BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHARLES LUTZ, Claimant, vs. CONSOLIDATED REFRIGERATED SERVICES, Employer, and GREAT WEST CASUALTY, Insurance Carrier, Defendants.	File No. 5066804 ARBITRATION DECISION Head Note Nos.: 1400; 1402.20; 1402.40 1800; 1803; 1803.01; 2500; 2700; 4100

STATEMENT OF THE CASE

The claimant, Charles Lutz, filed a petition for arbitration seeking workers' compensation benefits from Consolidated Refrigerated Services ("CRS") and its insurer Great West Casualty. Gary Mattson appeared on behalf of the claimant. Steve Spencer appeared on behalf of the defendants.

The matter came on for hearing on March 30, 2021, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner related to the COVID-19 pandemic, the hearing occurred via CourtCall. The parties appeared electronically, and the hearing proceeded without significant difficulties.

The record in this case consists of Joint Exhibits 1-11, Claimant's Exhibits 1-11, and Defendants' Exhibits A-O. Testimony under oath was also taken from the claimant, Charles Lutz, and company representative Denice Irwin. Sonya Wright was appointed the official reporter and custodian of the notes of the proceeding. The matter was fully submitted on May 12, 2021, after briefing by the parties.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

1. There was an employer-employee relationship at the time of the alleged injury.

2. The claimant sustained an injury to arising out of, and in the course of, employment, on June 1, 2017.

3. That the alleged injury is a cause of temporary disability during a period of recovery.

4. That the commencement date for permanent partial disability benefits, if any are awarded, is August 17, 2017.

5. That the claimant was married, and entitled to four exemptions.

6. That the costs listed in Claimant's Exhibit 4 have been paid.

Any entitlement to temporary disability and/or healing period benefits is no longer in dispute. The defendants waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. Whether the alleged injury is a cause of permanent disability.

2. The extent of permanent disability, if any is awarded.

3. Whether the disability is an industrial disability.

4. Whether the claimant's gross earnings were one thousand eight hundred eighty-two and 34/100 dollars ($1,882.34) per week, and a weekly rate of compensation rate of one thousand one hundred forty-six and 62/100 dollars ($1,146.62) per week.

5. Whether the claimant is entitled to reimbursement for medical expenses contained in Claimant's Exhibit 9.

6. Whether the claimant is entitled to reimbursement for an independent medical examination ("IME") pursuant to Iowa Code section 85.39.

7. Whether the claimant is entitled to alternate care pursuant to Iowa Code section 85.27.

8. Whether the defendants are entitled to a credit for seven weeks of compensation paid at the rate of one thousand one hundred forty-five and 51/100 dollars ($1,145.51) per week.

FINDINGS OF FACT

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

Charles Lutz, the claimant was 58 years old at the time of the hearing. (Testimony). He resides in Beaver Falls, Pennsylvania, where he has lived for about 52 years. (Testimony). He is married and has two children, aged 16 and 10. (Testimony). His children reside with him and his wife. (Testimony). Mr. Lutz graduated from Riverside High School in Ellwood, Pennsylvania in 1981. (Testimony). He received a C or D average in high school. (Testimony).

After graduating high school, Mr. Lutz moved to Texas to work for a steel company. (Testimony). He worked for about one-year heat treating steel used in the oil industry. (Testimony). He then worked part time jobs at bars and restaurants in Bryan and College Station, Texas, for about four years. (Testimony). He moved back to Pennsylvania, and worked in construction, carpet laying, and in a lumberyard. (Testimony). He worked at the lumberyard from 1989 to 1990. (Testimony). He then went to work for Pizza Dudes delivering pizza for four years. (Testimony). Mr. Lutz then got a job with a delivery company in Aliquippa, Pennsylvania. (Testimony). He delivered packages in western Pennsylvania, West Virginia, and Ohio. (Testimony). He delivered heavy boxes of paper for about one year. (Testimony).

Mr. Lutz moved to Long Island, New York, to be closer to his girlfriend at the time. (Testimony). He worked for a sewer company, building and digging septic tanks and cesspools. (Testimony). He also cleaned out septic tanks and cesspools. (Testimony). He lifted 50 to 100 pounds. (Testimony). After tiring of the smell, he found a job driving a box truck for an HVAC company. (Testimony). He unloaded air conditioning units, furnaces, and HVAC parts at homes and businesses. (Testimony). He did this job for three to four months before breaking up with his girlfriend and moving back to Pennsylvania. (Testimony).

Upon returning from New York, Mr. Lutz returned to his employment with the delivery company for several months. (Testimony). He then got a job working for a carpet and tile distribution warehouse known as Source in Imperial, Pennsylvania. (Testimony). He needed to push up to 500 pounds, carry carpet rolls and ceramic tile, and unloading his truck by hand. (Testimony). He characterized this as a physical job. (Testimony). He worked for Source for about two years before he obtained his Class A license in order to drive a semi-truck. (Testimony).

He applied for a position as a driver with a company known as PAM. (Testimony). PAM sent him to truck driving school in Indianapolis, Indiana. (Testimony). In 1999 he became a truck driver. (Testimony). Between 1999 and 2000, he worked for PAM hauling freight to all 48 states. (Testimony). In 2000, Mr. Lutz began hauling mail for a company known as Midwest. (Testimony). He ended up working for four companies that hauled mail, Midwest, Eagle Express, SLM, and BECO.

(Testimony). Mr. Lutz also had back surgery in 2000 due to two disks pinching the nerves in his back. (Testimony). This resolved the back problems that he had at that time, and after eight weeks, he returned to work. (Testimony). Working as a driver hauling mail was sometimes a "no touch" job where the mail was not touched. (Testimony). Other times, he unloaded carts of mail off the trailer, and reloaded the trailer. (Testimony). The carts full of mail were heavy. (Testimony). After a time, delivering mail became repetitive, and Mr. Lutz looked for a new job. (Testimony).

Mr. Lutz hauled freight for Wilco out of Missouri to the lower 48 states. (Testimony). He leased his truck. (Testimony). On April 8, 2011, Mr. Lutz began employment with CRS. (Testimony). CRS is located in Kingsley, Iowa. (Testimony). Mr. Lutz was dispatched from Kingsley, Iowa, and CRS's only terminal was Kingsley, Iowa. (Testimony). When he started with CRS, Mr. Lutz was an owner-operator. (Testimony). In August of 2014, he "leased on" with CRS. (Testimony). This was because the engine in his truck died. (Testimony). CRS paid to repair the truck, and Mr. Lutz agreed to repay CRS over the next three and a half years. (Testimony; Defendants' Exhibit H:32). With CRS, Mr. Lutz hauled mostly Blue Bunny ice cream and milk. (Testimony). He also hauled plants from time to time. (Testimony). Sometimes, he would have to load or unload plants, but the remainder of his loads were considered "no touch." (Testimony). Mr. Lutz maintained logs, as required by the Department of Transportation regulations. (Testimony). He also maintained a personal journal with his mileage, stops, and fuel purchased. (Testimony). Mr. Lutz testified that CRS tried to have drivers return to Kingsley, Iowa, every two weeks, or so. (Testimony). Mr. Lutz was paid by the load. (Testimony). He testified that he earned 25 percent of each load. (Testimony).

Some prior medical records were provided. On February 22, 2016, Jarod Stragand, D.O., examined Mr. Lutz. (JE 3:1-2). Mr. Lutz complained of left shoulder discomfort, including a clicking sound. (JE 3:1). He also had poorly controlled diabetes at the time. (JE 3:1). Dr. Stragand ordered an x-ray of the left shoulder, which showed no acute issues and mild degenerative changes in the acromioclavicular and glenohumeral joints. (JE 3:2).

Mr. Lutz had a medical examination for a commercial driver's license ("CDL") on February 23, 2016. (DE H:29). Mr. Lutz indicated that he was a diabetic, but indicated no issues with chronic low back pain or spinal injury. (DE H:29).

On June 1, 2017, Mr. Lutz had a car accident. (Testimony). Mr. Lutz was operating his CRS truck on Interstate 77 North between Akron, Ohio, and Canton, Ohio. (Testimony). He was coming from a dairy with a loaded truck. (Testimony). Mr. Lutz testified that he attempted to move over due to merging traffic, and struck a stopped or slow moving tractor-trailer in the middle lane. (Testimony). Mr. Lutz estimates that he was driving between 65 mph and 70 mph. (Testimony). This totaled the CRS truck. (Testimony). Mr. Lutz complained of injuries to his back, legs, arms, and hands after the accident. (Testimony). He has not worked for CRS since this date. (Testimony).

City of Green EMS arrived on scene to tend to Mr. Lutz. (Joint Exhibit 1:1-3). EMS found Mr. Lutz ambulatory. (JE 1:2). Mr. Lutz made no complaints of head or neck pain. (JE 1:2). Mr. Lutz complained of pain in his right hand from gripping the steering wheel. (JE 1:2). He also had pain in his shins. (JE 1:2). EMS transported Mr. Lutz to Summa-ER. (JE 1:2; 2:1).

Upon arrival at Summa-ER, Mr. Lutz was examined by an attending physician. (JE 2:1-10). The doctor found no head injury, chest pain, or abdominal pain. (JE 2:2). Mr. Lutz complained of left hand pain, bilateral mid tibial pain, left arm and left forearm pain, and abrasions to his lower legs. (JE 2:2). X-rays of the left arm and hand were negative. (JE 2:3-4). X-rays of the right and left leg were negative. (JE 2:4-5). Upon discharge, Mr. Lutz was directed to follow up with the Center for Corporate Health – Green. (JE 2:8). The doctor also indicated that Mr. Lutz could return to work with no standing for longer than 30 minutes and no lifting greater than 10 pounds. (JE 2:9). After being discharged from his initial care, Mr. Lutz's wife picked him up from the hospital, and took him home. (Testimony).

Mr. Lutz visited Dr. Stragand's office on June 5, 2017. (JE 3:3-6). Mr. Lutz was following up from his motor vehicle accident. (JE 3:3). Mr. Lutz noted injuries to his left anterior tibia, and that he did not recall hitting his head, but that he felt "off." (JE 3:3). He continued to have poorly controlled diabetes. (JE 3:3). Dr. Stragand recommended a head CT. (JE 3:4). The head CT was performed on June 5, 2017. (JE 3:21). The CT showed normal results. (JE 3:21).

On June 9, 2017, Mr. Lutz reported to WorkWell, Inc. (JE 4:1-3). Roger Pomchek, PA-C, and Scott Sheppard, M.D., examined Mr. Lutz. (JE 4:2). Mr. Lutz told the providers his history, including the motor vehicle accident on June 1, 2017. (JE 4:1). Mr. Lutz denied any loss of consciousness or head injury. (JE 4:1). He also denied any mid back or low back pain. (JE 4:1). Mr. Lutz complained of issues with his left forearm, both hands, both legs, right knee, neck pain, and a mild headache. (JE 4:1). The providers observed Mr. Lutz ambulating with an antalgic gait. (JE 4:1). He displayed some tenderness to the suboccipital and paraspinal cervical musculature. (JE 4:1). The providers noted some bruising, swelling and abrasions on Mr. Lutz's extremities. (JE 4:2). The right knee had full range of motion with no discomfort. (JE 4:2). The providers diagnosed Mr. Lutz with cervical sprain, bilateral hand sprains/strains, left forearm contusion, left lower leg contusion, right knee and lower leg contusion. (JE 4:2). The providers recommended ice, heat, and naproxen. (JE 4:2). They also recommended a formal physical therapy evaluation. (JE 4:2). They placed Mr. Lutz on modified duty. (JE 4:2). Mr. Lutz could lift and carry 11 to 20 pounds. (JE 4:3). He could stand occasionally and was told to avoid climbing ladders. (JE 4:3).

Mr. Lutz followed up with WorkWell, Inc., on June 16, 2017. (JE 4:4-6). Mr. Lutz complained of soreness "all over." (JE 4:4). Some of the discomfort in his left leg and shin improved, but his left foot and ankle, and right knee and low back continued. (JE 4:4). He progressed his activities in physical therapy. (JE 4:4). His worst pain was in the plantar aspect of his left foot, and the medial aspect of his left ankle. (JE 4:4). The

swelling in his hands went down. (JE 4:4). The superficial wounds to his lower extremities also showed significant resolution. (JE 4:4). The providers diagnosed Mr. Lutz with cervical sprain, lumbar sprain, bilateral hand sprains/strains, left forearm contusion, left lower leg contusion with resistant left foot and ankle pain, right knee and lower leg contusion. (JE 4:5). The providers continued to keep Mr. Lutz on modified duty. (JE 4:5). Mr. Lutz's restrictions did not substantially change. (JE 4:6).

On June 16, 2017, Mr. Lutz had a right knee x-ray with BHS Imaging Services. (JE 5:1). The interpreting radiologist found no acute fracture or joint effusion. (JE 5:1). The radiologist did note "extremely minimal" early arthritic changes. (JE 5:1). Mr. Lutz also had an x-ray of his left foot. (JE 5:2). The x-ray showed a 3 mm plantar calcaneal spur in the presence of an Achilles' osteophyte, hallux valgus, and no fractures. (JE 5:2). The radiologist noted a well maintained plantar arch. (JE 5:2). A left ankle x-ray showed no evidence of fracture or dislocation. (JE 5:3).

Mr. Lutz had a return visit to WorkWell, Inc., on June 23, 2017. (JE 4:7-10). Mr. Lutz recounted his medical history and injury history. (JE 4:7). Mr. Lutz reported that his biggest concerns were right knee pain, low back pain, and left foot/ankle pain. (JE 4:7). His neck pain, left forearm pain, and bilateral hand pain were nearly resolved. (JE 4:7). He denied numbness, tingling or weakness from the low back. (JE 4:7). Mr. Lutz also reported left plantar foot and ankle pain. (JE 4:7). Mr. Lutz took naproxen, which provided him with relief. (JE 4:8). Mr. Lutz continued to ambulate with an antalgic gait. (JE 4:8). The provider diagnosed Mr. Lutz with cervical sprain, lumbar sprain, bilateral hand sprains/strains, left forearm contusion, left lower leg contusion with resultant left foot and ankle pain, and right knee and lower leg contusion. (JE 4:9). Mr. Lutz remained on modified duty with substantially the same limitations. (JE 4:9-10).

On June 30, 2017, Mr. Lutz continued his care with WorkWell, Inc. (JE 4:11-13). Mr. Lutz indicated he felt "about the same." (JE 4:7). The provider indicated that Mr. Lutz gave "vague description of bilateral leg pain, numbness and discomfort throughout both lower extremities and no particular dermatomal pattern." (JE 4:11). He also claimed to have difficulty with ambulation and pain throughout his lower extremities. (JE 4:11). He continued to complain of pain on the anterior aspect of the left ankle and plantar aspect of the left heel. (JE 4:11). He told the provider that his Achilles' tendons felt as though they were in knots. (JE 4:11). He reported no significant complaints of neck or upper extremity pain. (JE 4:11). Mr. Lutz continued to display an antalgic gait on the left. (JE 4:11). His superficial lower extremity wounds were resolved. (JE 4:11). The provider found some diminished reflexes at the ankle. (JE 4:11). The providers diagnosed Mr. Lutz with multiple musculoskeletal sprains and contusions. (JE 4:12). They continued him on modified duty. (JE 4:12-13). His restrictions remained fundamentally unchanged. (JE 4:12-13). The providers reviewed imaging with Mr. Lutz, and noted that they were "rather unremarkable." (JE 4:12). The provider notes some degenerative spurring in the left foot and ankle, but noted no other issues. (JE 4:12). Mr. Lutz was to continue with his present management and physical therapy. (JE 4:12). It was recommended that he take a nonsteroidal anti-inflammatory, and a prescription for Mobic was given. (JE 4:12).

Mr. Lutz followed up with WorkWell, Inc., on July 7, 2017, for his continued complaints. (JE 4:14-16). Mr. Lutz reported marginal improvement. (JE 4:14). He felt that he made some gains with physical therapy. (JE 4:14). His main complaint was low back pain and bilateral leg pain with numbness. (JE 4:14). The pain in his back was moderate in severity. (JE 4:14). The pain and numbness radiated to his bilateral posterior thighs. (JE 4:14). He also complained of ongoing knee discomfort and left ankle pain. (JE 4:14). He continued to take Mobic and attend physical therapy. (JE 4:14). Upon examination, Mr. Lutz continued to display an antalgic gait on the left side. (JE 4:14). The providers continued to diagnose Mr. Lutz with "[m]ultiple musculoskeletal sprains and contusions status post motor vehicle accident." (JE 4:15). They also continued him on modified duty with similar restrictions. (JE 4:15-16).

Mr. Lutz had a lumbar MRI at IRG Imaging on July 12, 2017. (JE 6:1-2). Eric Flint, M.D., interpreted the MRI. (JE 6:2). The lumbar spine had normal alignment. (JE 6:1). Dr. Flint noted disc space narrowing at L3-4, L4-5, and L5-S1 with mild spondylosis. (JE 6:1). Dr. Flint also found mild central canal stenosis at L3-4, and did not find focal disc protrusion. (JE 6:1). Dr. Flint saw evidence of the previous left L4 hemilaminectomy. (JE 6:2). Finally, Dr. Flint opined that Mr. Lutz had degenerative disc disease and mild spondylosis with right L5-S1 facet arthrosis. (JE 6:2).

On July 14, 2017, Mr. Lutz continued his follow up care with WorkWell, Inc. (JE 4:17-20). He continued to claim marginal improvement in his symptoms. (JE 4:17). Mr. Lutz noted low back pain that radiated into his right leg. (JE 4:17). The pain radiation followed no particular dermatomal pattern. (JE 4:17). He also complained of pain into his right knee, and bilateral ankle pain. (JE 4:17). Mr. Lutz indicated that his cervical strain, forearm contusion and bilateral hand injuries were resolved. (JE 4:17). Examination of the lumbar spine revealed limited range of motion secondary to pain. (JE 4:17). The providers diagnosed Mr. Lutz with resolving right knee and lower leg contusions, and low back sprain/strain. (JE 4:18). The providers reviewed MRIs of the lumbar spine and opined that they showed mild to moderate degenerative changes at L4-5 and L5-S1 with no associated central or foraminal narrowing. (JE 4:18). The provider noted no acute changes or disc herniations in the lumbar spine. (JE 4:18). The provider recommended continuing conservative management and physical therapy. (JE 4:18). The providers continued modified duty, and did not change his restrictions. (JE 4:18-20).

Mr. Lutz followed up with WorkWell, Inc., on July 18, 2017. (JE 4:21-24). Mr. Lutz denied any numbness, paresthesias, or weakness in his lower extremities. (JE 4:21). Most of Mr. Lutz's symptoms resolved, except for "residual discomfort" in his lower back with occasional radiation into his legs. (JE 4:21). Upon examination, the provider noted that Mr. Lutz's gait was near normal. (JE 4:21). Mr. Lutz displayed some tenderness to palpation in the lower back, but no muscle spasms were found. (JE 4:21). The provider found no obvious issues to Mr. Lutz's right knee. (JE 4:22). The providers diagnosed Mr. Lutz as follows: "[a]pproximately 7 weeks status post a right knee and lower leg contusion and strain as well as a lumbosacral strain with underlying degenerative changes, and a history of multiple previous lower back surgeries." (JE

4:22). The providers recommended that Mr. Lutz continue to take meloxicam, and supplement it with Tylenol. (JE 4:22). They also continued Mr. Lutz on modified duty, but Mr. Lutz no longer had any restrictions on sitting, standing, walking or driving. (JE 4:23). Mr. Lutz could occasionally bend, crawl, squat, and climb a ladder. (JE 4:23). He could frequently reach and climb stairs. (JE 4:23).

Mr. Lutz had a physical therapy appointment on July 27, 2017, with Air Physical Therapy. (JE 8:1). Mr. Lutz complained of pain in his left calf for the past several days. (JE 8:1). He rolled over in bed the night before and "had a pain in his back that went down his left leg to ankle." (JE 8:1). He had physical therapy, but noted minimal improvement. (JE 8:1). He had good potential for rehabilitation, but was plateauing in progress. (JE 8:1).

On July 28, 2017, Mr. Lutz returned to WorkWell, Inc. (JE 4:25-28). Mr. Lutz continued to complain of lower back pain radiating into his bilateral extremities. (JE 4:25). He indicated that his pain was 7 out of 10. (JE 4:25). Mr. Lutz felt that he was 50 percent improved from the time of the incident, but that he remained unable to sleep on the right side without discomfort. (JE 4:25). The provider diagnosed Mr. Lutz with lumbar sacral strain with underlying degenerative changes and a history of multiple previous lower back surgeries, right knee strain and left ankle sprain. (JE 4:25). The provider recommended that Mr. Lutz continue taking meloxicam, continue to attend physical therapy, and obtain an EMG of the bilateral lower extremities. (JE 4:25). Mr. Lutz was able to lift and carry 21 to 50 pounds, and had no restrictions related to sitting, standing, walking, or driving. (JE 4:27).

On July 31, 2017, Mr. Lutz reported to Medical Rehabilitation, Inc., for an EMG with Ellen Mustovic, M.D. (JE 7:1-4). Mr. Lutz told Dr. Mustovic that he had back pain radiating up his spine, along with pain in his right knee. (JE 7:1). He reported that his legs felt weak. (JE 7:1). Dr. Mustovic could not obtain reflexes at the knees and ankles; however, she found full motor strength in Mr. Lutz's lower extremities. (JE 7:1). Dr. Mustovic opined that the EMG was normal. (JE 7:2). Specifically, Dr. Mustovic opined that she did not find electrical evidence of bilateral lumbosacral radiculopathy. (JE 7:2).

Mr. Lutz had another physical therapy visit with Air Physical Therapy on August 1, 2017. (JE 8:2). Mr. Lutz expressed frustration regarding his pain levels. (JE 8:2). He indicated that his pain inhibited him from completing activities of daily living. (JE 8:2). Physical therapy progressed as planned. (JE 8:2). The therapist recommended a more aggressive approach to his therapy. (JE 8:3).

On August 2, 2017, Mr. Lutz continued his physical therapy with Air Physical Therapy. (JE 8:4-5). He continued to report pain and frustration with the lack of answers surrounding his pain. (JE 8:4). He complained of neck pain since the previous weekend. (JE 8:4). He tolerated treatment with some pain. (JE 8:4). The therapist again recommended continued therapy with a "more aggressive approach." (JE 8:5).

Mr. Lutz continued his treatment at WorkWell, Inc., on August 3, 2017. (JE 4:29-31). Mr. Lutz complained of pain to his lower back that radiated into his legs. (JE 4:29). Upon meeting with the provider, Mr. Lutz reported "increasing neck, upper back and left shoulder discomfort." (JE 4:29). The provider discussed the results of the EMG with Mr. Lutz. (JE 4:29). Mr. Lutz indicated that he understood that the EMG showed no evidence of lumbosacral radiculopathy. (JE 4:29). The provider told Mr. Lutz that if he had increased neck, thoracic and left shoulder pain, additional approval was needed from the insurer, as these injuries were not part of his initial claim. (JE 4:29). This caused Mr. Lutz to become aggravated, at which time he stormed out of the examination room. (JE 4:29). Mr. Lutz's restrictions included sitting, standing, walking, and driving up to 12 hours per day, lifting and carrying 21-50 pounds, and using both hands and feet. (JE 4:31).

On August 3, 2017, Mr. Lutz had another visit at Air Physical Therapy. (JE 8:6-7). Mr. Lutz reported no new pain, just the "same old pain" in his legs and back. (JE 8:6). He also indicated that he had left upper trapezius pinching. (JE 8:6). The therapist observed Mr. Lutz have a slow gait into the clinic, and exhibit frequent facial grimacing during the session. (JE 8:6). If Mr. Lutz plateaued in two weeks, he would be discharged. (JE 8:6-7).

Mr. Lutz visited Greater Pittsburgh Orthopedic Associates on August 7, 2017, where J. William Bookwalter, M.D., examined him. (JE 9:1-3). Mr. Lutz complained of lumbar and lower extremity issues. (JE 9:1). Dr. Bookwalter noted that Mr. Lutz had a significant history of back complaints, including a surgery in 2000. (JE 9:1). Following his June of 2017 accident, he had a number of complaints in his lower extremities. (JE 9:1). The symptoms occurred more on the right than the left. (JE 9:1). Mr. Lutz felt as though something was inside his leg. (JE 9:1). Mr. Lutz requested an EMG. (JE 9:1). Dr. Bookwalter noted forward flexion of the back of 30 degrees with a sacral angle of 30 degrees. (JE 9:2). He also had extension of 10 degrees and bilateral lateral flexion of 10 degrees. (JE 9:2). Dr. Bookwalter also found spasm. (JE 9:2). Dr. Bookwalter reviewed the imaging studies and the EMG. (JE 9:2). He indicated that the EMG showed degenerative disc disease, and slight stenosis at L3-4 and L5-S1. (JE 9:2-3). Dr. Bookwalter dictated the following impression: "I think that he has probably aggravated his lumbar degenerative disc disease. He probably has some lower extremity soft tissue trauma. On the whole, I don't see anything neurosurgical." (JE 9:3). Dr. Bookwalter recommended and ordered a thoracic MRI, and both steroidal and nonsteroidal medications. (JE 9:3). Dr. Bookwalter also issued an order for physical therapy. (JE 9:5).

On August 8, 2017, Mr. Lutz returned to WorkWell, Inc. (JE 4:32-34). He reported marginal improvement, but still had intermittent bilateral lower extremity discomfort. (JE 4:32). Physical therapy provided short term relief of his symptoms. (JE 4:32). Mr. Lutz noted "rather vague" right knee pain, but denied other symptoms. (JE 4:32). The provider diagnosed Mr. Lutz as follows: "[a]pproximately 10 weeks status post a right knee and lower leg contusion and strain as well as a lumbosacral strain with underlying degenerative changes, and a history of multiple previous lower back

surgeries." (JE 4:33). The provider continued Mr. Lutz on modified duty. (JE 4:33). Mr. Lutz's restrictions remained largely unchanged. (JE 4:34).

Mr. Lutz had a thoracic MRI at Butler Memorial Hospital on August 9, 2017. (JE 5:4). Jeffrey Hilger, M.D., interpreted the MRI. (JE 5:4). The MRI showed no spinal canal stenosis in the thoracic spine. (JE 5:4). The MRI showed right posterior osteophytes at T7-8 and a medium size posterior central disc protrusion at T8-9. (JE 5:4). Neither of these defects had any effect on the thoracic spinal cord. (JE 5:4).

On August 10, 2017, Mr. Lutz returned to Air Physical Therapy for continued physical therapy. (JE 8:8-9). Mr. Lutz felt a burning in his medial right thigh. (JE 8:8). The day prior, he had sharp pains in the medial right ankle, the left shoulder and upper back. (JE 8:8). He claimed to have more leg pain than back pain and that both legs twitched a lot. (JE 8:8). Mr. Lutz expressed frustration with a lack of progress and no relief of his pain. (JE 8:9).

Mr. Lutz repeated his physical therapy on August 14, 2017. (JE 8:10-12). The therapist noted that Mr. Lutz had limitations to his lumbar spine range of motion. (JE 8:10). The therapist recommended no further intervention due to failed treatment. (JE 8:10). Mr. Lutz continued to have an observed antalgic gait. (JE 8:12). Extension of his lumbar spine caused bilateral burning sensation in his lower extremities. (JE 8:12). Mr. Lutz reported that walking and standing also caused pain. (JE 8:12). Mr. Lutz opined that his pain stemmed from his right hip; however, the therapist opined that the symptoms are stenotic in nature. (JE 8:12).

Following his MRI, Mr. Lutz returned to Dr. Bookwalter's office on August 17, 2017. (JE 9:6-9). Mr. Lutz reported making no progress since his last visit. (JE 9:6). He continued to have pain in his back, right hip, and right leg. (JE 9:6). Activity caused worsening symptoms. (JE 9:6). Dr. Bookwalter found Mr. Lutz to be essentially unchanged upon examination with a restricted range of motion in his back. (JE 9:7). Dr. Bookwalter also found spasm in the back with some diminished sensation in the L4-5 distributions. (JE 9:7). Dr. Bookwalter corrected his previous dictation noting that the EMG was normal. (JE 9:7). Dr. Bookwalter indicated that the thoracic MRI showed degenerative changes at multiple levels with no cord compression or cord signal changes. (JE 9:7). Dr. Bookwalter opined that Mr. Lutz suffered an aggravation of thoracic and lumbar degenerative disc disease. (JE 9:7). Dr. Bookwalter continued, "[i]n my opinion this patient does not have any surgically significant pathology. I would recommend that he be seen by the physiatrists and pursue a physiatry supervised rehab program." (JE 9:8). Dr. Bookwalter told the nurse case manager to cancel a scheduled independent medical examination ("IME") and send Mr. Lutz to a physiatrist. (JE 9:8).

Mr. Lutz continued to treat with WorkWell, Inc., on August 22, 2017. (JE 4:35-37). Mr. Lutz admitted that he temporarily stopped attending physical therapy as he awaited results of a thoracic MRI. (JE 4:35). Mr. Lutz continued to take nonsteroidal anti-inflammatory drugs as needed. (JE 4:35). Mr. Lutz continued to ambulate in a

normal manner. (JE 4:35). The provider diagnosed Mr. Lutz as follows: "[a]pproximately 12 weeks status post a right knee and lower leg contusion and strain as well as a lumbosacral strain with underlying degenerative changes, and a history of multiple previous lower back surgeries." (JE 4:36). Mr. Lutz continued to remain on modified duty with the same restrictions as provided in previous appointments. (JE 4:37).

James Cosgrove, M.D., of Tri Rivers Consulting Services, examined Mr. Lutz for an IME on August 28, 2017. (DE N:73-79). Dr. Cosgrove reviewed medical imaging and records in preparing his report. (DE N:73-77). Mr. Lutz complained of right sided hip pain with bilateral leg pain radiation from the knee down to the shin and into the ankle. (DE N:74). Upon examination, Dr. Cosgrove found that Mr. Lutz displayed "surprisingly good" range of motion in his cervical spine. (DE N:77). Dr. Cosgrove found Mr. Lutz to have full flexion, extension, side bending, and rotation in his lumbar spine. (DE N:77). Mr. Lutz also had no issues bending over and picking up objects from the floor. (DE N:77). Straight leg raising testing showed no radicular symptoms. (DE N:77). Upon examination of the right knee, Mr. Lutz complained of pain. (DE N:77-78). Mr. Lutz showed no issues going from sitting to standing. (DE N:78). Dr. Cosgrove agreed that Mr. Lutz may have mild diabetic neuropathy. (DE N:78). Dr. Cosgrove's impressions of Mr. Lutz's conditions were as follows: resolved contusion to the lower extremities, resolved head contusion, history of lumbar surgery with no aggravation or change in condition, and history of disc protrusion in the thoracic spine which is asymptomatic. (DE N:78). Based upon his examination of Mr. Lutz, Dr. Cosgrove concluded that Mr. Lutz reached MMI and had no evidence of impairment of a neurologic, musculoskeletal or vascular nature. (DE N:78). Dr. Cosgrove declined to provide an impairment rating, as Mr. Lutz suffered only subjective pain complaints. (DE N:78).

On September 5, 2017, Mr. Lutz returned to WorkWell, Inc. (JE 4:38-40). The provider reviewed the claimant's recent medical history, and indicated that Mr. Lutz would be advanced to a home exercise program. (JE 4:38). The provider released Mr. Lutz to work full duty. (JE 4:38). Mr. Lutz was discharged and instructed to follow up with his primary care physician. (JE 4:39).

On October 13, 2017, Mr. Lutz returned to Dr. Stragand's office. (JE 3:10-12). Mr. Lutz had lumbar pain with radiation into his bilateral legs. (JE 3:10). The pain was worse on the right side. (JE 3:10). Mr. Lutz told Dr. Stragand that he had never had diabetic peripheral neuropathy. (JE 3:10). Dr. Stragand recommended that Mr. Lutz lose weight. (JE 3:12).

Mr. Lutz reported to Ellwood City Medical Center on January 18, 2018, for an MRI of his right knee. (JE 10:1-2). The reason for the examination was severe right leg and knee pain. (JE 10:1-2). The examination was mildly compromised by motion. (JE 10:1). John Jackson, M.D., interpreted the examination. (JE 10:1-2). Dr. Jackson did not find any knee joint effusion or gross intraarticular body. (JE 10:1-2). Dr. Jackson found minor tendonosis in the distal quadriceps tendon and a tear along the inner third of the lateral meniscus posterior horn. (JE 10:1-2).

On January 24, 2018, Mr. Lutz visited with Robert McGann, D.O., F.A.C.O.S. (JE 10:3). Mr. Lutz complained of ongoing right knee pain that he claimed started with his June 1, 2017, work injury. (JE 10:3). Upon examination, Dr. McGann found that Mr. Lutz had full range of motion with lateral jointline tenderness. (JE 10:3). He had no joint effusion. (JE 10:3). Dr. McGann diagnosed Mr. Lutz with internal derangement of the right knee with probable lateral meniscal pathology. (JE 10:3). Dr. McGann recommended an arthroscopic surgery to the right knee. (JE 10:3). Mr. Lutz told Dr. McGann that he needed to speak to his lawyer to "see when he can proceed." (JE 10:3).

Sunil Bansal, M.D., M.P.H., performed an IME on December 6, 2018. (CE 2:1-16). Dr. Bansal issued a report on February 8, 2019. (CE 2:16). Dr. Bansal reviewed Mr. Lutz's pertinent medical records. (CE 2:2-10). Mr. Lutz recounted the circumstances of the work incident from June 1, 2017, to Dr. Bansal. (CE 2:11). Mr. Lutz claimed to have constant low back pain that radiated down both of his legs from his hips to his feet. (CE 2:11). He also had numbness to his right leg, and swelling of both legs and feet. (CE 2:11). Mr. Lutz claimed that he also had bilateral knee pain. (CE 2:11). Mr. Lutz used a cane to walk, and reported that he could walk for 15 minutes. (CE 2:11). He could lift 10 pounds from the floor. (CE 2:11). Mr. Lutz reported that he loaded and unloaded his truck to the tune of 1,000 to 2,500 pounds using a dolly. (CE 2:11). This conflicts a bit with his testimony. (Testimony). Upon physical examination, Dr. Bansal noted tenderness to palpation over the lower lumbar paraspinal muscles. (CE 2:12). Dr. Bansal found +2 crepitus in the right knee. (CE 2:12). Dr. Bansal found mild crepitus to the left knee. (CE 2:12). Dr. Bansal used a two-point discriminator to opine that Mr. Lutz had a loss of sensory discrimination over the lateral thigh. (CE 2:13).

Dr. Bansal opined that Mr. Lutz suffered an aggravation of his lumbar spondylosis and a lateral right meniscal tear as a result of the work incident on June 1, 2017. (CE 2:13). Dr. Bansal noted, "the severe impact from the collision on June 1, 2017 aggravated his lumbar spondylosis." (CE 2:13). Dr. Bansal acknowledged that the structural lumbar spondylosis pre-dated June 1, 2017, but he noted that Mr. Lutz was "symptomatically quiescent" prior to that time. (CE 2:13). Dr. Bansal opined that certain damage may have occurred to nociceptors, which could alter the magnitude of perceived pain. (CE 2:14). Dr. Bansal noted that this altered magnitude of perceived pain is known as neural plasticity, and "is considered to play a critical role in the evolution of chronic pain." (CE 2:14). Dr. Bansal also opined that the impact to Mr. Lutz's right knee was consistent with a lateral meniscal pathology. (CE 2:14). Dr. Bansal placed Mr. Lutz at maximum medical improvement ("MMI") for his back on August 17, 2017, as of his last appointment with Dr. Bookwalter. (CE 2:14). Dr. Bansal opined that Mr. Lutz had yet to receive adequate treatment for his right knee meniscus tear. (CE 2:15). Thus, Mr. Lutz had not reached MMI for his right knee condition. (CE 2:15).

Dr. Bansal placed Mr. Lutz in a DRE Category II impairment along with some from Category III. (CE 2:15). Due to his radicular complaints, guarding, loss of range of

motion, and continued pain, Dr. Bansal opined that Mr. Lutz suffered an 8 percent impairment to the whole person for his back injury. (CE 2:15). Dr. Bansal opined that Mr. Lutz suffered a 2 percent lower extremity impairment or a 1 percent impairment to the body as a whole for his right knee injury. (CE 2:15). Dr. Bansal recommended that Mr. Lutz not lift over 20 pounds occasionally, and not lift over 10 pounds frequently. (CE 2:15). Dr. Bansal also recommended no frequent kneeling, bending, squatting, climbing, or twisting. (CE 2:15-16). Dr. Bansal finally recommended no prolonged standing, walking, or sitting for greater than 30 minutes at a time. (CE 2:15-16). With regards to future medical care to Mr. Lutz's back, Dr. Bansal recommended maintenance including medications, epidural injections, radiofrequency ablation, and a TENS unit as recommended by a pain specialist. (CE 2:16). For Mr. Lutz's right knee, Dr. Bansal agreed with Dr. McGann's opinions that Mr. Lutz was a surgical candidate. (CE 2:16).

On February 5, 2019, Mr. Lutz again followed up with Dr. Stragand. (JE 3:13-17). Mr. Lutz indicated that he needed knee surgery, "but his attorney told him not to pursue that until his Workmen's Comp. case is completed." (JE 3:13). He continued to have low back pain with radiation to the right leg more than the left. (JE 3:13). Dr. Stragand opined that Mr. Lutz's major issue was poorly controlled diabetes. (JE 3:13).

Mr. Lutz reported to Capital Orthopaedics & Sports Medicine, where William R. Boulden, M.D., F.A.A.O.S., performed an IME on April 1, 2019. (Defendants' Exhibit A:1-7). Mr. Lutz complained to Dr. Boulden that he had pain in the low back area. (DE A:1). Specifically, Mr. Lutz had pain in the L4-5 area. (DE A:1). Mr. Lutz also complained of right groin pain, occasional leg symptoms, and right knee pain. (DE A:1). Dr. Boulden reviewed the medical records. (DE A:1-4). Walking and standing increased his back pain. (DE A:4). Dr. Boulden noted Mr. Lutz's history of back pain, 2001 surgery, and that Mr. Lutz indicated that he had no further leg symptoms after his previous surgeries. (DE A:4). Dr. Boulden examined Mr. Lutz and found no spasms in the lower back. (DE A:5). However, Mr. Lutz displayed a guarded range of motion with flexion, extension, and left and right lateral leg bending. (DE A:5). Mr. Lutz displayed "significant problems" getting up from a seated position. (DE A:5). Mr. Lutz stood in a stooped position with flexed knees until he felt comfortable. (DE A:5). Mr. Lutz displayed severe pain in his right hip, but once Dr. Boulden moved the hip to a flexed position of 90 degrees, Mr. Lutz noted no pain. (DE A:5). Upon examination, the right knee showed tenderness over the lateral joint line and none over the medal joint line. (DE A:5). Interestingly, at the conclusion of the examination, Mr. Lutz got up from a sitting position and walked out of the exam room with no hesitation. (DE A:5). Dr. Boulden characterized Mr. Lutz's behavior as "very theatrical" upon one time that he got up from the chair and "no observed changes" during the second time. (DE A:6). Dr. Boulden took an x-ray of Mr. Lutz's hip and noted no issues. (DE A:6).

Dr. Boulden opined that Mr. Lutz displayed symptoms that were quite significant compared to the diagnostic findings. (DE A:6). Dr. Boulden noted that "all objective findings on the diagnostic studies, except the right knee MRI, were all pre-existing and degenerative in nature." (DE A:6). Dr. Boulden further observed that Mr. Lutz visited at

least three different surgeons for his back or spine, and none recommended aggressive treatment. (DE A:6). Dr. Boulden noted the recommended knee surgery, and opined that, based upon the medical records, this would be related to the work incident. (DE A:6). Dr. Boulden concluded that, other than the right knee, the remaining complaints were subjective in nature, and opined that "there are a lot of pain behavioral findings noted" during the IME. (DE A:6). Dr. Boulden implied that the physical therapy performed on Mr. Lutz was inadequate. (DE A:6). Dr. Boulden would only provide a rating for Mr. Lutz's right knee of 2 percent based upon the lateral meniscus tear. (DE A:6). Dr. Boulden criticized Dr. Bansal for providing an 8 percent rating to the lumbar spine. (DE A:6). Dr. Boulden opined that Mr. Lutz did not display back spasms. Further, Mr. Lutz had no radicular pain pattern at all based upon his description of the pain radiation, and no correlation by an MRI, that would explain the pain distribution described by Mr. Lutz. (DE A:6). Dr. Boulden noted that without radicular pain, the only thing that Mr. Lutz had was guarded range of motion, and that Mr. Lutz displayed a discrepancy in that during the examination. (DE A:7). Dr. Boulden cited to Dr. Cosgrove's IME, in which Mr. Lutz displayed "excellent range of motion." (DE A:7). Dr. Boulden declined to issue a rating for Mr. Lutz's back injury. (DE A:7).

Dr. Boulden issued a letter on April 18, 2019, after reviewing the MRI of the thoracic spine dated August 9, 2017, the lumbar spine MRI dated July 12, 2017, and the MRI of the right knee. (DE A:12). Dr. Boulden opined that the thoracic MRI showed "multiple levels of degenerative disc disease of the thoracic spine starting at T2-3 through T8-9." (DE A:12). Dr. Boulden saw no cord changes or impingement, but did note some disc bulging. (DE A:12). The issues in the thoracic spine were all chronic in nature. (DE A:12). The MRI of the lumbar spine showed no herniated discs, no nerve root entrapment, and no nerve compression, despite showing a disc bulge at L5-S1 and mild neural foraminal narrowing. (DE A:12). Dr. Boulden opined that the lumbar MRI showed degenerative changes as previously discussed. (DE A:12). Finally, Dr. Boulden concluded that he did not see a lateral meniscus tear in the right knee; however, Dr. Boulden noted that Mr. Lutz did have symptoms over the area. (DE A:12). Dr. Boulden questioned whether Mr. Lutz actually had symptoms. (DE A:12). After reviewing the imaging studies, Dr. Boulden declined to change his opinions from the previous IME report. (DE A:12).

On June 5, 2019, Mr. Lutz returned to Dr. McGann's office. (Claimant's Exhibit 1:1-6). Mr. Lutz complained of ongoing right knee pain with a history of a meniscus tear. (CE 1:2). Dr. McGann noted his previous recommendation of arthroscopic evaluation, and indicated that Mr. Lutz had to hold off "due to legal issues." (CE 1:2). Upon closer examination of the right knee, Dr. McGann did not find any effusion. (CE 1:4). Dr. McGann found a near full range of motion with pain at the extreme of flexion. (CE 1:4). Dr. McGann diagnosed Mr. Lutz with internal derangement of the right knee, and again recommended surgical intervention. (CE 1:4). Surgery was scheduled for June 14, 2019. (CE 1:4).

On June 10, 2019, Dr. Bookwalter wrote a letter to defendants' counsel outlining his treatment of Mr. Lutz. (DE B:13-15). Dr. Bookwalter indicated that he identified spasm on examination, but also a normal motor examination. (DE B:13). Dr. Bookwalter reviewed the previous lumbar MRI and opined that Mr. Lutz had slight stenosis at L3-4 and L5-S1. (DE B:13). He also corrected his record in noting that the EMG showed no radiculopathy. (DE B:13). In an early examination, Dr. Bookwalter noted that his conclusion was that Mr. Lutz aggravated underlying lumbar degenerative disc disease and that Mr. Lutz "probably had some lower extremity soft tissue trauma." (DE B:14). Dr. Bookwalter opined that this was not a neurosurgical issue. (DE B:14). Dr. Bookwalter reviewed his notes from the August 17, 2017, visit including the thoracic MRI. (DE B:14). Dr. Bookwalter opined that the thoracic MRI showed degenerative changes at multiple levels with no true cord compression and no cord signal change. (DE B:14). Dr. Bookwalter noted that Mr. Lutz had no surgically significant pathology, and recommended a physiatry supervised rehabilitation program. (DE B:14). Dr. Bookwalter confirmed that there were no clinical findings of radiculopathy, and that "some subtle findings" could suggest an evolving diabetic neuropathy. (DE B:14). Dr. Bookwalter also noted that he trusted Dr. Cosgrove's opinions. (DE B:15).

Mr. Lutz reported to University of Pittsburgh Medical Center on June 14, 2019, for an arthroscopic procedure to the right knee. (CE 1:11-12). Dr. McGann performed the surgery. (CE 1:11-12).

Mr. Lutz returned to Greater Pittsburgh Orthopaedics Associates at the suggestion of his attorney on June 26, 2019. (JE 9:10-12). The records from this visit are difficult to read. Robert Liss, M.D., examined Mr. Lutz. (JE 9:12). Mr. Lutz claimed that he suffered lower back pain since the June 1, 2017, accident. (JE 9:10). He told the doctor that his back always felt swollen and he experienced pain radiating on the right to his legs including his ankles and feet. (JE 9:10). Mr. Lutz was not on any medications, nor was he engaged in a home exercise program or physical therapy for his back. (JE 9:10). The doctor found Mr. Lutz to be in "acute distress." (JE 9:11). Mr. Lutz continued to have restricted range of motion in the lumbar back. (JE 9:11). He also complained of pain with rotation of his hands. (JE 9:11). Dr. Liss found some swelling and erythema in Mr. Lutz's lower legs "consistent with chronic venous insufficiency or edema." (JE 9:11). The doctor's impression was chronic low back pain post work-related motor vehicle accident. (JE 9:12). Dr. Liss agreed with Dr. Buckwalter that Mr. Lutz's injuries represented an exacerbation of degenerative disc disease. (JE 9:12). The doctor noted that he reviewed the 2017 MRI scans and "found no evidence of an acute process attributable to MVA." (JE 9:12).

On July 17, 2019, Mr. Lutz returned to Dr. McGann's office. (CE 1:13-18). Mr. Lutz reported swelling and popping in his right knee following the surgery performed in June. (CE 1:14). Mr. Lutz ambulated with a cane. (CE 1:14). Dr. McGann noted that Mr. Lutz had chronic pain syndrome with low back and bilateral lower extremity complaints. (CE 1:14). Dr. McGann noted no effusion to the knee with a full range of motion. (CE 1:15). Dr. McGann diagnosed Mr. Lutz with primary osteoarthritis of the

right knee and effusion of the right knee. (CE 1:16). Dr. McGann injected xylocaine and depo-medrol into Mr. Lutz's right knee. (CE 1:16).

Scott Sheppard, M.D., of WorkWell, responded to a letter from defendants' counsel on August 19, 2019. (DE D:21-23). Dr. Sheppard agreed with Dr. Cosgrove's opinions that Mr. Lutz showed no physical evidence of impairment, that Mr. Lutz did not display any complaints that were able to be rated because they were subjective in nature, and that Mr. Lutz had mild diabetic peripheral neuropathy that was not related to the work injury. (DE D:21). Dr. Sheppard indicated that Mr. Lutz reached MMI effective September 5, 2017, as he had only minor subjective findings and no objective findings as of that visit. (DE D:21-22). Dr. Sheppard opined that Mr. Lutz had no evidence of any impairment, or need for permanent restrictions. (DE D:22). Dr. Sheppard also opined that Mr. Lutz suffered no significant injury to his right knee. (DE D:22). Dr. Sheppard noted that Mr. Lutz only had a small bruise on the front of his right leg, just below his right knee. (DE D:22). Dr. Sheppard indicated that a mechanism of injury that would cause an acute meniscus injury would be a result of significant twisting rather than a mild blunt trauma. (DE D:22-23). Finally, he reviewed Mr. Ponchek's examination of Mr. Lutz on June 9, 2017, and noted that it was "relatively unremarkable." (DE D:23).

On February 5, 2020, defendants' counsel sent a letter to Dr. Boulden with additional records from Dr. McGann after the right knee surgery. (DE A:8). Dr. Boulden responded to the letter with his own missive dated February 10, 2021. (DE A:9). Based upon the operative report, Dr. Boulden agreed that Mr. Lutz had a lateral meniscus tear in his right knee. (DE A:9). He also opined that the medial meniscus tear was asymptomatic and that Mr. Lutz's chondromalacia pre-existed the work incident. (DE A:9). Dr. Boulden declined to change his impairment rating of 2 percent of the right lower extremity. (DE A:9).

On March 10, 2020, Dr. Bansal reviewed additional medical records and issued an additional report. (CE 3:1-3). Dr. Bansal opined that the surgery performed on Mr. Lutz's right knee on June 4, 2019, was necessitated by the work incident on June 1, 2017. (CE 3:3). Dr. Bansal recounted that he also recommended the surgery in his IME report. (CE 3:3).

The claimant's attorney sent Dr. McGann a letter dated March 19, 2020. (CE 1:19-20). This letter was drafted subsequent to a phone conference between claimant's attorney and Dr. McGann. (CE 1:19). Dr. McGann signed the letter indicating that he agreed with the opinions within the letter on March 23, 2020. (CE 1:20). Dr. McGann agreed that the injury to Mr. Lutz's right knee necessitated the surgery performed in June of 2019. (CE 1:19). Dr. McGann further agreed that the right knee injury was causally related to, or materially aggravated by, the June 1, 2017, work injury. (CE 1:19).

On July 14, 2020, Dr. Stragand examined Mr. Lutz. (JE 3:18-20). Mr. Lutz presented for a wellness examination. (JE 3:18). He discussed his diabetes with Dr. Stragand. (JE 3:18). Mr. Lutz reported losing 60 pounds, as he cut sugar from his diet. (JE 3:18). He reported right shoulder pain and concern of rotator cuff issues. (JE 3:18). Dr. Stragand's record noted "[n]o back or joint pain." (JE 3:19).

On November 20, 2020, Christopher Panek, D.P.M., wrote a letter to defendants' counsel. (DE C:18). Dr. Panek noted that he saw Mr. Lutz on four occasions between May 30, 2017, and July 6, 2020. (DE C:18). Dr. Panek last saw Mr. Lutz on July 6, 2020, for diabetic footcare, but also for complaints of generalized stiffness and numbness in both feet and ankles. (DE C:18). Dr. Panek opined that Mr. Lutz had symptoms consistent with diabetic polyneuropathy. (DE C:18). Dr. Panek recommended that Mr. Lutz have further workup more proximally to the ankle joint. (DE C:18). Dr. Panek related none of Mr. Lutz's symptoms to the June 1, 2017, work incident. (DE C:18).

In early January of 2021, Mr. Lutz had a lumbar x-ray performed at Heritage Valley Health System. (CE 4:1). The radiologist opined that the x-ray showed severe degenerative findings in the posterior elements with modest degenerative disc disease. (CE 4:1). Mr. Lutz also had an x-ray of the sacrum and coccyx, which showed no acute issues. (CE 4:2).

On January 19, 2021, Edward Snell, M.D., examined Mr. Lutz. (CE 4:3-7). Mr. Lutz presented with low back and tailbone pain, along with radiating pain and numbness down his left leg, which had not improved. (CE 4:3). Lumbar strength was normal and lower extremity strength was intact. (CE 4:4). Dr. Snell reviewed the MRIs and x-rays, and opined that Mr. Lutz had "significant radiculopathy of the left L5 nerve root." (CE 4:4). Dr. Snell recommended an injection at L4-5 and L5-S1, and referred him to Dmitri Vassiliev, M.D. (CE 4:4). Dr. Snell diagnosed Mr. Lutz with spinal stenosis or the lumbar region and left lumbar radiculopathy. (CE 4:4).

Mr. Lutz visited Adrian Salazar, D.O., on January 28, 2021, pursuant to the recommendation of Dr. Snell. (CE 5:1-7). Mr. Lutz reported that he had pain for three to four years following his June of 2017 work incident. (CE 5:1). Mr. Lutz claimed lower extremity radiculopathy that followed an L5-S1 dermatomal distribution bilaterally. (CE 5:1). Mr. Lutz admitted to diabetic neuropathy in his feet, and was observed walking with an antalgic gait. (CE 5:1, 3). He displayed tenderness to palpation in the bilateral lumbar paraspinal muscles. (CE 5:3). Mr. Lutz was diagnosed with lumbar spinal stenosis with neurogenic claudication, left lumbar radiculopathy, history of lumbar surgery in 2001, and diabetes. (CE 5:4). Dr. Salazar provided Mr. Lutz with a lumbar epidural steroid injection. (CE 5:4-5).

Mr. Lutz was terminated by CRS. (Testimony). He claimed that he was terminated "by the insurance company" shortly after his workers' compensation benefits ceased. (Testimony). In fact, CRS's insurer declared Mr. Lutz uninsurable due to the

motor vehicle accident. (Testimony). Therefore, CRS's liability insurer declined to provide insurance coverage for Mr. Lutz as an employee. (Testimony).

Mr. Lutz continues to have pain in his right knee and leg. (Testimony). He has problems walking on his right knee and leg. (Testimony). It remained difficult for Mr. Lutz to stand for long periods of time, or move around. (Testimony). He also has issues keeping shoes tight on his feet. (Testimony). He has to slide his feet to walk. (Testimony). His right knee will also swell and stiffen. (Testimony). Sitting also causes his lower back and foot to have some pain. (Testimony). He also reported issues with balance, and interruptions to his sleep. (Testimony).

Mr. Lutz opined that he could no longer climb in and out of a truck or into the trailer. (Testimony). He also indicated that he could not perform any over-the-road trucking jobs because driving like he used to exacted a toll on his body. (Testimony). He also claimed that he could not perform lifting like he did in his former jobs. (Testimony). Mr. Lutz has not worked anywhere since June of 2017. (Testimony). He also has not sought employment anywhere since June of 2017. (Testimony). Mr. Lutz testified that, since he is not working, he assists his son with remote schooling, and his daughter with homeschooling. (Testimony). At home, he does some dishes, cooks meals, and does minimal housework. (Testimony). He also takes care of the lawn at his home, and another home. (Testimony). He opined that the heaviest item that he could lift was a grocery bag. (Testimony).

Mr. Lutz testified that he was a truck driver from 1999 to 2017. (Testimony). He intended to continue working for CRS until he retired in his late 60s or early 70s. (Testimony). Mr. Lutz has been on Social Security Disability since November of 2018, with a benefit date retroactive to November 29, 2017. (Testimony; CE 6:1). He is thus a Medicare beneficiary. (Testimony). He receives two thousand two hundred fifty-five and 00/100 dollars ($2,255.00) per month in Social Security Disability benefits. (Testimony).

It should be noted that he indicated that if he had the money, he would proceed with injections, as recommended by Dr. Bookwalter. (Testimony).

Denice Irwin, of CRS, also testified. (Testimony). She is one of three members of the Operations Department. (Testimony). She handles accounts payable, accounts receivable, data entry, and payroll for CRS. (Testimony). She testified that she would process paperwork from drivers for billing purposes. (Testimony). She noted that Mr. Lutz and other CRS drivers were paid on a unique system. (Testimony). In order to get paid, a CRS driver submitted paperwork, at which time "assessorials" such as drop pay, bridge fees, detention time, were deducted from their pay, along with a fuel surcharge. (Testimony). Drivers make themselves available for loads at their own discretion. (Testimony). Legally, drivers could work a maximum of 70 hours per week. (Testimony). CRS issued drivers' pay on Tuesdays. (Testimony). When a driver received their pay depended on when pay documentation was sent to CRS. (Testimony). There could be times where a driver may be paid one week later.

(Testimony). Ms. Irwin reviewed Mr. Lutz's pay and work records for the time before the date of injury, and opined as to Mr. Lutz's proper rate of pay. (Testimony).

CONCLUSIONS OF LAW

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).

Permanent Disability

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 medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

The claimant had a previous low back issue. He underwent surgery for this condition in 2000. He testified that the lower back issue resolved after the surgery, and that he was asymptomatic. He alleges that the work incident on June 1, 2017, caused a permanent aggravation of his lower back condition. He also alleges that the work incident caused a permanent injury to his right knee by way of a torn meniscus.

It is well established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

> a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

Mr. Lutz initially reported to the emergency room after the work incident. The records of his emergency room visit contain no mention of back pain. He also made no mention of back pain to Dr. Stragand during his first visit post-incident. Mr. Lutz further denied mid and low back pain during his first visit to WorkWell. WorkWell did note a right knee contusion. It was not until June 16, 2017, that lower back issues were noted. On July 31, 2017, Mr. Lutz had an EMG, which was normal. A thoracic MRI showed no stenosis or effect on the thoracic cord. A lumbar MRI showed degenerative disc disease and mild spondylosis with right L5-S1 arthrosis. Dr. Bookwalter found spasm in the lower back, and indicated that Mr. Lutz had an aggravation of thoracic and lumbar degenerative disc disease. Of note, Dr. Bookwalter did not indicate that this was a permanent aggravation.

Dr. Cosgrove performed an IME and found a normal range of motion in Mr. Lutz's lumbar spine. Mr. Lutz also showed no issues picking up things from the floor. Dr. Cosgrove further opined that Mr. Lutz did not suffer an aggravation. Dr. Bookwalter indicated that he would trust Dr. Cosgrove's opinions and recommendations. Dr. Cosgrove placed Mr. Lutz at MMI with no evidence of a permanent impairment. Dr. Cosgrove opined that Mr. Lutz only had subjective pain complaints.

Dr. Bansal performed an IME and was the only doctor to issue permanent restrictions related to Mr. Lutz's back issues. Dr. Boulden performed an IME. He found no spasms, and indicated that Mr. Lutz behaved in a highly theatrical manner. When he first exited a chair for testing he acted as though he was in great pain. When he later exited the same chair, he showed no signs or symptoms of pain. Dr. Boulden noted the lack of objective findings, and opined that no MRI correlated to the pain claimed by the claimant. Finally, Dr. Sheppard from WorkWell opined that Mr. Lutz had no physical evidence of impairment. Dr. Sheppard noted that Mr. Lutz had subjective pain complaints. Dr. Boulden, Dr. McGann, and Dr. Bansal agreed that Mr. Lutz suffered the right knee injury. Dr. McGann and Dr. Bansal attributed the right knee injury to the work incident. Dr. Sheppard indicated that the claimant lacked a proper mechanism of injury for a right knee meniscus tear.

Throughout his treatment, doctors allowed Mr. Lutz to continue working modified duty, if it was available to him. His restrictions were gradually decreased until he was released on full duty. The only doctor to provide permanent restrictions was Dr. Bansal. Mr. Lutz testified that he was unaware of these restrictions.

I find that the medical evidence provided did not meet the burden to show that the claimant had a permanent material aggravation of his pre-existing back injury. While the claimant certainly has pain in his lower back, several medical providers indicated that Mr. Lutz's subjective pain complaints do not correlate with objective evidence. I did not find Dr. Bansal's opinions to be persuasive.

I find that the preponderance of evidence in the record proves that the work incident caused the claimant's right knee injury and subsequent surgery.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss of use of a scheduled member under Iowa Code 85.34(2)(a)-(t) or for loss of earning capacity under Iowa Code 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in Iowa Code 85.34(a) – (t) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

Where an injury is limited to a scheduled member, the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

Iowa Courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code 85.34(2)(a)-(t), this agency must only consider the functional loss of the particular scheduled member involved, and not the other factors which constitute an "industrial disability." Iowa Supreme Court decisions over the years have repeatedly cited favorably language in a 66-year old case, Soukup v. Shores Co., 222 Iowa 272, 277, 268 N.W. 598, 601 (1936), which states:

> The legislature has definitely fixed the amount of compensation that shall be paid for specific injuries … and that, regardless of the education or qualifications or nature of the particular individual, or of his inability … to engage in employment … the compensation payable … is limited to the amount therein fixed.

Our court has even specifically upheld the constitutionality of the scheduled member compensation scheme. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404 (Iowa 1994). Permanent partial disabilities are classified as either scheduled or unscheduled. A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Graves, 331 N.W.2d 116; Simbro v. Delong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

When the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Iowa Code 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). "Loss of use of a member is equivalent to "loss" of the member. Moses v. National Union C.M. Co., 194 Iowa 819, 184 N.W. 746 (1921). Pursuant to Iowa Code 85.34(2)(u), the workers' compensation commissioner may equitably prorate compensation payable in those cases wherein the loss is something less than that provided for in the schedule. Blizek v. Eagle Signal Co., 164 N.W.2d 84 (Iowa 1969).

Consideration is not given to what effect the scheduled loss has on claimant's earning capacity. The scheduled loss system created by the legislature is presumed to include compensation for reduced capacity to labor and to earn. Schell v. Central Engineering Co., 232 Iowa 421, 4 N.W.2d 339 (1942).

The right of a worker to receive compensation for injuries sustained which arose out of and in the course of employment is statutory. The statute conferring this right can also fix the amount of compensation to be paid for different specific injuries, and the employee is not entitled to compensation except as provided by statute. Soukup, 222 Iowa 272, 268 N.W. 598.

Since I found that the claimant did not prove that he suffered a permanent aggravation of his lower back injury, the only question is the extent of functional impairment caused by the right knee injury and subsequent surgery. While I did not accept the opinions of Dr. Bansal, both he and Dr. Boulden agreed that Mr. Lutz sustained a 2 percent permanent impairment to his right lower extremity. Therefore, I award Mr. Lutz a 2 percent impairment to his right lower extremity. This is equivalent to 4.4 weeks of benefits (2 percent x 220 weeks = 4.4 weeks).

Permanent and Total Disability

Mr. Lutz alleges he is permanently and totally disabled under the statute and common law odd-lot doctrine. The defendants reject this assertion.

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 that they are totally and permanently disabled if the claimant's medical impairment, taken together with nonmedical factors totals 100-percent. Id. The odd-lot doctrine applies when the claimant has established the claimant has sustained something less than 100-percent disability, but is so injured that the claimant is "unable to perform services other than 'those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist.'" Id. (quoting Boley v. Indus. Special Indem. Fund, 130 Idaho 278, 281, 939 P.2d 854, 857 (1997)).

"Total disability does not mean a state of absolute helplessness." Walmart Stores, Inc. v. Caselman, 657 N.W.2d 493, 501 (Iowa 2003)(quoting IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 633 (Iowa 2000)). Total disability occurs when the injury wholly disables the employee from performing work that the employee's experience, training, intelligence, and physical capacities would otherwise permit the employee to perform." IBP, Inc., 604 N.W.2d at 633. However, finding that the claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

In Guyton v. Irving Jensen, Co., the Iowa Supreme Court formally adopted the "odd-lot doctrine." 373 N.W.2d 101 (Iowa 1985). 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 provide evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of fact finds the worker does fall in the odd-lot category, then 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). Even under the odd-lot doctrine, the trier of fact is free to determine the weight and

credibility of evidence in determining whether the worker's burden of persuasion has been carried, and only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

The claimant has not proven himself to be permanently and totally disabled pursuant to the statute.

The claimant was 58 years old at the time of the hearing. He graduated high school with average to below average grades. He worked in a number of manual labor type jobs before obtaining his CDL and becoming a truck driver. He appeared to be of average intelligence. Based upon my determination of causation above, I found that Mr. Lutz suffered a 2 percent impairment to his right lower extremity. Mr. Lutz claimed an inability to do any of the prior positions; however, this was due to complaints related to his back. There is no functional capacity evaluation or vocational expert report in evidence. The only permanent restrictions imposed were by Dr. Bansal, and Mr. Lutz admitted to being unaware of those restrictions. Finally, Mr. Lutz admitted to making no effort to find further employment. Because of the lack of expert evidence and Mr. Lutz's failure to seek further employment, amongst other reasons, I find that Mr. Lutz has failed to prove that he is permanently and totally disabled under an odd-lot theory.

Gross Earnings and Weekly Rate

The parties have a dispute regarding the claimant's weekly workers' compensation rate. Iowa Code 85.36 states "[t]he basis of compensation shall be the weekly earnings of the injured employee at the time of the injury." Weekly earnings are defined as the gross salary, wages, or earnings of an employee had the employee worked the customary hours for the full pay period in which the employee was injured as the employer regularly required for work of employment. Id. The subsections of Iowa Code 85.36 set forth methods for computing weekly earnings depending upon the type of earnings and employment.

If an employee is paid on a daily, or hourly basis, or based upon output, weekly earnings are computed by dividing by thirteen (13) the earnings over the thirteen (13) week period immediately preceding the injury. However, any week that does not fairly reflect the employee's customary earnings shall be replaced by the closest previous week that is a fair representation of the employee's customary earnings. Iowa Code 85.36(6). The calculation shall include shift differential pay, but not overtime or premium pay in the calendar weeks immediately preceding the injury. Id. If the employee was absent during the time period subject to calculation for personal reasons, the weekly earnings are the amount the employee would have earned had the employee worked when work was available to other employees in a similar occupation for the employer. Id.

In this case, the defendants provided testimony from Denice Irwin. She testified that Mr. Lutz's work activities and the resulting payments were fluid. The claimant was not paid every week or biweekly, as the timing of his payments depended on when his

trip documents were received by CRS. This is a unique case, as there were weeks where the claimant continued to work where logs of his pay would show as a "zero," as he was still hauling his cargo. (DE O; DE L). The statute indicates that weeks which do not fairly reflect the employee's customary earnings shall be replaced by the closest previous week with earnings that fairly represent the employee's customary earnings. Id. In this case, that means including weeks where the claimant's pay logs may show "zero" earnings, as those reflect Mr. Lutz's customary earnings during the 13 weeks prior to the injury.

For the reasons set forth above, I conclude that the claimant's gross weekly wages are one thousand two hundred eight and 69/100 dollars ($1,208.69) per week. The claimant is married, and entitled to four exemptions. Thus, the claimant's weekly workers' compensation rate is seven hundred seventy and 54/100 dollars ($770.54).

Payment of Medical Expenses

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 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 1975).

Pursuant to Iowa Code 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Claimant is entitled to an order of reimbursement if he/she has paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

In cases where the employer's medical plan covers the medical expenses, claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, the defendants are ordered to make payments directly to the provider. See Krohn, 420 N.W.2d at 463. Where medical payments are made from a plan to which the employer did not contribute, the claimant is entitled to a direct payment. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 867-68 (Iowa 2008) ("We therefore hold that the commissioner did not err in ordering direct payment to the claimant for past medical expenses paid through insurance coverage obtained by the claimant independent of any employer contribution."). See also Carl A. Nelson & Co. v. Sloan, 873 N.W.2d 552 (Iowa App. 2015)(Table) 2015 WL 7574232 15-0323.

The employee has the burden of proof to show medical charges are reasonable and necessary, and must produce evidence to that effect. Poindexter v. Grant's Carpet Service, I Iowa Industrial Commissioner Decisions, No. 1, at 195 (1984); McClellan v. Iowa S. Util., 91-92, IAWC, 266-272 (App. 1992).

The employee has the burden of proof in showing that treatment is related to the injury. Auxier v. Woodard State Hospital School, 266 N.W.2d 139 (Iowa 1978), Watson v. Hanes Border Company , No. 1 Industrial Comm'r report 356, 358 (1980) (claimant failed to prove medical charges were related to the injury where medical records contained nothing related to that injury) See also Bass v Vieth Construction Corp., File No 5044430 (App. May 27, 2016)(Claimant failed to prove causal connection between injury and claimed medical expenses); Becirevic v Trinity Health, File No. 5063498 (Arb. December 28, 2018) (Claimant failed to recover on unsupported medical bills).

I found that the claimant failed to prove causation of his alleged back injuries. Therefore, the claimant is not entitled to reimbursement for alleged medical care related to treatment for his back. However, I found the claimant carried his burden with regard to his right knee issues. I also find that the claimant is entitled to reimbursement for the care for the billing from Akron Radiology, Inc. Based upon my review of claimant's exhibit 9, I find that the claimant is owed five thousand eighty-nine and 35/100 dollars ($5,089.35) for related out of pocket balances.

IME Reimbursement Pursuant to Iowa Code section 85.39

Mr. Lutz is also seeking reimbursement of the independent medical examination performed by Dr. Bansal on December 6, 2018. Iowa Code 85.39(2) states:

> If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination.

An employer is not liable for the cost of an independent medical exam for an injury that is determined to not be a compensable injury. Id. A reasonable fee for an independent medical examination made pursuant to Iowa Code 85.39(2) is based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the exam is conducted. 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).

At the request of the defendant, Dr. Cosgrove rendered an impairment rating on August 28, 2017. The claimant subsequently sought an independent medical examination with Dr. Bansal on December 6, 2018. This satisfies the requirements of Iowa Code 85.39. While I determined that the claimed back injury is not compensable, Dr. Bansal also examined Mr. Lutz for his knee injury. Defendant shall reimburse claimant for the independent medical examination performed by Dr. Bansal in the amount of two thousand seven hundred sixty-three and 00/100 dollars ($2,763.00).

Alternate Care Pursuant to Iowa Code section 85.27

Iowa Code 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obligated to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care…. The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

Iowa Code 85.27(4). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). "In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the competing interests of their employers." Ramirez, 878 N.W.2d at 770-71 (citing Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d at 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

Under the law, the employer must furnish "reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee." Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original)). Such employer-provided care "must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Iowa Code 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order the care." Id. "Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995); Pirelli-Armtrong Tire Co., 562 N.W.2d at 436. As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. Because "the employer's obligation under the statute turns on the question of reasonable

necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

The claimant seeks continued care for his back. I found that he did not prove, by a preponderance of the evidence, that the back injury was a permanent aggravation of his pre-existing back injury. Therefore, the claimant's request for alternate care is denied.

Credit

The defendants claim a credit for seven weeks of compensation at the rate of one thousand one hundred forty-five and 51/100 dollars ($1,145.51) per week. The claimant's dispute both the rate for the credit, and whether or not the credit is due as a permanency benefit. I previously found that the proper rate is seven hundred seventy and 54/100 dollars ($770.54). The defendants provided evidence that they paid temporary total disability benefits from June 7, 2017, to October 4, 2017. The parties stipulated that the commencement date for permanent partial disability benefits is August 17, 2017.

The injury in this case occurred before substantial changes were made in Iowa law regarding workers' compensation benefits. At the time of the injury in this case, Iowa Code section 85.34(4) stated:

> If an employee is paid weekly compensation benefits for temporary total disability under section 85.33, subsection 1, for a healing period under section 85.34, subsection 1, or for temporary partial disability under section 85.33, subsection 2, in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess shall be credited against the liability of the employer for permanent partial disability under section 85.34, subsection 2, provided that the employer or the employer's representative has acted in good faith in determining and notifying an employee when the temporary total disability, healing period, or temporary partial disability benefits are terminated.

In this case, the defendants paid the claimant temporary total disability benefits for seven weeks after the stipulated commencement date of August 17, 2017. No evidence has been presented that the defendants did not act in good faith in determining or notifying Mr. Lutz that temporary total disability, healing period, or temporary partial disability benefits were terminated. Therefore, the defendants are entitled to a credit for seven weeks of permanent partial disability benefits at the rate of seven hundred seventy and 54/100 dollars ($770.54). The defendants paid more than this. The defendants are not entitled to a repayment for overpayment of benefits. See e.g. Rubey v. Interstate Nurseries, Inc., 4 Iowa Indus. Comm'r Rep. 292 (1984).

ORDER

THEREFORE, IT IS ORDERED:

The defendants are to pay unto the claimant four point four (4.4) weeks of permanent partial disability benefits at the rate of seven hundred seventy and 54/100 dollars ($770.54) per week from the commencement date of August 17, 2017. Considering the credit to which the defendant is entitled, the claimant is owed nothing further for permanent partial disability benefits.

The defendants are to reimburse the claimant five thousand eighty-nine and 35/100 dollars ($5,089.35) for outstanding medical billing.

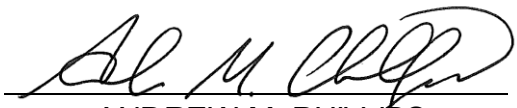
The defendants shall reimburse the claimant two thousand seven hundred sixty-three and 00/100 dollars ($2,763.00) for Dr. Bansal's IME.

The claimant's request for alternate medical care is denied.

Defendant is entitled to a credit of seven weeks of compensation at the rate of seven hundred seventy and 54/100 dollars ($770.54) per week.

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

Signed and filed this 2nd day of August, 2021.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Gary Mattson (via WCES)

Stephen Spencer (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.