substantial evidence exists which would support a finding favorable to the employer. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

If the employer fails to show reasonable cause or excuse for the delay or denial, the commissioner shall impose a penalty in an amount up to 50 percent of the amount unreasonably delayed or denied. Christensen, 554 N.W.2d at 254. The factors to be considered in determining the amount of the penalty include the length of the delay, the number of delays, the information available to the employer and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

Claimant provides no argument regarding his alleged entitlement to penalty benefits in his post-hearing brief. Nevertheless, claimant established conclusively that defendants denied liability and have not paid any weekly benefits in this claim. Therefore, I find that claimant has proven a delay or denial of weekly benefits.

Defendants directed claimant's medical care to Ms. Bolton, a physician's assistant. After reviewing claimant's MRI, Ms. Bolton was asked to provide a causation opinion. Ms. Bolton opined that claimant's degenerative changes are likely causing the majority of his then-current symptoms. She further opined that she did not know whether claimant's then-current symptoms were exclusively a result of the October 23, 2019, work injury. (JE4, p. 183) She then referred claimant to a spine specialist, "for further insight on current condition including encroachment of exiting right L5 nerve root noted on MRI scan." She noted, "My hope would be that a specialist would have better insight on cause and chronicity." (Id.)

At that juncture, I find defendants had a reasonable basis to contest or at least conduct further investigation of this claim. At hearing, claimant conceded that defendants sent him a denial letter after receiving Ms. Bolton's causation letter. (Hr. Tr., pp. 31-32) In addition to Ms. Bolton's opinion, defendants later obtained an opinion from Dr. Chen definitively providing that claimant's work injury did not cause, aggravate, or accelerate the degenerative low back condition. At some point in their investigation, defendants also learned of the November 2019 slip and fall.

Defendants bore the burden to establish a reasonable basis, or excuse, and to prove the contemporaneous conveyance of those bases to the claimant. I find defendants carried their burden of proof.

Claimant asserted a claim for past medical expenses on the hearing report. Claimant did not address this issue in his post-hearing brief. The parties are strongly encouraged to address all issues in future briefs.

The medical expenses in question can be found in Exhibit 2.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except

where the employer has denied liability for the injury. Iowa Code section 85.27; Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Defendants denied liability for claimant's ongoing symptoms and stopped authorizing care after Ms. Bolton's February 3, 2020, report. I find that all of the past medical expenses sought by claimant occurred after defendants' denial of liability. The treatment dates in Exhibit 2 correspond with medical records in the Joint Exhibits. As such, I find that all of the expenses sought by claimant in Exhibit 2 were for reasonable treatment related to his work-related low back condition. Defendants shall reimburse, pay, or otherwise hold claimant harmless for the causally related medical expenses outlined in Exhibit 2.

Claimant seeks reimbursement of the independent medical evaluation charges from Dr. Stoken. Iowa Code 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. Defendants stipulated to claimant's entitlement regarding the same. (Hr. Tr., p. 8)

The final disputed issue is whether costs should be assessed against either party. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. In this case, claimant recovered permanent partial disability benefits. Exercising the agency's discretion, I conclude it is appropriate to assess claimant's costs in some amount. Claimant's costs are limited to the filing fees in this matter. (Hr. Tr., p. 8) This is a permitted cost pursuant to 876 IAC 4.33(7) and is assessed against defendants.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits commencing on December 27, 2021.

Weekly benefits are payable at the stipulated weekly rate of six hundred twenty-three and 50/100 dollars ($623.50).

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

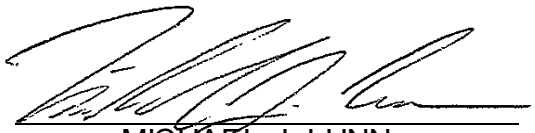
Defendants shall pay directly to the medical provider, reimburse claimant for any out-of-pocket expenses, and hold claimant harmless, for all causally related medical expenses outlined in Exhibit 2.

Defendants shall reimburse claimant for Dr. Stoken's independent medical evaluation pursuant to Iowa Code section 85.39 in the amount of two thousand four hundred and 00/100 dollars ($2,400.00).

Defendants shall reimburse claimant's costs as outlined in this decision.

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this ____4th____ day of October, 2022.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

John Dougherty (via WCES)

Patrick Waldron (via WCES)

Cory Abbas (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.