

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOHN GREENLEAF,

Claimant,

VS.

STAN KOCH TRUCKING,

Employer,

and

THE HARTFORD INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

File No. 5064762

ARBITRATION DECISION

Head Note Nos.: 1803

STATEMENT OF THE CASE

Claimant, John Greenleaf, filed a petition in arbitration seeking workers' compensation benefits from Stan Koch Trucking, employer, and Hartford Insurance Company, insurance carrier, both as defendants, as a result of a stipulated injury sustained on July 15, 2016. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch. The record in this case consists of Joint Exhibits 1 through 18, Defendants' Exhibit A, and the testimony of the claimant and William Sullivan. The parties submitted post-hearing briefs.

ISSUES

The parties submitted the following issues for determination:

1. The extent of industrial disability; and
2. Specific taxation of costs.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration

decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

FINDINGS OF FACT

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

Claimant's testimony was consistent as compared to the evidentiary record and his demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

Claimant was 61 years of age at the time of hearing. He resides in Shenandoah, Iowa. Claimant graduated high school and attended two semesters of college. He obtained a diploma in radio and tv broadcasting; he worked in that field from 1978 to 2000. Claimant began work as an over-the-road and local truck driver in 2004. While driving trucks commercially, claimant suffered a torn rotator cuff; the injury did not permanently impact claimant's ability to work. (Claimant's testimony)

Claimant worked for defendant-employer on two separate occasions, over a 6 to 8-year period. His initial stint of employment ended when claimant was terminated for violation of a company policy. Approximately six months later, in or around February 2012, defendant-employer rehired claimant. After his rehire, claimant testified he earned in excess of \$50,000.00 annually as a full time driver. Claimant's duties at defendant-employer primarily involved delivery and unloading of Polaris vehicles. Claimant drove Polaris vehicles to dealers all over the country, using a double-deck trailer. In order to unload vehicles from the top deck, claimant maneuvered and set up ramps weighing 85 to 100 pounds. (Claimant's testimony; See JE15, page 93) Drivers may be on duty for up to 14 consecutive hours, 11 of which may be driving. Thereafter, drivers must be off work for 10 consecutive hours. (Claimant's testimony)

While driving a route for defendant-employer in July 2016, claimant stopped for the night in Alabama. He awoke with right shoulder pain, but utilized over-the-counter medication and continued working. Claimant then continued his route to Georgia. He awoke with significant right shoulder pain and presented to the emergency room. (Claimant's testimony) On July 16, 2016, claimant was seen in the emergency department of Coffee Regional Medical Center with noted complaints of right shoulder pain. (JE1, pp. 1-2) A CT of the cervical spine revealed a mild posterior osteophyte involving the C5-C6 disc space, causing a mild degree of spinal canal stenosis. (JE1, p. 3) Claimant testified the providers were unable to determine the cause of his pain and discharged him. (Claimant's testimony)

Following that visit, he developed numbness and a swelling sensation in his right index finger. Claimant returned to the emergency department, where he was given a narcotic pain medication; he utilized the medication when he was not actively driving.

Defendant-employer advised claimant to cease driving and seek medical care. Claimant sought care with his primary care provider, who referred claimant for evaluation with neurosurgeon, Keith Lodhia, M.D. (Claimant's testimony)

On August 8, 2016, claimant presented to Dr. Lodhia for neurosurgical consult regarding radicular right arm pain. (JE2, p. 4) Dr. Lodhia assessed cervical spondylosis with radiculopathy. He ordered a cervical MRI and a course of physical therapy. (JE2, p. 5)

Claimant returned to Dr. Lodhia on August 30, 2016. Dr. Lodhia opined the MRI revealed moderate right paracentral disc protrusion at C6-C7 and compression on the C7 nerve root on the right side. Dr. Lodhia ordered an epidural steroid injection; in the event it failed to provide relief, surgery would be discussed. (JE2, p. 6)

On October 21, 2016, claimant returned to Dr. Lodhia and reported improved symptoms. Dr. Lodhia placed claimant at maximum medical improvement (MMI) and ordered a functional capacity evaluation (FCE) to determine claimant's work capabilities. In the event of recurrence of symptoms, Dr. Lodhia indicated a C6-C7 anterior cervical discectomy remained an option. (JE2, pp. 7-8)

Claimant testified he underwent a physical evaluation, required to return to employment at defendant-employer, but he did not meet the requirements. He was, therefore, unable to return to work at defendant-employer and his employment ceased in mid-November 2016. (Claimant's testimony)

In early December 2016, claimant began work at trucking company, HFC Transport. He drove a refrigerated truck. (Claimant's testimony)

Claimant presented to Dr. Lodhia on February 13, 2017 and reported a return of right arm symptoms since beginning a new job. Dr. Lodhia indicated the symptom flare was not surprising, given the large size of the herniation and amount of compression resulting from the original injury. He assessed right-sided cervical radiculopathy with C6-C7 disc herniation and ordered a repeat MRI. (JE2, pp. 9-10)

Following the MRI, claimant returned to Dr. Lodhia on March 2, 2017. He opined the updated MRI confirmed C7 radiculopathy with a C6-C7 disc protrusion. He recommended proceeding with a C6-C7 anterior cervical discectomy and fusion. (JE2, pp. 11-12)

On April 12, 2017, claimant underwent surgery with Dr. Lodhia. The procedure consisted of anterior cervical microdiscectomy and fusion at C6-C7, with surgical treatment of a slight bone spur. (JE3, pp. 19-20)

Following surgery, claimant did not return to employment at HFC Transport. (Claimant's testimony)

On May 8, 2017, claimant presented to Dr. Lodhia. Dr. Lodhia noted claimant was no longer employed. He indicated claimant had not passed a physical test prior to surgery and opined claimant was not likely to pass an examination in the near future due to lack of improvement. On examination, Dr. Lodhia observed a well-healed incision, rotation to 80 percent of normal, triceps weakness, and numbness of the index finger. He suspected nerve damage from radiculopathy at right C6-C7. Dr. Lodhia ordered a course of physical therapy and recommended reevaluation in three months to assess claimant's ability to return to work. (JE2, p. 13)

In approximately July 2017, claimant was hired as a school bus driver for Shenandoah School District. While he is classified as a full time school bus driver, claimant only drives a morning bus route and occasionally provides transportation for extracurricular activities. His duties include pre-trip inspections, cleaning, and transporting students. The morning route generally takes approximately two hours to complete. Claimant earns \$36.30 per hour for the morning school route and \$14.02 per hour for transportation related to extracurricular activities. (Claimant's testimony)

During an appointment on August 14, 2017, Dr. Lodhia instructed claimant in home exercises. He released claimant to return to work on August 21, 2017. (JE2, p. 15)

On October 10, 2017, claimant underwent an FCE with Teresa Isenhower-Moyer, PT. During the evaluation, Ms. Isenhower-Moyer noted claimant was capable of maximum lifts of: 45 pounds rarely; 30 pounds occasionally; and 20 pounds frequently. She also noted some limitation in standing forward bend and significant limitation in crouching. (JE4, pp. 21-26)

Claimant returned to Dr. Lodhia on December 11, 2017. Dr. Lodhia reviewed claimant's FCE and noted the evaluation limited claimant to 40 hours per week and 8 hours per day. He adopted restrictions consistent with the FCE results and placed claimant at MMI, to return as needed. (JE2, p. 16) Subsequently, Dr. Lodhia opined claimant sustained a 5 percent whole person impairment. (JE2, p. 18)

In May 2018, claimant began full time employment at DLA, while also maintaining his employment as a school bus driver. At DLA, claimant worked as a grain truck driver. His work is year-round, hauling grain between customers and the elevator. His duties include driving, pre-trip inspections, tarping loads, and opening and closing hoppers; the latter two tasks are completed by pushing buttons and are not physical in nature. He is paid as a percentage of the loads he transports; the number of loads varies from 4 to 8 loads per day. (Claimant's testimony)

By answers to interrogatories dated October 24, 2018, defendants denied defendant-employer was ready, willing, and able to return claimant to work. (JE7, p. 64)

Claimant possessed a CDL license, with endorsements, issued in February 2018. (JE11, pp. 71-72) In December 2018, claimant underwent the required Department of Transportation medical examination. The provider determined claimant met the standards required to drive commercially, but required monitoring after one year due to hypertension and diabetes. (JE17, pp. 99-100)

At the referral of claimant's counsel, on January 25, 2019, claimant presented to board certified occupational medicine physician, Sunil Bansal, M.D., for an independent medical examination. Dr. Bansal performed a records review and noted Dr. Lodhia rated claimant's permanent impairment as 5 percent whole person on the basis of mild C7 subjective symptoms, with normal motion and sensory function. (JE5, pp. 28-33) Dr. Bansal also took a history from claimant and performed a physical examination. (JE5, pp. 33-35) Thereafter, Dr. Bansal assessed a disc herniation at C6-C7, status-post anterior cervical microdiscectomy and fusion. By the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Table 15-5, Dr. Bansal opined claimant fell within DRE Category IV and sustained a 25 percent whole person impairment. He indicated future maintenance care may be needed, including medication and pain clinic evaluation. Dr. Bansal also opined claimant would likely require fusion extension in the future, due to propensity for adjacent segment disease. (JE5, p. 35) He recommended permanent restrictions of: a 30-pound maximum lift; avoidance of lifting greater than 20 pounds overhead; and avoidance of activities requiring repeated neck motion or placement in a posturally flexed position for greater than 15 minutes. (JE5, p. 36)

Defendants referred claimant for an employability assessment by vocational counselor, Michelle Holtz. Ms. Holtz performed a records review, including claimant's deposition transcript, answers to interrogatories, and personnel, academic, and medical records. (JE6, pp. 37-39) Thereafter, Ms. Holtz authored a vocation report dated April 15, 2019.

Ms. Holtz summarized claimant's medical history, education, and work history. (JE6, pp. 37-39) She described claimant as a 61-year-old, high school graduate with one year of general college coursework, a diploma in radio and tv broadcasting, and a certificate in advertising. Ms. Holtz noted claimant was medically discharged from the Navy. Additionally, she noted claimant possessed a valid CDL license, with endorsements, and he intended to reenroll in EMT courses after he originally experienced difficulty with required testing. (JE6, p. 42) Ms. Holtz classified claimant's past relevant jobs and their physical demands as: telemarketer (sedentary); announcer (light); tractor trailer truck driver (medium); truck driver heavy (medium); and school bus driver (medium). (JE6, p. 41)

She noted claimant earned \$1,193.23 weekly at defendant-employer pre-injury. Post-injury, Ms. Holtz noted claimant earned: \$914.90 weekly at HFC from December 2016 through April 2017; \$236.85 weekly from July 2017 through December 2017, and \$257.50 weekly during the 2018 year, from employment with Shenandoah School

District; and an estimated \$550.00 weekly after taxes from DLA. Claimant indicated he did not intend to leave his concurrent employment at Shenandoah School District and DLA. (JE6, pp. 39-41)

Ms. Holtz analyzed claimant's earning capacity utilizing the permanent restrictions outlined in the FCE, as adopted by Dr. Lodhia, and as recommended by Dr. Bansal. Despite the differing restrictions, she opined both sets of restrictions yielded the same placement options in claimant's labor market. In both analyses, Ms. Holtz found claimant suffered a 32 percent loss of wage, based upon a pre-injury wage of \$1,193.23 and post-injury earnings of \$807.50 (\$550.00 + \$257.50). (JE6, pp. 44, 52) Under the restrictions analysis, Ms. Holtz found claimant suffered an approximate 45 percent loss of access to his labor market. (JE6, p. 43) In completing labor market research, available jobs carried wages ranging from \$350.00 to \$961.00 per week, with the majority in the \$350.00 to \$430.00 range. Comparing this range to claimant's preinjury wages resulted in a loss of wage range of 19 to 71 percent, in the event claimant was forced to seek alternative employment. (JE6, p. 44) Ms. Holtz opined claimant possessed transferrable skills, but the restrictions precluded return to some of his past relevant jobs. She noted lifting requirements varied between trucking jobs and claimant would need to evaluate the specific lifting requirements of prospective employers were compatible with his restrictions. Ms. Holtz ultimately opined claimant suffered a 40 percent loss of earning capacity under this analysis. (JE6, p. 51)

Ms. Holtz also analyzed claimant's earning capacity in light of claimant's demonstrated ability to work in the medium physical demand category without medical difficulties, given claimant's ongoing employment as a grain truck driver and school bus driver. Under this analysis, Ms. Holtz found no loss of access to jobs in claimant's labor market. Comparing claimant's preinjury wage with the wage range of available jobs resulted in a 19 to 58 percent loss of wage. (JE6, p. 52) Ms. Holtz opined claimant possessed transferrable skills, remained physically capable of performing all his past jobs, and numerous jobs were available to claimant. (JE6, p. 61) Under this analysis, Ms. Holtz opined claimant suffered a 35 percent loss of earning capacity. (JE6, p. 62)

At the time of hearing, claimant remained employed as a grain truck driver for DLA and as a school bus driver for Shenandoah School District. Between these two employers, claimant works 5 days per week, approximately 10 hours per day. He described his duties for these employers as less physically demanding than his work at defendant-employer. In his existing position as a school bus driver, claimant testified he spends a maximum of two hours per day driving. In his grain truck driver position, claimant testified he works full time hours, but that time is not all spent driving, as he enters and exits the truck to load and unload. He distinguished this type of driving from over-the-road driving which requires consistent driving throughout the work day. He described over-the-road driving as physically and mentally strenuous, particularly when driving in areas of heavy traffic. Additionally, claimant testified travelling certain roads at high speeds would be detrimental to his neck due to poor road conditions; he explained

that country roads are driven at slower speeds and are, therefore, less jarring on his neck. (Claimant's testimony)

Claimant testified he currently intends to remain employed with both Shenandoah School District and DLA. Shortly before hearing, he applied for school bus driver position that carried full time hours with Shenandoah School District. In this position, he would earn \$36.35 per hour for bus routes and \$14.37 per hour for activity transportation. This position would only allow for 40 hours of work; overtime hours are not permitted. As of the date of hearing, his application remained pending. (Claimant's testimony)

Additionally, claimant remains CPR certified. While he did not initially pass the required testing, claimant intended to reenroll in EMT courses during the upcoming semester. Claimant believes he is physically capable of working as an EMT. (Claimant's testimony)

Review of claimant's Social Security and tax records reveals the following earnings: \$55,077.00 in 2013; \$54,744.00 in 2014; \$53,967.00 in 2015; \$32,709.00 in 2016, the year of his stipulated injury; \$16,418.00 in 2017; and \$30,964.37 in 2018 (\$13,309.00 from Shenandoah School District and \$17,655.37 from DLA). (JE8, p. 67; JE9, pp. 68-69)

Defendants paid for medical expenses incurred in treatment of the work injury, as found in Joint Exhibit 16. (JE16, pp. 94-96) Defendants also paid temporary total disability benefits for the periods of July 16, 2016 through November 7, 2016 and April 3, 2017 through December 11, 2017. (JE13, pp. 76-79) Defendants commenced payment of permanent partial disability benefits on December 12, 2017 and continued to pay such benefits through the date of evidentiary hearing. (JE13, pp. 79-81)

As of the date of evidentiary hearing, claimant testified he continues to suffer with symptoms related to the work injury. Claimant testified his right index finger constantly feels swollen, as if it could pop if poked with a pin. His understanding is that the nerve which reaches his finger was impacted by the bone spur and did not regenerate after surgery. Claimant testified he visits a chiropractor for symptomatic treatment of neck complaints. He also recently began to wear the cervical collar provided after surgery when his work duties include driving on rough and/or bumpy roads or parking lots. He testified the use of the cervical collar helps to stabilize his neck. He has not returned to Dr. Lodhia since his release and has no appointments scheduled. He takes no medication for his neck complaints. (Claimant's testimony)

Approximately two weeks prior to evidentiary hearing, defendant-employer offered claimant a position as a van driver. (Claimant's testimony) Defendant-employer's job description for the position of over-the-road van driver sets forth physical requirements of: driving up to 11 hours; the ability to exert up to 30 pounds of force occasionally, 22-30 pounds frequently, and 11-15 pounds constantly; occasional

cervical flexion and extension; and constant cervical rotation. (JE12, pp. 73-74) Claimant testified a van driver position is different than his prior position at defendant-employer. He testified the position did not require setting up ramps or driving equipment off a trailer; however, he was unclear if any freight would need to be handled by hand. After reviewing the offered job description, claimant felt the position would be detrimental to his neck, as cervical flexion and rotation were both requirements of the position. He expressed doubt as to his ability to physically perform the job. Claimant also expressed concern that he would need to quit two jobs in order to take the position at defendant-employer, but the offered position would not begin until after the scheduled hearing. He testified he was concerned he would show up to work and discover he was unable to tolerate the job, leaving him unemployed. (Claimant's testimony)

Claimant indicated he would recommend employment at defendant-employer and described defendant-employer as a good company to work for, with good equipment. However, claimant expressed some question as to the timing of the job offer and indicated he is better aware of his physical abilities than would be defendant-employer. He testified a restriction limiting work hours to 8 hours per day and 40 hours per week is inconsistent with over-the-road driving. Claimant admitted he also prefers to be home every night and this would not be possible, were he to accept an over-the-road position. (Claimant's testimony)

Two days prior to evidentiary hearing, defendants amended their response to request for admissions number 12. By this amended response, defendants admitted defendant-employer was ready, willing, and able to return claimant to work. (DEA)

William Sullivan, risk management director for defendant-employer, testified at evidentiary hearing. In this role, Mr. Sullivan oversees workers' compensation, motor vehicle accidents, liability and cargo claims. From this professional capacity, Mr. Sullivan knew claimant. Mr. Sullivan testified approximately 80 percent of defendant-employer's loads are no-touch freight and the average truck is less than two years old, with 99 percent of trucks being automatic. (Mr. Sullivan's testimony)

Mr. Sullivan testified individual assignments vary based on customer needs. Dependent upon need, drivers may drive up to 11 hours, with a mandatory 30-minute break after 8 hours. Mr. Sullivan said defendant-employer also employs drivers nicknamed "hobby truckers," who drive reduced hours. He indicated these drivers choose the hours they drive, for instance an 8-hour workday. (Mr. Sullivan's testimony)

Mr. Sullivan denied anything nefarious about the timing of the job offer to claimant. At claimant's January 2019 deposition, Mr. Sullivan learned claimant had passed a medical certification and continued driving. Mr. Sullivan explained that the trucking industry has a shortage of drivers and defendant-employer has a history with claimant, so he believed if claimant was capable of driving, he should be doing so for defendant-employer. As a result, defendant-employer reviewed claimant's medical certification and medical records. After doing so, Mr. Sullivan determined claimant was

capable of performing the required tasks and was eligible for rehire. Therefore, defendant-employer extended claimant an offer for a no-touch driving job. He explained these regional and over-the-road no-touch jobs are often given to drivers with restrictions. The average earnings for the position offered to claimant is \$61,000.00 annually. (Mr. Sullivan's testimony)

Mr. Sullivan's testimony was consistent as compared to the evidentiary record and his demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt claimant's veracity. Mr. Sullivan is found credible.

CONCLUSIONS OF LAW

The first issue for determination is the extent of industrial disability.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The parties stipulated claimant's permanent disability shall be compensated industrially.

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

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

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

Claimant was 61 years of age at the time of evidentiary hearing. He graduated high school and attended 2 semesters of college. He also earned a diploma in radio and tv broadcasting. Claimant pursued EMT courses, but was unable to pass the required testing; he expressed an intention to again pursue these courses and EMT certification. The vast majority of claimant's work history falls in two categories: broadcasting and commercial driving. While claimant worked in broadcasting for nearly

22 years; his work history since 2004 has specialized in commercial driving. Claimant continues to possess a valid CDL with endorsements and he passed a medical certification to drive in December 2018.

Claimant suffered a stipulated work-related injury on July 15, 2016. Treating neurosurgeon, Dr. Lodhia, diagnosed right-sided cervical radiculopathy with C6-C7 disc herniation. An MRI confirmed moderate right paracentral disc protrusion at C6-C7 and compression on the C7 nerve root on the right side. After failed efforts at conservative care, claimant underwent surgical intervention with Dr. Lodhia on April 12, 2017. The procedure consisted of anterior cervical microdiscectomy and fusion, with shaving of a bone spur. Following surgery, claimant continued to experience nerve symptoms in his right index finger and self-treats neck symptomatology.

Two physicians have opined as to the extent of claimant's permanent functional impairment. Treating surgeon, Dr. Lodhia, opined claimant suffered a 5 percent whole person impairment as a result of mild C7 subjective symptoms. Dr. Lodhia's report did not reference the specific section(s) of the AMA Guides which he used in computing this impairment. Claimant's IME physician, Dr. Bansal, opined claimant fell within DRE Cervical Category IV, warranting a 25 percent whole person impairment, pursuant to AMA Guides Table 15-5. Dr. Bansal's opinion is consistent with the AMA Guides Table 15-5 and Example 15-5, importantly due to altered motion segment integrity due to fusion. Due to the specificity of Dr. Bansal's opinion and its consistency with the rating methodology set forth in the AMA Guides, I adopt Dr. Bansal's opinion that claimant sustained a 25 percent whole person functional impairment as a result of the July 15, 2016 work injury.

Following attainment of MMI, claimant underwent an FCE which was reviewed and adopted by Dr. Lodhia. Dr. Lodhia noted the FCE limited claimant's physical exertion to 8 hours per day and 40 hours per week and imposed restrictions consistent with the evaluation results. During the FCE, claimant demonstrated maximum lifting capabilities of 45 pounds rarely, 30 pounds occasionally, and 20 pounds frequently; he also displayed some limitation in standing forward bend and significant limitation in crouching. Dr. Bansal was more explicit, recommending a maximum lift of 30 pounds, avoidance of lifting over 20 pounds overhead, and avoidance of activities requiring repeated neck motion or placement in a posturally flexed position for greater than 15 minutes. While the imposed and recommended restrictions are not the same, they are entirely consistent, and are hereby adopted in consideration of claimant's industrial disability. Importantly, Ms. Holtz opined the restrictions had the same impact upon claimant's employability.

Claimant demonstrated motivation to return to work. He returned to work following a course of conservative care and again following fusion surgery. Claimant resumed employment approximately three months post fusion surgery as a school bus driver; within one year, claimant had also added employment as a grain truck driver. He continued to work in both positions at the time of hearing, working approximately

10-hour days. Despite working two jobs, claimant's earnings decreased post-injury. Claimant earned nearly \$54,000.00 in 2015 while employed by defendant-employer. In 2018, claimant earned approximately \$31,000.00 as a school bus and grain truck driver. In her vocational evaluation, Ms. Holtz found claimant sustained a 32 percent wage loss following the injury. Claimant has limited his job search post-injury, however, and admits he prefers to be home nightly; this type of schedule is inconsistent with his prior experience as an over-the-road driver. Utilizing the restrictions adopted *supra*, Ms. Holtz opined claimant suffered a 40 percent loss of earning capacity and a 45 percent loss of access to the labor market. Of the positions available to claimant, those jobs carried wages representing a 19 to 71 percent loss of wage range; notably, the majority of available positions fell in the lower portion of the wage range.

Of his 15 years as a commercial driver, a period of 6 to 8 of those years have included employment for defendant-employer. However, claimant never returned to defendant-employer following the work injury and at one stage, failed the physical examination required by defendant-employer. Following treatment, surgery, and recovery, claimant passed a medical certification physical in December 2018. Despite passing the medical certification, claimant's 8-hour per day, 40-hour per week restriction is inconsistent with traditional over-the-road truck driving. Claimant's restrictions upon lifting further reduce the number of over-the-road jobs which would be otherwise be available, as weight requirements vary amongst employers.

Defendant-employer learned of claimant's certification in January 2019 and in May 2019, made claimant an offer to work as an over-the-road van driver. The van driver position is different than the position claimant held pre-injury on the Polaris fleet, which required claimant to maneuver 85 to 100 pound ramps. Based upon claimant's restrictions, claimant is precluded from returning to his preinjury position.

While defendant-employer did offer claimant a position, the proximity of the offer to the date of hearing resulted in a lack of sufficient time to determine if the position were truly suitable. It is unclear whether claimant would be called upon to handle freight, but most relevantly, the offer did not take into account claimant's hour restriction. The job description notes driving up to 11 hours per day, in excess of claimant's 8-hour restriction. While Mr. Sullivan credibly testified defendant-employer employs limited-hour drivers, nicknamed "hobby drivers," that option is not spelled out in the extended offer. It is unclear what earnings one could expect as a "hobby driver." It is also unclear whether claimant could physically tolerate driving up to 8 hours per day, should that be expected. While claimant is working 10 hour days, he does not drive the duration of those hours. Additionally, sustained over-the-road driving at highway speeds is distinguishable in terms of physical demand than slower-paced bus and grain truck operation, with regular breaks in driving. Given this uncertainty and claimant's history of injury in the employ of defendant-employer, it is reasonable that claimant would not resign his two positions to pursue this job offer with defendant-employer.

Following consideration of the above and all other relevant factors of industrial disability, it is determined claimant has suffered a 45 percent industrial disability as a result of the work injury of July 15, 2016. This award entitles claimant to 225 weeks of permanent partial disability benefits (45 percent x 500 weeks = 225 weeks), commencing on the stipulated date of December 11, 2017. The parties stipulated claimant's gross average weekly wage was \$1,193.00 and claimant was single and entitled to 1 exemption at the time of the work injury. The proper rate of compensation is therefore, \$685.32.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Claimant requests taxation of the costs of: filing fee (\$100.00); transcription fees (\$203.70); and Dr. Bansal's examination cost. (JE10, p. 70) The costs of filing fee and transcription fee are taxable costs and are hereby taxed to defendants.

With respect to Dr. Bansal's evaluation expenses, defendants confirmed payment would be made for the report portion of the evaluation, if payment had not already been issued. Defendants contest taxation of the examination portion of Dr. Bansal's expense. The cost of obtaining a practitioner's report may be taxed. However, the Iowa Supreme Court has ruled only the portion of the independent medical examination expense incurred in preparation of the written report can be taxed. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015). Accordingly, the cost of Dr. Bansal's expense that is attributable to examination is not taxable to defendants.

ORDER

THEREFORE, IT IS ORDERED:

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Defendants shall pay unto claimant two hundred twenty-five (225) weeks of permanent partial disability benefits commencing on December 11, 2017 at the weekly rate of six hundred eighty-five and 32/100 dollars (\$685.32).

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30. 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall receive credit for benefits paid.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs are taxed to defendants pursuant to 876 IAC 4.33, as set forth *supra*.

Signed and filed this 28th day of August, 2020.


ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jordan Glaser (via WCES)

Jessica Voelker (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.