BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICHARD BURROUGHS, Claimant, vs. CRST INTERNATIONAL, Employer, Self-Insured Defendant.	File No. 19002062.01 ARBITRATION DECISION Headnote Nos.: 1100; 1800; 4100; 2500; 3000; 3001; 3002; 4000; 4000.2

STATEMENT OF THE CASE

The claimant, Richard Burroughs, filed a petition for arbitration seeking workers' compensation benefits from self-insured employer CRST International. Benjamin Roth appeared on behalf of the claimant. Chris Scheldrup appeared on behalf of the defendant.

The matter came on for hearing on July 18, 2023, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner, the hearing occurred electronically via Zoom. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-20, Claimant's Exhibits 1-15, and Defendant's Exhibits A-U. The claimant objected to the inclusion of Defendant's Exhibit U in the record. The exhibit was disclosed shortly before the hearing, and was considered to be a rebuttal report to claimant's reports served on July 12, 2023, and June 28, 2023. After hearing arguments, the objection was overruled as the claimant failed to prove unfair prejudice considering the late disclosure of several of their exhibits. Based upon the foregoing, the entirety of the exhibits was admitted to the record.

The claimant testified on his own behalf. Deborah Mentzer, Glenn Dorris, and Greogry Macera, testified on behalf of the defendants. Amy Pedersen was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the close of the hearing, and the matter was considered fully submitted following briefing by the parties on September 25, 2023.

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. That the claimant sustained an injury, which arose out of, and in the course of employment on August 13, 2019.

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

4. That, if the injury is found to be a cause of permanent disability, the disability is an industrial disability.

5. That, at the time of the work injury, the claimant was single and entitled to one exemption.

6. That, with regard to disputed medical expenses, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses, and the defendant would not offer contrary evidence as to this issue.

7. That, prior to the hearing, the claimant was paid 112.285 weeks of compensation at five hundred forty-three and 47/100 dollars ($543.47) per week, for a total credit of sixty-one thousand twenty-three and 92/100 dollars ($61,023.92).

8. That the costs listed in Claimant's Exhibit 15 have been paid.

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. Whether the claimant is entitled to healing period benefits from August 14, 2019, to June 8, 2022, and whether the claimant was off work during this period of time.

3. The extent of permanent partial disability benefits, should any be awarded.

4. The proper commencement date for permanent disability benefits, should any be awarded.

5. Whether the claimant is permanently and totally disabled.

6. The claimant's gross earnings, and the resulting weekly rate of compensation.

7. Whether the claimant is entitled to payment of certain medical expenses, as itemized in Claimant's Exhibit 14.

8. With regard to the disputed medical expenses:

    a. Whether the fees or prices charged by the providers were fair and reasonable.
    b. Whether the treatment was reasonable and necessary.
    c. Whether the listed expenses were causally connected to the work injury.
    d. Whether the listed expenses were at least causally connected to the medical conditions upon which the claim of injury is based.
    e. Whether the requested expenses were authorized by the defendant.

9. Whether the claimant is entitled to penalty benefits.

10. Whether the claimant is entitled to a specific taxation of costs, and the amount of those costs.

FINDINGS OF FACT

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

Richard Burroughs, the claimant, was 58 years old at the time of the hearing. (Testimony). He was a high school graduate, who achieved average grades. (Testimony). He went on to the Brownsville Minority Workers' Training program, and also attended Rutgers University and Big Apple in New York City. (Testimony). He took courses in environmental remediation and environmental science. (Testimony). He learned about site investigation and site classification, which included working on EPA Superfund sites, removed asbestos and lead from schools, and performed air and water sampling. (Testimony). He testified that he had enough credits to earn an associate's degree. (Testimony). He also previously possessed certain certifications to perform environmental remediation work, but allowed those certifications to lapse. (Testimony).

Mr. Burroughs spent most of his career in the dry-cleaning industry. (Testimony). He worked in machine maintenance, cleaned, pressed clothing, among other duties. (Testimony). He did not feel like he could perform that position at the time of the hearing due to the physical demands. (Testimony). He also worked in environmental remediation, which included performing site investigations, containment set up, and decontamination. (Testimony). He described this as labor-intensive work, with a great deal of climbing and bending required. (Testimony). He testified that he felt like he could not perform those positions anymore. (Testimony). Immediately prior to working at CRST, he worked at a Kohl's distribution center as a floor manager. (Testimony).

Beginning in 2018, he worked as a truck driver for CRST, and eventually was promoted to a driver lead position. (Testimony). As a truck driver for CRST, he picked up freight, delivered freight, and drove from point to point. (Testimony). When he became a lead driver, he took new drivers on the road for 26 to 30 days in order to train them in how to be safe drivers. (Testimony). He also taught drivers how to budget their money while on the road. (Testimony). After completion of training, the trainer would then become a co-driver with their trainee. (Testimony). As a driver and lead driver, he had to climb up into trucks, perform walkaround inspections of the truck and trailer, and observe the truck being loaded. (Testimony). He noted that the position required "a lot of bending and a lot of climbing." (Testimony).

There were times between trips when CRST drivers were provided with "home time." (Testimony). This meant that the driver was not on the road. (Testimony). When he had home time, Mr. Burroughs would stay with relatives, and chose not to return to his home in New Jersey. (Testimony).

For a time, Mr. Burroughs left CRST, but returned as he testified that CRST sent him letters demanding money and threatening to sue him if he did not pay them back for his training. (Testimony).

Medical records that predated the alleged injury were included in the record. (Joint Exhibit 14:115-117). During an emergency room visit in 2010, Mr. Burroughs complained of constant low back pain for the previous two weeks. (JE 14:115). He was prescribed medication and discharged from the emergency room. (JE 14:116). There were no other relevant records predating the work injury.

Shortly before 12:00 p.m., on August 13, 2019, Mr. Burroughs climbed into his truck to retrieve his Qualcomm unit in order to notify CRST that he was ready to pick up another student driver or pick up another load. (Testimony). As he was exiting the truck, he caught his heel on the lip of the compartment door causing him to fall backwards out of his truck. (Testimony). He fell about six to seven feet and landed on his back, shoulder, and head. (Testimony).

Immediately after his fall, he had pain in his head and back. (Testimony). He described the feeling as his body ringing. (Testimony). He attempted to sit up, but could not. (Testimony). He testified that when he awoke the next morning, he had neck pain. (Testimony).

Mr. Burroughs did not immediately seek medical care because he was embarrassed that he fell out of his truck. (Testimony). His daughter helped him upstairs, and he drew a hot bath. (Testimony). He laid down, and woke up in the middle of the night thinking he was having a stroke because his entire body felt numb. (Testimony). Due to these symptoms, he sought treatment at the emergency room on August 14, 2019. (Testimony; JE 1:1-2).

At the emergency room, it was noted that the claimant had no obvious fractures, but did have arthritic changes. (JE 1:1). The provider discussed a "high suspicion" that the claimant had disc herniation given the claimant's paresthesias and improved pain while standing. (JE 1:1). The provider recommended that the claimant take a short

course of pain medication and NSAIDs. (JE 1:1). The claimant declined an injection of Toradol. (JE 1:1). The nurse practitioner diagnosed the claimant with acute midline low back pain with sciatica and paresthesia. (JE 1:2).

On August 28, 2019, about two weeks after his emergency room visit, he began to be seen at Concentra in Georgia. (Testimony; JE 2:3-6). He recounted lower back, head, and neck pain after falling out of a work truck. (JE 2:3). Pain radiated to his left buttock, left thigh, left calf, left big toe, left lateral foot, and plantar foot. (JE 2:4). He described the pain as aching. (JE 2:4). The provider observed that Mr. Burroughs was in mild distress, as he was pacing and could barely sit or stand. (JE 2:4). The provider diagnosed Mr. Burroughs with a neck strain, a low back contusion, cervical radiculopathy, and lumbar radiculopathy. (JE 2:4). He was referred for imaging, physical therapy, and later injections. (Testimony). Mr. Burroughs testified that he avoided having injections because he has an "unreasonable fear of needles." (Testimony). The provider outlined restrictions including occasional lifting up to 5 pounds, and occasional pushing or pulling up to 5 pounds. (JE 2:6). He was also to avoid bending and prolonged driving. (JE 2:6). During this time, Mr. Burroughs resided with his daughter in Georgia. (Testimony). His daughter helped to care for him. (Testimony).

The claimant had a cervical spine MRI on August 30, 2019. (JE 3:12-13). The MRI showed a disc bulge at C5-6 with mild left and right neural foraminal stenosis along with mild spinal canal stenosis. (JE 3:12). The MRI also showed a posterior central broad disc herniation indenting the ventral thecal sac at C6-7. (JE 3:13). There were also osteophytes at these levels, which the radiologist opined were "consistent with a more recent herniation of the disc." (JE 3:13). A lumbar MRI was also performed on the same date. (JE 3:14-15). The MRI showed a bulging disc at L3-4 with mild left and right neural foraminal stenosis. (JE 3:15). The MRI also showed 3.6 mm of anterolisthesis at L4-5 with an underlying disc bulge indenting the ventral thecal sac. (JE 3:15). This encroached the left and right neural foramina contacting the exiting left and right L4 nerves. (JE 3:15). An annular fissure disrupted the right neural foraminal annular disc fibers at L4-5. (JE 3:15). The radiologist opined that this was "age indeterminate." (JE 3:15). There was another disc bulge with a posterior central disc herniation at L5-S1. (JE 3:15). An annular fissure disrupted the posterior central annular disc fibers, which pointed to the L5-S1 disc herniation. (JE 3:15). According to the radiologist, the findings pointed to a more recent injury to the disc. (JE 3:15).

On September 5, 2019, Mr. Burroughs returned to Concentra. (JE 2:7-9). He continued to complain of issues to his lower back, neck, and left hip. (JE 2:7). Mr. Burroughs complained of difficulty with sitting, along with numbness in his hands and feet. (JE 2:7). The Concentra provider opined that the claimant had an antalgic gait and "significant difficulties with the physical requirements of his job." (JE 2:8). The provider referred Mr. Burroughs to an orthopedic spine physician. (JE 2:8). The restrictions provided to the claimant remained the same as during his August visit to Concentra. (JE 2:9).

The claimant returned to Concentra on September 10, 2019, for physical therapy. (JE 4:16-19). The previous restrictions were noted. (JE 4:16). Mr. Burroughs rated his

pain 10 out of 10 at the time of the therapy appointment. (JE 4:16). His range of motion was limited based upon pain in various areas of his back. (JE 4:16). He was observed to have a moderately antalgic gait. (JE 4:17). Therapy was performed, and the therapist determined that he achieved 10 percent of his goals as of the visit. (JE 4:17).

On September 24, 2019, John Foster, M.D. examined the claimant for ongoing complaints of neck and low back pain, along with numbness into the left fourth and fifth fingers and feet. (JE 5:20-21). Dr. Foster recounted the imaging results as noted above, but noted that he could not review the films. (JE 5:20). Dr. Foster characterized the claimant's symptoms as "moderate, constant, sharp," and present since his injury. (JE 5:20). Mr. Burroughs displayed tenderness across his spine. (JE 5:20). He also displayed decreased sensation in the left fourth and fifth fingers on examination. (JE 5:20). Dr. Foster diagnosed him with a cervical strain with "HNP" at C6-7 without involvement of the cord or nerve root, mild bilateral neuroforaminal and central stenosis at C5-6, a lumbar strain involving the bilateral SI joints, and a central "HNP" at L4-5 and L5-S1 with involvement of the nerve root at the bilateral L4 and S1 nerve roots. (JE 5:20-21). Dr. Foster recommended a course of treatments including lumbar and SI joint injections, but noted that Mr. Burroughs expressed skepticism towards these treatments. (JE 5:21). Dr. Foster also prescribed physical therapy, and requested him to return in one week with his MRI films. (JE 5:21). Dr. Foster declined to recommend surgery and instead recommended that Mr. Burroughs proceed with injections. (JE 5:21). If he did not have injections, Dr. Foster noted that the claimant approached maximum medical improvement and a full-duty release. (JE 5:21).

Dr. Foster examined the claimant again on October 1, 2019, for his continued complaints of neck and low back pain. (JE 5:22-23). Dr. Foster was able to review the MRI results, and concurred with the radiologist's findings as they pertained to the cervical spine. (JE 5:22). However, Dr. Foster did not see any nerve root involvement at L4-5 or L5-S1. (JE 5:22). Dr. Foster again described Mr. Burroughs' symptoms as moderate, constant and sharp. (JE 5:22). Dr. Foster prescribed a cervical epidural steroid injection and bilateral SI joint injections. (JE 5:23). At the time of the examination, he declined to prescribe a lumbar epidural steroid injection, as he felt that the claimant's pain started in his SI joints and not the lumbar spine. (JE 5:23). Dr. Foster placed the claimant on light duty with a restriction of lifting, pushing, or pulling of 5 pounds. (JE 5:23). He also prohibited Mr. Burroughs from commercial driving. (JE 5:23).

Christopher Taylor, M.D., examined Mr. Burroughs for complaints of neck pain on October 23, 2019. (JE 6:30-31). Mr. Burroughs rated his pain 10 out of 10. (JE 6:30). His pain worsened at night. (JE 6:30). Dr. Taylor provided Mr. Burroughs with an injection. (JE 6:31).

On November 26, 2019, Dr. Foster saw the claimant again for a follow-up of his neck and low back pain. (JE 5:24). Mr. Burroughs recalled having his first epidural steroid injection, and indicated to the doctor that he had two days of pain relief before his symptoms returned. (JE 5:24). In fact, Mr. Burroughs felt that the pain worsened in his neck, and that his numbness increased. (JE 5:24). Dr. Foster decided to hold off on the second cervical and second SI joint injections due to lack of relief. (JE 5:25). Dr.

Foster recommended an EMG due to the claimant's worsening peripheral neurologic complaints. (JE 5:25). Dr. Foster ordered a lumbar epidural steroid injection. (JE 5:25). The previously provided restrictions remained unchanged. (JE 5:25).

Dr. Taylor performed an EMG on the claimant on December 18, 2019. (JE 6:32). The EMG was abnormal, and provided evidence of chronic right neuropathy, and sub-acute severe left ulnar radiculopathy. (JE 6:32). There was also evidence of neuropathy across the wrists, which Dr. Taylor opined suggested bilateral moderate carpal tunnel syndrome. (JE 6:32).

Dr. Foster examined Mr. Burroughs again on January 7, 2020, for continued neck and low back pain issues. (JE 5:26-27). Dr. Foster reviewed the results of the EMG, and opined that the claimant had severe right chronic cubital tunnel, subacute left cubital tunnel, and bilateral carpal tunnel syndrome. (JE 5:26). Mr. Burroughs complained to Dr. Foster that he now experienced worsening leg pain and numbness. (JE 5:26). Dr. Foster again noted that he was sending the claimant for his first lumbar epidural steroid injection, and provided him with left cubital tunnel and carpal tunnel injections. (JE 5:27). Dr. Foster made a brief mention of "[c]ausation would appear to be present to the left cubital tunnel syndrome…" but expressed doubt as to the right side or the bilateral carpal tunnel issues. (JE 5:27). The restrictions remained unchanged. (JE 5:27).

Mr. Burroughs was examined by Dr. Foster, in Georgia, on January 28, 2020. (JE 2:10-11). Mr. Burroughs previously had an injection into his left cubital tunnel and left carpal tunnel, and expressed dismay as to a repeat injection. (JE 2:10). Dr. Foster outlined the previous MRI findings as noted above. (JE 2:10). Dr. Foster saw no clear nerve root involvement on the MRI at L4-5 or L5-S1. (JE 2:10). A physical examination showed tenderness in various areas of the claimant's spine. (JE 2:10). Dr. Foster diagnosed the claimant as follows:

1. Cervical strain with central HNP C6-C7 with no cord or nerve root involvement.
2. Mild bilateral neural foraminal stenosis with central stenosis C5-C6.
3. Lumbar strain involving the bilateral SI joints, essentially resolved.
4. Central HNP L4-L5 and L5-S1 with questionable nerve root involvement involving the bilateral L4 and S1 nerve roots.
5. Bilateral cubital tunnel syndrome.
6. Bilateral carpal tunnel syndrome, but symptomatic only on the left.

(JE 2:11). Dr. Foster withheld a planned second injection, and recommended a lumbar epidural steroid injection. (JE 2:11). He proposed additional physical therapy and kept the claimant on light duty with restrictions of no lifting more than 5 pounds, no pushing, no pulling, and no commercial driving. (JE 2:11). Dr. Foster recommended the claimant return in two weeks. (JE 2:11). He concluded his report by opining that Mr. Burroughs had no surgically treatable pathology in his neck or back. (JE 2:11).

Dr. Taylor visited with the claimant again on January 29, 2020. (JE 6:33-34). Mr. Burroughs rated his back pain 8 out of 10. (JE 6:33). Dr. Taylor provided the claimant with another injection during this visit. (JE 6:34).

On February 11, 2020, Dr. Foster re-examined Mr. Burroughs for his continued neck and low back pain. (JE 5:28-29). Mr. Burroughs had a lumbar epidural steroid injection, and felt that it made his symptoms worse. (JE 5:28). Dr. Foster noted, "I am not convinced that the patient has surgically treatable pathology in the neck or back. However, he has failed all treatment that he is willing to undergo and does have abnormalities on the cervical and lumbar MRIs." (JE 5:29). Because of this, Dr. Foster sent Mr. Burroughs to a spine specialist. (JE 5:29). Dr. Foster retained the prior restrictions. (JE 5:29).

In early 2020, Mr. Burroughs moved to New Jersey. (Testimony). He could no longer live with his daughter, as he was not meant to be living with his daughter permanently. (Testimony). He moved in with his son in New Jersey. (Testimony). CRST offered to provide Mr. Burroughs with a bus ticket to allow him to travel from Georgia to New Jersey; however, according to CRST claims representative Deb Mentzer, he demanded a rental car instead. (Testimony). Ms. Mentzer noted that Mr. Burroughs' moves, and an inability to consistently contact him, resulted in delays in treatment. (Testimony).

Rafael Levin, M.D., examined Mr. Burroughs on March 27, 2020. (JE 7:35-37). Dr. Levin is board certified in adult spinal surgery, and is the chief of the division of spine surgery at Hackensack University Medical Center in Westwood, New Jersey. (DE R:135). He also is a diplomat of the American Academy of Orthopaedics. (DE R:135). Mr. Burroughs explained his medical history, and noted that he experienced worsening pain. (JE 7:35). Dr. Levin opined that the "causally related diagnosis" involved the L4-5 and L5-S1 disc pathologies superimposed on pre-existing asymptomatic spondylosis and L4-5 spondylolisthesis. (JE 7:37). Dr. Levin wanted to have repeat imaging of the lumbar spine. (JE 7:37). Dr. Levin recommended an elective surgical decompression and stabilization procedures to "reestablish foraminal heights at L4-5 and L5-S1" due to a failure of conservative care. (JE 7:37). With regard to the claimant's neck, Dr. Levin found nothing causally related to the work injury. (JE 7:37). Therefore, he placed the claimant at MMI for this issue. (JE 7:37).

The claimant had a lumbar MRI on April 2, 2020, on the order of Dr. Levin. (JE 8:78-79). The MRI showed L3-4 disc bulge with encroachment on the neural foramina, a mild loss of L4-5 disc space height with diffuse herniation and compression of the anterior thecal sac, and mild loss of L5-S1 disc space height with diffuse disc herniation with compression of the anterior thecal sac and bilateral neural foramina and bilateral exiting nerve root. (JE 7:79).

On April 20, 2020, Dr. Levin saw Mr. Burroughs via TeleHealth following repeat imaging of the lumbar spine. (JE 7:38-42). Mr. Burroughs continued to have radicular and claudication symptoms in his bilateral lower extremities. (JE 7:38). The updated MRI showed stable moderate bilateral L4-5 recess and proximal foraminal stenosis, along with moderate bilateral L5-S1 foraminal stenosis. (JE 7:39). X-rays showed

reasonably maintained disc heights. (JE 7:39). Dr. Levin opined that Mr. Burroughs had "chronic bilateral lower extremity radiculopathy and claudication symptoms that correlate with neuro compressive pathology at L4-5 and L5-S1 as previously described." (JE 7:40). Dr. Levin saw no evidence of gross instability and found relatively minimal spondylolisthesis at L4-5. (JE 7:40). Based upon this, Dr. Levin recommended a minimally invasive bilateral decompression at L4-5 and a foraminal decompression at L5-S1 once elective surgeries were permitted in New Jersey. (JE 7:40). Dr. Levin told Mr. Burroughs that this plan required commitment from him by way of active participation in physical therapy and weight reduction. (JE 7:40). Dr. Levin restricted Mr. Burroughs from lifting more than 10 pounds, bending repetitively more than three times per hour, and from driving a commercial vehicle. (JE 7:40, 42).

Dr. Levin wrote a letter to CBCS and Genex Services dated April 25, 2020. (JE 7:43-44). Dr. Levin opined that the injuries to L4-5 and L5-S1 were causally related to the work incident. (JE 7:43). Dr. Levin further opined that there was evidence of disc pathology which was previously asymptomatic. (JE 7:43). Dr. Levin found that the medical records and available history showed no evidence of any radicular symptomatology or evidence of prior lumbar spine or radicular symptoms. (JE 7:43). Since Mr. Burroughs did not have meaningful symptomatic or functional improvement following conservative care, Dr. Levin felt that a minimally invasive surgery, as described above, would be appropriate. (JE 7:44). Dr. Levin recommended that Mr. Burroughs avoid a more extensive fusion since the minimally invasive option could improve his symptoms with appropriate post-operative exercise and weight loss. (JE 7:44).

In August of 2020, Mr. Burroughs had a car accident while driving from New Jersey to Maryland. (Testimony). He testified that a vehicle ran him off the road and he wrecked his car between two barriers. (Testimony). This accident caused the airbags in the vehicle to deploy. (Testimony). Following that accident, he went to the emergency room, but left before he could be seen because the emergency room was crowded. (Testimony). As a result of that car accident, he struck his right shoulder, right knee, and his head resulting in a stiff neck; however, he testified that his symptoms resolved by the next day. (Testimony).

Mr. Burroughs reported to an emergency room in Maryland on August 21, 2020, following his motor vehicle accident. (JE 9:80-84). He left the emergency room without treatment. (JE 9:84).

Mr. Burroughs had a physical therapy visit on September 22, 2020. (JE 10:96). Mr. Burroughs reported his pain and numbness issues to the therapist. (JE 10:96). Therapy was performed during this visit. (JE 10:96).

On September 24, 2020, a nurse case manager ("NCM") with Genex issued a progress report. (JE 11:109). The NCM noted attending a therapy appointment with the claimant, as he complained of an inability scheduling and difficulty finding the physical therapy location. (JE 11:109).

The claimant had another physical therapy visit on October 15, 2020. (JE 10:97-100). This was his seventh visit. (JE 10:97). He continued to complain of numbness

and tingling, along with pain. (JE 10:97). He had no change in his symptoms. (JE 10:98). Mr. Burroughs tolerated therapy and could complete the exercises with minimal complaints. (JE 10:100).

On October 28, 2020, Dr. Levin visited with Mr. Burroughs again. (JE 7:45-47). His previously scheduled surgery was canceled due to a diabetes diagnosis. (JE 7:45). Mr. Burroughs told Dr. Levin that he achieved good control of his diabetes following diet modifications and diabetes medications. (JE 7:45). Despite losing 70 pounds, he continued to have radicular pain and claudication symptoms on the left side. (JE 7:45). Standing, walking, and prolonged sitting aggravated his symptoms. (JE 7:45). Provided Mr. Burroughs could be medically cleared, Dr. Levin decided to proceed with the previously ordered surgery. (JE 7:47). Dr. Levin reiterated restrictions. (JE 7:47).

Mr. Burroughs had his tenth, and final, physical therapy visit on October 29, 2020. (JE 10:101-105). He told the therapist that he would have surgery on November 10, 2020. (JE 10:102). Since the claimant plateaued, he was discharged with a fair prognosis. (JE 10:104).

On November 2, 2020, Frank Mastrianno, M.D., examined the claimant for pre-surgical clearance. (JE 12:110). The previous delay in surgery was noted as due to high blood sugar and "new onset of uncontrolled diabetes." (JE 12:110). Since that time, the claimant saw an endocrinologist and was provided with metformin. (JE 12:110).

Dr. Levin performed surgery on the claimant on November 10, 2020. (JE 13:111-114). The diagnoses were L4-5 severe bilateral lateral recess stenosis with L5 radiculopathy and claudication with minimal spondylolisthesis and L5-S1 foraminal stenosis more on the left than the right. (JE 13:111). Dr. Levin performed an L4-5 bilateral decompressive laminectomy with decompression of the L5 nerve roots bilaterally and L4 nerve roots, and an L5-S1 bilateral foraminotomy. (JE 13:111). Mr. Burroughs was provided with a corset and admitted for monitoring. (JE 13:114).

Two to three days after his surgery, Mr. Burroughs began having severe pain. (Testimony). A friend recommended that he return to the hospital. (Testimony). Dr. Levin told him that he should wait several days for normal post-operative pain to resolve. (Testimony). Mr. Burroughs felt that something was wrong, so he reported to the emergency room the next morning, where he was told that he had an infection in his back. (Testimony). He was prescribed antibiotics and pain medications; however, the pain worsened. (Testimony).

Dr. Levin examined Mr. Burroughs again on November 25, 2020, for his first postoperative visit. (JE 7:48-54). His intermittent muscle spasms improved, and he told Dr. Levin that he experienced "significant improvement" in his lower extremity pain and strength. (JE 7:48). Dr. Levin was pleased with the symptomatic and functional improvement seen after the surgery. (JE 7:50). Dr. Levin kept Mr. Burroughs on modified duty including no lifting greater than 10 pounds, no repetitive lifting more than three times per hour, no commercial driving, and being allowed to sit for 20 minutes per hour. (JE 7:50-51). Dr. Levin prescribed physical therapy. (JE 7:53).

Mr. Burroughs started post-surgical therapy on December 14, 2020. (JE 10:106).

On December 16, 2020, Mr. Burroughs returned to Dr. Levin's office for continued post-operative follow-up care. (JE 7:57-61). Mr. Burroughs had one session of physical therapy since his previous visit. (JE 7:57). Mr. Burroughs reported residual neuropathic pain complaints along with mechanical back discomfort and occasional radiculitis. (JE 7:57). Dr. Levin reassured the claimant that he would continue to improve from both a symptomatic and functional standpoint following physical therapy. (JE 7:59). Dr. Levin provided new restrictions of no lifting more than 25 pounds, and no commercial driving. (JE 7:59).

In December of 2020, Mr. Burroughs fell while exiting his vehicle. (Testimony). He attributed this to "storms" of pain, which are unmanageable jolts of pain that cause him to freeze up or lose his strength and fall. (Testimony). He did not think that his pain became worse after the fall, as it had already been worsening. (Testimony).

Dr. Levin visited with Mr. Burroughs again on December 21, 2020. (JE 7:62-64). Mr. Burroughs fell while exiting a vehicle. (JE 7:62). Before he could attend his next session of physical therapy, the therapist required that Dr. Levin medically clear him. (JE 7:62). He displayed an antalgic gait. (JE 7:63). Dr. Levin observed no change in his condition following the fall, and cleared him to resume physical therapy. (JE 7:63). He also recommended that Mr. Burroughs undergo an EMG to rule out diabetic neuropathy. (JE 7:64). He reiterated restrictions previously provided in October of 2020. (JE 7:64).

On December 25, 2020, the claimant reported to an emergency room in Newark, New Jersey, with complaints of worsening back pain, along with lower extremity and foot numbness. (JE 14:118-120). He rated his pain 10 out of 10. (JE 14:118).

At the arrangement of Dr. Levin, Mr. Burroughs had an EMG on December 28, 2020, conducted by John Robinton, M.D., P.A. (JE 15:121-124). Dr. Robinton opined that the claimant had mild peripheral neuropathy. (JE 15:121). The EMG showed no evidence of active radiculopathy. (JE 15:121). Dr. Robinton further opined that "the symptomatology appears to be disproportionately severe for the nature of the findings." (JE 15:121). Since the complaints were "more neuropathic than radicular in nature," Dr. Robinton recommended a referral to the claimant's primary care provider. (JE 15:121-122). He also refused to relate any diagnosis of peripheral neuropathy to the claimed work injury. (JE 15:122).

Mr. Burroughs had his seventh physical therapy visit on January 16, 2021. (JE 10:107). He rated his pain 7 out of 10. (JE 10:107). Through seven visits, Mr. Burroughs demonstrated improvement in strength, pain levels, and functional mobility. (JE 10:107).

Mr. Burroughs self-quarantined for COVID-19 and missed his January 21, 2021, therapy visit. (JE 10:108).

On January 27, 2021, the claimant again followed-up with Dr. Levin. (JE 7:65-69). Mr. Burroughs was supposed to bring updated MRI studies with him to the

appointment, but failed to do so. (JE 7:65). Dr. Levin noted that the MRIs were negative based upon his review of the record. (JE 7:65). An EMG performed in late December of 2020, showed no evidence of radiculopathy. (JE 7:65). Instead, it showed mild peripheral neuropathy that was unrelated to the injury. (JE 7:65). Mr. Burroughs continued to complain of axial back pain and numbness in his feet. (JE 7:65). After examination, Dr. Levin concluded that Mr. Burroughs' subjective complaints were disproportionate to the objective findings and imaging studies. (JE 7:67). Dr. Levin concluded that the neuropathy was possibly diabetic in nature. (JE 7:67). Dr. Levin further concluded that Mr. Burroughs would continue to improve with an independent routine home exercise program. (JE 7:67). Dr. Levin placed the claimant at maximum medical improvement ("MMI"). (JE 7:67). Further, he recommended a functional capacity evaluation ("FCE") in order to establish objectively based permanent restrictions. (JE 7:67). In the interim, Dr. Levin allowed the claimant to return to work with a restriction of no lifting more than 30 pounds and no commercial driving. (JE 7:67-68).

Dr. Levin discharged the claimant in January of 2021. (Testimony). Mr. Burroughs testified that, during the visit, he was shaking and in pain. (Testimony). He testified that Dr. Levin asked him why he was shaking, and told him that he would be fine and that his pain would go away. (Testimony).

Mr. Burroughs then moved to Texas with his son. (Testimony). In Texas, he received additional physical therapy and testing. (Testimony).

On May 9, 2021, the claimant reported to an emergency room with complaints of an early dental abscess. (JE 16:125).

Mr. Burroughs went to an urgent care in Harker Heights, Texas, on May 26, 2021, where a physician's assistant examined him. (JE 17:126-127). Mr. Burroughs reported a lengthy history of lower back pain. (JE 17:126). He reiterated the incident in which he was injured. (JE 17:126). The provider outlined the claimant's medical history. (JE 17:126). He rated his back pain 10 out of 10, and claimed radicular symptoms to his bilateral legs and feet. (JE 17:126). Mr. Burroughs was vague about his previous hospitalization and diabetes management. (JE 17:127). The provider found the claimant's subjective responses to be "out of proportion to the physical exam findings." (JE 17:127). After the provider discussed a treatment plan, Mr. Burroughs "abruptly left the exam room and the clinic," and indicated he needed fresh air. (JE 17:127). A workers' compensation form was completed, which indicated that the claimant could return to work on May 26, 2021, with restrictions of no driving. (JE 17:128).

On June 10, 2021, the claimant returned to the urgent care facility. (JE 17:129-132). He continued to rate his pain 10 out of 10. (JE 17:129). Mr. Burroughs was referred for a repeat MRI of the lumbar spine, another EMG, and repeat physical therapy. (JE 17:129). Mr. Burroughs could continue to work, but only drive an automatic transmission. (JE 17:132). He also was not allowed to lift or carry more than 20 pounds for more than four hours per day. (JE 17:132).

The EMG was performed on June 14, 2021. (JE 18:140-141). Aleksandr Goldvekht, M.D., F.A.A.P.M.R., interpreted the results of the EMG. (JE 18:140-141). His opinions were as follows:

1. There is electrodiagnostic evidence supportive of mild, right L5/S1 radiculopathy, with possible left L5/S1 radicular disease as well. Increased motor unit amplitude and reinnervated motor unit potentials were identified on EMG, without evidence of active denervation.
2. NCS testing demonstrates that all sensory studies in the lower extremities could not be generated, with reduced lateral plantar responses. In the appropriate clinical setting, this reflects a sensorimotor peripheral polyneuropathy. Clinical correlation advised.
3. Sacral plexopathy and sciatic neuropathy cannot be ruled out in this patient.
4. There is no electrodiagnostic evidence of focal peroneal or tibial neuropathies in their [*sic*] knee or ankle segments, or myopathy.

(JE 18:141). Dr. Goldvekht recommended exploring underlying metabolic or endocrine causes with regard to the polyneuropathy. (JE 18:141).

On June 23, 2021, the claimant started physical therapy with Select Physical Therapy in Killeen, Texas. (JE 19:142-147). He complained of low back pain with a date of onset in August of 2019. (JE 19:142). Therapy was performed. (JE 19:142-147).

Mr. Burroughs continued his follow-up care with the Texas urgent care facility on June 24, 2021. (JE 17:133-136). He continued to complain of pain that he rated 10 out of 10. (JE 17:133). He recently began physical therapy. (JE 17:133). He attempted an MRI, but "had difficulty" during it. (JE 17:133). A new EMG "showed evidence supportive of mild, right L5-S1 and possible left L5-S1 radicular disease without evidence of active denervation." (JE 17:133). Nerve conduction testing demonstrated possible sensorimotor peripheral polyneuropathy. (JE 17:133). He was restricted to only carrying 20 pounds or less; however, he was allowed to drive. (JE 17:136).

An MRI of the lumbar spine was performed on June 29, 2021, at Seton Medical Center in Harker Heights, Texas. (JE 20:150-151). Joshua Jansen, M.D., interpreted the results of the MRI. (JE 20:151). The MRI showed operative changes at L4-5 with mild spinal canal stenosis and moderate bilateral neural foraminal stenosis, multilevel lumbar disc degeneration and facet degenerative changes, and at L3-4 mild canal stenosis and bilateral neural foraminal stenosis. (JE 20:151).

On July 20, 2021, Mr. Burroughs returned to the urgent care facility in Texas. (JE 17:137-139). The repeat MRI was finished. (JE 17:137). The provider noted that "[t]esting to date has confirmed age related changes to spine with [*sic*] any acute findings. Will send MMI." (JE 17:139). Mr. Burroughs was released to work with no restrictions. (JE 17:139).

Mr. Burroughs had his sixth physical therapy visit on August 4, 2021. (JE 19:148-149). He canceled or did not attend four visits. (JE 19:148). A note says, "[a]ll goals are to be abandoned due to discharge for no shows." (JE 19:149).

On August 5, 2021, Randal Wojciehoski, D.P.M., D.O., issued a report outlining his opinions based upon a medical records review. (Defendant's Exhibit A:1-5). Dr. Wojciehoski is board certified in internal medicine and emergency medicine. (DE A:6). The doctor opined that Mr. Burroughs had no permanent impairment pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (DE A:4).

Mr. Burroughs was admitted to Upper Chesapeake Medical Center on February 6, 2022, and was discharged on February 10, 2022. (JE 9:85-95). His primary care provider recommended that he report to the emergency room due to a progressively worsening left heel ulcer for the previous three weeks. (JE 9:85). He complained of chronic neuropathy in the bilateral hands and feet along with his upper legs and arms. (JE 9:85). An MRI of his foot showed atrophy throughout multiple muscles and mild edema which can be seen in chronic denervation, and the radiologist recommended clinical correlation of this issue. (JE 9:88). The provider noted that the neuropathy "may be related to diabetes versus vitamin deficiency versus connective tissue disease." (JE 9:89). Daniel Cavanaugh, M.D., provided the claimant with an orthopaedic spine consultation prior to his discharge from the hospital. (JE 9:91). Dr. Cavanaugh's diagnoses were: 1. degenerative spondylolisthesis L4-L5; 2. "[c]oncern for cervical / thoracic cord compression;" 3. [l]ikely diabetic neuropathy; and, 4. [p]ossible tarsal tunnel syndrome. (JE 9:91).

Dr. Levin saw Mr. Burroughs again on June 8, 2022. (JE 7:70-77). Mr. Burroughs told Dr. Levin that he had been traveling between North Carolina, Texas, and Maryland. (JE 7:70). Mr. Burroughs complained of "chronic activity related axial mechanical low back pain and neuropathic type symptoms to his bilateral lower extremities which [were] both constant and with [*sic*] intermittent exacerbations. (JE 7:70). In Texas, Mr. Burroughs received an additional two months of physical therapy along with electrodiagnostic studies. (JE 7:70). Dr. Levin reviewed the additional electrodiagnostic studies and found them suggestive of polyneuropathy. (JE 7:71). Upon physical examination, Dr. Levin again observed that the claimant displayed disproportionate pain reproduction "strongly suggestive of symptomatic magnification." (JE 7:72). Dr. Levin felt that additional diagnostics or interventions for the lumbar spine were not worthwhile, due to the lack of clear evidence of nonorganic findings combined with the claimant's chronic nonfocal diffuse subjective complaints that lacked correlation with objective findings. (JE 7:72). Dr. Levin felt that the claimant should perform independent stretching and strengthening. (JE 7:72). Dr. Levin allowed the claimant to return to work full duty with no restrictions, and he placed the claimant at MMI effective June 8, 2022. (JE 7:73-77).

On February 8, 2023, Mr. Burroughs had a functional capacity evaluation ("FCE") performed by Jeffrey Winston, D.C., C.W.C.E., at Baltimore Work Rehab. (CE 3:128-147). Dr. Winston proceeded to issue a report outlining his findings. (CE 3:128-147). The FCE was limited, as the claimant had "excessive hypertension" which included a measurement of 178 over 138. (CE 3:128). As a result of this, Dr. Winston had to

remove major portions of the FCE. (CE 3:128). Dr. Winston found the claimant provided appropriate levels of physical effort during the FCE. (CE 3:128). Mr. Burroughs demonstrated the ability to meet essential job demands for standing, walking, pushing a 40 pound cart, pulling a 40 pound cart, balancing, kneeling, and climbing stairs. (CE 3:128). He had limitations with sitting or crouching. (CE 3:128). This difficulty with sitting would preclude Mr. Burroughs from returning to work as a trucker, according to Dr. Winston. (CE 3:128).

David Segal, M.D., J.D., conducted an IME via Zoom on March 23, 2023. (CE 1:7-55). Dr. Segal issued a report outlining the findings of his IME.(CE 1:7-55). Dr. Segal reviewed Mr. Burroughs' report of the onset of his pain, along with providing a brief outline of his medical treatment. (CE 1:7-9). Dr. Segal also reviewed a number of medical records. (CE 1:9-10). Dr. Segal opined that, "[e]ven though this interaction was done via ZOOM, I was able to obtain all information necessary to make the appropriate opinions and conclusions for this report based on a reasonable degree of medical certainty." (CE 1:10).

Mr. Burroughs told Dr. Segal that he had pain in his neck that radiated down his left arm to just below his elbow, and sometimes to his index, ring, and middle fingers. (CE 1:10). He had low back pain to both of his buttocks, and sometimes down his left leg to his knee. (CE 1:10). He also described constant burning pain and numbness in his left foot and toes. (CE 1:10). At the time of the IME, he rated his neck pain 8 out of 10, his low back pain 7 out of 10, and his left elbow pain 6 out of 10. (CE 1:11). He felt that his neck and low back pain were worsening. (CE 1:11). Mr. Burroughs outlined various other aspects of his claimed pain. (CE 1:12). He noted the need for assistance in getting out of bed or off the toilet. (CE 1:12). He could not sit for a long period of time before his back hurt. (CE 1:12). Mr. Burroughs also told Dr. Segal that he felt he injured his shoulders when he fell. (CE 1:12). Mr. Burroughs reported a number of limitations. (CE 1:16-17).

Despite no other evidence to indicate a concussion, Dr. Segal proceeded with diagnosing the claimant with post-concussive symptoms after outlining various symptoms. (CE 1:13-14).

Mr. Burroughs told Dr. Segal that his injury had a great effect on his life, noting that he could not drive a commercial vehicle since the incident. (CE 1:16). Mr. Burroughs attributed this to his inability to sit for long periods of time and his foot numbness. (CE 1:16). Mr. Burroughs also felt that his employer "essentially fired" him since they did not assign him additional work or light duty. (CE 1:16). Mr. Burroughs felt that he could have worked in a dispatch position. (CE 1:16).

Dr. Segal outlined elements of a physical examination, but again acknowledged that this examination was limited because it was conducted via Zoom. (CE 1:18). Dr. Segal noted that he was "able to get exam information from visual observation over the video, and some self-examination by Mr. Burroughs at my instruction." (CE 1:18). Dr. Segal observed that the claimant had reduced range of motion in his neck. (CE 1:18). He also found the claimant to have tenderness to palpation, though it is unclear how he

could come to this conclusion when he conducted the examination via Zoom. (CE 1:18).

Dr. Segal then reviewed the MRI results and provided his own opinions as to what they showed. (CE 1:19-22). Dr. Segal felt that the broad-based herniation with an annular tear visualized on the cervical spine MRI of August 30, 2019, was consistent with the August 13, 2019 fall, and corresponded with the claimant's radicular symptoms. (CE 1:19). Dr. Segal felt that the lumbar MRI results from August 30, 2019, showed either an acute injury or a preexisting condition that was permanently aggravated by a work injury. (CE 1:20). Dr. Segal opined that the claimant's anterolisthesis was degenerative, but that the injury "likely loosened the facets, causing or increasing the anterolisthesis" thus permanently aggravating his condition. (CE 1:20). In reviewing the April 2, 2020, MRI of the lumbar spine, Dr. Segal opines that the disc herniation at L5-S1 and stenosis at L4-5 were "slightly more prominent." (CE 1:21). Dr. Segal reviewed an x-ray from April 2, 2020, and opined that the claimant had a condition that caused permanent instability that does not usually improve, and instead was a common result for poor results after surgery. (CE 1:21). Dr. Segal then reviewed a cervical MRI conducted on December 25, 2020, and opined that it was similar to the August 30, 2019, MRI. (CE 1:22). A lumbar MRI performed on December 25, 2020, showed the neural foramina as the same as before the surgery. (CE 1:22). Dr. Segal admitted that MRIs do not capture surgical decompression; however, he opined further that "when there are increasing symptoms after surgery, this is a clinically relevant finding that deserves attention and treatment." (CE 1:22). A June 29, 2021, MRI of the lumbar spine showed slightly improved central stenosis; however, it showed "more pathologic" facets. (CE 1:22). Dr. Segal opined based upon this MRI that "the surgery likely further disrupted the competence of the facets, causing more instability." (CE 1:22).

Dr. Segal opined that the mechanism of injury was "consistent with injury to all areas," including the lower back, neck, left elbow, and concussion. (CE 1:23). Dr. Segal admits that the post-concussive symptoms were discussed nowhere in the records. (CE 1:23). Dr. Segal indicated that Mr. Burroughs suffered "a very severe injury and affected not only many parts of Mr. Burroughs's body, but his body as a whole." (CE 1:23). Dr. Segal noted that different injuries caused different impairments to Mr. Burroughs, therefore he considered "[a]ll diagnoses that are rateable based on [the] AMA Guides, Fifth Edition" in providing impairment ratings. (CE 1:23).

Dr. Segal identified several specific issues and addressed causation. (CE 1:24-27). Dr. Segal diagnosed the claimant with lumbar spondylolisthesis and failed back syndrome. (CE 1:24). He based this diagnosis on the claimant's symptoms, imaging studies, and the surgery performed. (CE 1:24). He felt that Mr. Burroughs had spondylolisthesis slippage at 6 mm, which is greater than the 3 mm slippage which Dr. Segal considered to be clinically significant. (CE 1:24). Dr. Segal opined that Mr. Burroughs' postoperative course was "consistent with symptomatic spondylolisthesis and continued nerve root compression." (CE 1:24). According to Dr. Segal, the surgery performed by Dr. Levin was a destabilizing factor in Mr. Burroughs' back. (CE 1:24). Dr. Segal continued by diagnosing the claimant with mechanical cervical and lumbar pain and radiculopathy. (CE 1:24). He opined that the claimant had "classic radicular

symptoms." (CE 1:24). Dr. Segal further diagnosed the claimant with left elbow and ulnar radiculopathy. (CE 1:24). He noted the frequent pain in the claimant's left elbow along with the "discernible pain, numbness, and tingling," radiating from the elbow to the left ring and pinky fingers. (CE 1:25). He also opined as to grip strength, but there is no indication that he took any grip strength measurements. (CE 1:25). Finally, Dr. Segal diagnosed Mr. Burroughs with a concussion and post-concussive syndrome. (CE 1:25-26). He based this upon three notes of "head pain" in the medical records, and the claimant's assertion that he struck his head when he fell. (CE 1:25-26). He opined that the claimant's head symptoms were permanent at the time of the Zoom IME based upon the temporal distance from the date of injury. (CE 1:26).

Dr. Segal then reviewed Dr. Wojciehoski's IME report. (CE 1:27-28). He opined that Dr. Wojciehoski's report was not consistent with the Guides. (CE 1:28).

Dr. Segal specifically diagnosed the claimant as follows:

Lumbar Spine:

1. Spondylolisthesis L4-L5
2. Lumbar spinal instability L4-L5
3. Disc herniation L4-L5 and L5-S1
4. Annular tear
5. Spinal and foraminal stenosis L4-L5 and L5-S1
6. Lumbar radiculopathy, bilateral but primarily left L4 and L5 nerve root signature
7. Status post lumbar decompression L4-L5 and L5-S1
8. Post laminectomy syndrome
9. Permanent aggravation/acceleration of degenerative spine disease
10. Permanent aggravation/acceleration of facet arthropathy/SI joint arthropathy
11. Mechanical low back pain syndrome

Cervical Diagnoses:

1. Cervical radiculopathy (primarily right C6 and C7)
2. Disc bulge/herniation C5-C6
3. Traumatic cervical facet arthropathy
4. Occipital neuralgia

Left Elbow:

1. Ulnar neuropathy

Traumatic Brain Injury and Post-Concussive Syndrome:

1. Traumatic Brain Injury and Concussion
2. Post-concussion syndrome with cognitive and language deficits, memory deficits, tinnitus and hearing deficit, balance deficits,

> sleeping disturbance, post traumatic headache, as well as psychiatric sequelae of brain injury with emotional lability.

(CE 1:28-29). Dr. Segal then spent time justifying his various diagnoses and citing to the medical records that he believed reinforced his diagnoses. (CE 1:29-41). The IME report continues with a causation analysis of each diagnosis. (CE 1:41-43). Dr. Segal concluded that each of the above diagnoses were caused, "within a reasonable degree of medical certainty…" to the August 13, 2019, incident. (CE 1:41-43).

Dr. Segal placed the claimant at MMI for his lumbar spine on June 8, 2022. (CE 1:43). He opined that Dr. Levin's MMI date was inappropriate because Mr. Burroughs "continued to get worse" following the January 27, 2021, evaluation. (CE 1:43). Dr. Segal assigned an MMI date of February 11, 2020, for cervical spine and left elbow issues, as this was "…about six months after the injury…" (CE 1:43). Finally, Dr. Segal opined that Mr. Burroughs had not achieved MMI for any brain injury, as he had not yet received any evaluation for the same. (CE 1:43).

With regards to permanent impairment, Dr. Segal opined that, based upon the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, it was appropriate to use the DRE method in order to evaluate the injuries to Mr. Burroughs' lumbar spine and cervical spine. (CE 1:44). These methods, according to Dr. Segal, were not "influenced by an in-person examination…" as any instability was based upon his review of the imaging studies. (CE 1:44). Dr. Segal also felt that the DRE method was most appropriate, as Mr. Burroughs satisfied all of the criteria for the method. (CE 1:44). Dr. Segal placed the claimant into lumbar DRE category III and category IV, which "therefore meets criteria for lumbar DRE Category V…based on Table 15-3 on page 384…" of the Guides. (CE 1:44). Dr. Segal placed the claimant into lumbar DRE category IV because he had at least 4.5 mm of translation of one vertebra on another and the 6 mm of documented instability at L4-5. (CE 1:44). Dr. Segal then placed the claimant into lumbar DRE category III for the L4-5 radicular pattern and sensory loss. (CE 1:44). Mr. Burroughs met the pattern of dermatomal pain and loss of muscle strength as documented by the "exam" performed by Dr. Segal. (CE 1:45). The second set of criteria met by Mr. Burroughs was associated radiculopathy with a disc herniation and foraminal stenosis at L4-5 and L5-S1. (CE 1:45). Dr. Segal opined that "[t]he weakness and numbness in his left lower extremity qualifies as significant lower extremity impairment." (CE 1:45). Since Mr. Burroughs' symptoms caused impairment in his activities of daily living with moderate pain level and a neurologic deficit, Dr. Segal felt that he had a 28 percent impairment of the whole person based upon the DRE lumbar spine category V. (CE 1:45-46).

Dr. Segal continued with an impairment analysis related to the claimant's cervical diagnoses. (CE 1:46-47). Dr. Segal used the cervical DRE method and placed the claimant into either category II or category III, and noted that there were overlapping symptoms between the cervical radiculopathy and ulnar neuropathy. (CE 1:46). This made it difficult to differentiate between the two without performing a physical examination. (CE 1:46). Considering this, Dr. Segal placed the claimant into a DRE category II for "nonverifiable radicular complaints." (CE 1:46). Dr. Segal then used

Table 15-5 on page 392 of the Guides. (CE 1:46). He noted the claimant's clinical history, and the specific impacts of the condition on the claimant's activities of daily living in order to arrive at an 8 percent whole person impairment for the cervical issues. (CE 1:46-47). Dr. Segal moved on to his diagnosis of left ulnar neuropathy. (CE 1:47). Dr. Segal opined that the claimant had a 20 percent grip strength loss in his left upper extremity, which resulted in a 9 percent upper extremity impairment. (CE 1:47). He also had a sensory loss that combined to provide a 4 percent upper extremity impairment. (CE 1:47). Since Dr. Segal did not examine the claimant, he used measurements from the FCE in order to arrive at this judgment. (CE 1:47). Dr. Segal combined these ratings to arrive at a 13 percent upper extremity impairment, and then converted that to an 8 percent whole person impairment. (CE 1:47). Dr. Segal combined the 28 percent lumbar impairment with the 8 percent cervical impairment, and the 8 percent left ulnar neuropathy impairment to arrive at a 39 percent whole person impairment. (CE 1:47).

Dr. Segal then provided permanent restrictions based upon his review of the medical records and his conversation with Mr. Burroughs. (CE 1:47-48). Dr. Segal felt that Mr. Burroughs could no longer work in "a physical job such as he had before that work injury" since he had active radiculopathy that would continue to be aggravated. (CE 1:47). This aggravation could cause further permanent damage to the nerve and thus increase permanency of certain symptoms. (CE 1:47). Dr. Segal further opined that Mr. Burroughs' job options were "extremely limited," as he could no longer perform the type of physical activity required of him prior to the work injury. (CE 1:47). Dr. Segal opined that Mr. Burroughs' ambulation was compromised, though without physically examining the claimant personally, it is unclear how Dr. Segal arrived at this determination. (CE 1:47-48). Dr. Segal also opined that the claimant could not stand or walk for more than a couple minutes at a time due to certain neurologic deficits and pain. (CE 1:48). Dr. Segal recommended the following work restrictions for Mr. Burroughs:

- Sitting: 20 minutes, total 3 hours with breaks as needed
- Standing: 20 minutes at one time sit for 10 minutes, total 2 hours per day
- Walking: 15 minutes at one time sit for 10 minutes, total 1 hour per day
- Bending, one bend: Rarely
- Bending, repetitive: Never
- Reaching Overhead: Rarely
- Fine Motor left: Occasionally
- Fine Motor, repetitive left: Never
- Lifting: 20 pounds Occasionally, 30 pounds Rarely
- Carrying both arms: 20 pounds Occasionally, 30 pounds Rarely
- Carrying left arm: 5 pounds Occasionally, 10 pounds Rarely
- Pushing/Pulling: 40 pounds on wheels Occasionally
- Stairs, 1 flight: Rarely (needs to go up or down backwards and must have railing)
- Use of vibrating tools/machinery and vehicles: Never
- Kneeling: Never

- Crouching/Squatting: Never
- Ladders: Never

(CE 1:48). Dr. Segal proceeded to criticize the opinions of Dr. Levin and expressed his disagreement with the judgment of Dr. Levin. (CE 1:49).

Dr. Segal recommended that Mr. Burroughs be provided additional evaluations and treatment, which could include a spinal fusion. (CE 1:51). Without a fusion, Dr. Segal felt that Mr. Burroughs "may not improve and may get worse." (CE 1:51). If a fusion was not approved, then Dr. Segal speculated that Mr. Burroughs may require a spinal stimulator. (CE 1:52). Dr. Segal then provided a laundry list of possible future treatments, but simply noted that these procedures "could be necessary in the future." (CE 1:53).

On May 15, 2023, Bev Kornides, P.T., conducted a physical capacity evaluation of Mr. Burroughs at The Centers for Advanced Orthopaedics – Mid Maryland Musculoskeletal Institute. (CE 4:148-155). Ms. Kornides found that the claimant had the capability to lift and carry 10 pounds with both arms and both shoulders. (CE 4:148). The results of the tests were consistent and reliable according to Ms. Kornides. (CE 4:148). She found that Mr. Burroughs could complete 61.7 percent of the physical demands of his job as a truck driver and trainer. (CE 4:148). He could not successfully bend, squat, kneel, crawl, or perform dynamic balance off of the ground. (CE 4:148). Ms. Kornides opined that he could perform job tasks within the sedentary physical demand category, and that, based upon his sitting and standing capabilities, he was not capable of full-time work at the time of the appointment. (CE 4:148).

Ms. Kornides noted that the claimant was 30 minutes late for his appointment. (DE G:70). She found him to be "purposefully vague" in answering questions regarding relevant information. (DE G:70). Mr. Burroughs also neglected to tell Ms. Kornides about his employment with UPS and Amazon and noted that he "[a]ppeared frustrated that I asked about previous work history." (DE G:70-71). Ms. Kornides further agreed with a statement that, if the claimant performed work requiring continuous standing for handling packages, it would be inconsistent with the limitation which he described and demonstrated during the evaluation. (DE G:71). She also believed that Mr. Burroughs was "consistently underperforming" compared to his actual abilities. (DE G:71). She wrote, "[a]ppeared frustrated regarding testing items as he was bothered with the entire FCE/Frequently I explained that I am just attempting to safely gather data re: physical ability to perform work tasks." (DE G:71). Ms. Kornides noted that she completed the FCE and that her findings remained the same. (DE G:71).

Barbara Laughlin, M.A., of Laughlin Management, issued an employability assessment with respect to Mr. Burroughs on June 15, 2023. (CE 2:101-122). This assessment was performed at the request of claimant's attorney. (CE 2:101). Ms. Laughlin is a vocational consultant. (CE 2:126). Ms. Laughlin began her report by reviewing the claimant's medical history. (CE 2: 101-106). She then reviewed the claimant's military and educational history. (CE 2:106-107).

Ms. Laughlin reviewed Mr. Burroughs' employment history. (CE 2:107-111). Based upon the Dictionary of Occupational Titles, Ms. Laughlin then opined as to the exertional level required for each position. (CE 2:107). For various dry-cleaning positions, Mr. Burroughs worked in either a skilled or unskilled position with medium or light exertional level. (CE 2:107). Mr. Burroughs then worked as an asbestos removal worker and site supervisor. (CE 2:107-108). These positions were both unskilled and skilled, and medium or heavy exertional level. (CE 2:107-108). He then worked as a pollution control technician and asbestos removal worker. (CE 2:108). These positions were skilled and unskilled and light and heavy exertional level. (CE 2:108). He then worked as a site supervisor and with asbestos removal. (CE 2:108). These positions were skilled and unskilled and medium to heavy exertional level. (CE 2:108). His work at Kohl's was light and medium exertional level and skilled, semi-skilled or unskilled. (CE 2:109-110). His work at CRST was semi-skilled and medium exertional level. (CE 2:110). Mr. Burroughs' work at the auto auction was semi-skilled and light exertional level. (CE 2:110). His work with Amazon was either light or heavy exertional and semi-skilled or unskilled. (CE 2:110-111). His work at UPS was at the light exertional level or medium exertional level and was considered unskilled. (CE 2:111).

Ms. Laughlin opined that Mr. Burroughs was considered an older worker and thus there was "resistance to hiring and promotion." (CE 2:112).

Considering the claimant's work history and restrictions, Ms. Laughlin conducted a transferable skills analysis using the OASYS computerized transferable analysis program. (CE 2:113-116). Ms. Laughlin noted that if Dr. Levin's reports were utilized, Mr. Burroughs had no vocational impact. (CE 2:115). She further noted that the FCE at Baltimore Work Rehab was incomplete and "lacked evaluation of lifting and carrying," which resulted in an inability to run the OASYS program. (CE 2:115). Ms. Laughlin then used the restrictions provided by the FCE and found that Mr. Burroughs had a 100 percent occupational loss for occupations that closest matched his skills. (CE 2:115). He had a 98.2 percent occupational loss for "good match occupations," and a 99.9 percent occupational loss for unskilled occupations. (CE 2:115). The end result in that scenario was four occupations remaining to him. (CE 2:116). Ms. Laughlin then ran the OASYS program using the restrictions provided by Dr. Segal's report. (CE 2:116). Based upon these restrictions, Mr. Burroughs had a 98.4 percent occupational loss for closest match occupations, a 95.8 percent occupational loss for good match occupations, and a 99.0 percent loss for unskilled occupations. (CE 2:116). Ms. Laughlin goes on to point out that, with Dr. Segal's restrictions, the claimant met neither the criteria for sedentary nor light work. (CE 2:116). Therefore, Mr. Burroughs would be "essentially at less than sedentary work." (CE 2:116).

Ms. Laughlin next undertook a labor market analysis using the restrictions of the FCE. (CE 2:116-117). She identified a position as an election clerk that earned seventeen and 75/100 dollars ($17.75) per hour as a median wage. (CE 2:117). Using the restrictions provided by Dr. Segal, Ms. Laughlin found the job as an election clerk, a job as a maintenance dispatcher earning a median of nineteen and 80/100 dollars ($19.80) per hour, and a job as an appointment clerk at an AutoNation in Maryland, earning sixteen and 82/100 dollars ($16.82) per hour. (CE 2:117). Finally, she

identified a position as an animal shelter clerk that earned eighteen and 20/100 dollars ($18.20) per hour. (CE 2:117). An addendum to the report outlined the requirements and job descriptions for each of the foregoing positions. (CE 2:121-122).

John Parkerson, M.D., M.S., F.A.C.O.E.M., of Landover, Maryland, conducted an IME of the claimant on behalf of the defendant on May 25, 2023. (DE E:52-60). Dr. Parkerson is board certified in occupational medicine. (DE E:52). Dr. Parkerson issued a report outlining his findings on June 16, 2023. (DE E:52-60). He outlined the history provided by the claimant, including complaints of popping in his neck, no head complaints, and numbness in his bilateral hands. (DE E:52). He also had worsening back pain and foot numbness that caused difficulty with walking and driving. (DE E:52). Mr. Burroughs used exercises and hot baths to help his condition. (DE E:52). Dr. Parkerson then reviewed the pertinent medical records. (DE E:53-56).

Dr. Parkerson next outlined the findings of his examination of the claimant. (DE E:57). He observed that Mr. Burroughs walked with a slow, shuffling gait, and did not use any assistive device, like a cane. (DE E:57). He displayed no tenderness to palpation to the cervical spine. (DE E:57). Dr. Parkerson documented range(s) of motion in the claimant's cervical spine. (DE E:57). Mr. Burroughs displayed a dextroscoliotic posture in the lumbosacral spine, with tenderness over the right paravertebral musculature. (DE E:57). Dr. Parkerson documented range of motion measurements in the lumbar spine. (DE E:57). Dr. Parkerson felt that the claimant did not put forth a full effort for range of motion testing due to significant discrepancies between measurements. (DE E:60). He also opined that there was "a degree of symptom magnification." (DE E:60). Dr. Parkerson diagnosed the claimant as follows:

> Head injury without loss of consciousness, resolved
> Cervical spondylosis and disc degeneration, pre-existing
> Cervical sprain/strain, resolved
> Lumbar spondylosis, stable spondylolisthesis, and disc degeneration, pre-existing
> Lumbar sprain/strain
> Lumbar radiculopathy
> Non-Insulin-dependent diabetes mellitus with peripheral neuropathy
> Bilateral cubital and carpal tunnel syndromes

(DE E:58). Dr. Parkerson related only a portion of the current lower back issues to the August 13, 2019, work injury. (DE E:58). He opined that the fall aggravated underlying lumbar degenerative disease. (DE E:58). He further outlined that any head injury or cervical spine injury is resolved. (DE E:58). However, he continued to have underlying degenerative issues in his cervical spine. (DE E:58). Dr. Parkerson also concluded that any upper extremity neuropathy was not causally related to the work accident. (DE E:58). He attributed these neuropathies to the claimant's diabetes, as the claimant did not sustain an injury to his upper extremities, nor did he display any cervical radiculopathy. (DE E:58).

Like Dr. Levin, Dr. Parkerson placed the claimant at MMI on June 8, 2022. (DE E:58). He allowed the claimant to work full-time on a light duty basis, as the claimant's

back condition limited his functional activities. (DE E:58). He provided permanent restrictions of sitting, standing, and walking based upon Mr. Burroughs' pain tolerance. (DE E:58). Dr. Parkerson directed Mr. Burroughs to avoid any activities that would exacerbate his symptoms, "such as frequent bending and prolonged static positions." (DE E:58). Dr. Parkerson allowed the claimant to lift up to 15 pounds on a regular basis. (DE E:58).

Dr. Parkerson opined that the claimant had no permanent impairment due to his alleged head injury, as it had objectively and subjectively resolved without lingering issues. (DE E:59). Dr. Parkerson provided the claimant with a five percent whole person impairment rating based upon non-accident-related conditions. (DE E:59). He opined that no impairment resulted from the August 13, 2019, injury. (DE E:59). With regard to the lumbosacral injury, Dr. Parkerson opined that the claimant qualified for DRE lumbar category IV based upon Table 15-3 of the Guides. (DE E:59). Considering the minimal spondylosis and confirmed radiculopathy, the doctor assessed the claimant with a 20 percent whole person impairment. (DE E:59). He attributed 8 percent to the pre-existing condition, and 12 percent to the work incident. (DE E:59). He found that the claimant had a 10 percent permanent impairment to each upper extremity, but that none of it was due to the August 13, 2019, work incident. (DE E:60).

Ms. Laughlin issued a supplemental employability assessment on June 19, 2023, which included her opinions based upon the report of Dr. Parkerson. (CE 2:123-127). Ms. Laughlin opined that Mr. Burroughs could not perform "the full and wide range of light work." (CE 2:124). She further opined that Mr. Burroughs did not meet the criteria for either sedentary or light work with the restrictions provided by Dr. Parkerson. (CE 2:124). When Ms. Laughlin applied the restrictions of Dr. Parkerson, she found that Mr. Burroughs had a 92.7 percent occupational loss for the closest match occupations, an 87.8 percent occupational loss for good match occupations, and a 95.4 percent occupational loss for unskilled occupations. (CE 2:124). Ms. Laughlin then undertook labor market research and found positions as a maintenance service dispatcher, a taxicab starter, a check cashier, and an appointment clerk. (CE 2:125).

Ms. Laughlin concluded her report by opining that Mr. Burroughs would be unable to obtain and maintain competitive employment, as there were no jobs in any quality, quantity or dependability available to him. (CE 2:118).

Greg Macera, M.S., C.R.C., C.I.S.M., M.C.R.S.P., C.R.P., of Paradigm issued an "Employability Report" containing his opinions on Mr. Burroughs. (DE H:73-81). Mr. Macera has a masters degree in rehabilitation counseling from Boston University, and is a certified rehabilitation counselor. (DE I:82). He is also certified as a Maryland Workers' Compensation Commission Rehabilitation Service Provider. (DE I:82). Mr. Macera reviewed a number of medical records and information also included in the record. (DE H:73). He attempted to interview Mr. Burroughs via Zoom, but claimant's counsel could not attend the meeting. (DE H:73). Mr. Macera did not feel comfortable meeting with Mr. Burroughs without his counsel present since his counsel scheduled the meeting and requested being present on Zoom. (DE H:73). Mr. Burroughs attempted to record the meeting, but Mr. Macera objected to the same. (DE H:73). Mr. Macera had to reschedule the interview for a different date. (DE H:73).

Mr. Burroughs reported pain all the time in his feet, shoulder, neck, and back. (DE H:74). He rated his pain between 7 and 9 out of 10. (DE H:74). Sitting, standing, and walking alleviated the pain. (DE H:74). Mr. Macera outlined Mr. Burroughs' physical capabilities, placing him in the light duty physical demand category on a full-time basis. (DE H:75). He noted that Mr. Burroughs could lift 15 pounds on a regular basis, sit, stand, and walk in accordance with his pain tolerance, and avoid frequent bending and static positions. (DE H:75). Mr. Macera then reviewed the claimant's previous employment positions, and categorized them by their exertional and skill levels. (DE H:75-78). Mr. Macera opined that, based upon his background and skills, Mr. Burroughs possessed the following skills that made him a "valuable candidate in alternative employment:"

- Knowledge of commercial driving regulations and area roads
- Knowledge of merchandise and commodities being transported
- Knowledge of state and federal regulations in completing truck logs
- Skills with inspecting truck equipment and supplies according to safety standards
- Ability to travel long and short distances
- Ability in making decisions and judgments regarding safety in vehicle repair and maintenance
- Knowledge of protocols for emergency roadside repairs
- Knowledge in cargo coordination and logistics, production work and safety protocols
- Construction experience and supervisory skills
- Basic Sales

(DE H:78). Mr. Macera further concluded that, based upon his experience, if a driver wished to remain in the transportation industry, but could no longer drive, they would be considered an asset for transportation companies. (DE H:78). This included positions such as: transportation dispatcher, cargo coordinator, transportation maintenance, transportation recruiting, instructor, fleet service manager, and safety inspector, amongst others. (DE H:78). Furthermore, these positions are noted to have high turnover, and therefore there is a high demand for these positions. (DE H:78).

Mr. Macera felt that Mr. Burroughs was capable of searching for jobs, interviewing successfully, and obtaining employment as evidenced by his previous positions with Amazon, UPS, and the auto auction. (DE H:80). Mr. Macera next undertook a labor market survey. (DE H:79). He identified five positions within the transportation industry to which Mr. Burroughs' skills would transfer. (DE H:79). These positions were a sedentary semi-skilled position as an assignment clerk, a light duty skilled position as a dispatcher, a light duty skilled position as a safety coordinator, a sedentary skilled position as a driver recruiter, and a light duty skilled position as a vocational training instructor. (DE H:79). Mr. Macera identified ten different jobs in the Maryland area that fit within these positions. (DE H:79-80). Some of these positions were part-time positions, which had the capability of turning into full-time positions. (DE H:81).

Mr. Macera testified on behalf of the defendants. (Testimony). He continued to work for Paradigm as a vocational case manager. (Testimony). He has worked in the field for the last 30-plus years, and testified that he dealt with attempting to put injured workers back to work. (Testimony). As part of his job, he reviewed Mr. Burroughs' case, met with him, and reviewed a report produced by Ms. Laughlin. (Testimony). Mr. Macera testified that he believed that Mr. Burroughs possessed the skills necessary to obtain employment. (Testimony). He recounted several other truck drivers with similar physical limitations who he secured positions for over the previous years. (Testimony). Mr. Macera identified courier jobs, car shuttle jobs, driver recruiter positions, and customer service positions that "would utilize his years of experience in the transportation industry." (Testimony). Mr. Macera testified that the claimant's history of supervisory positions and DOT knowledge presented "valuable skills that employers look for in today's day and age." (Testimony). Mr. Macera concluded that Mr. Burroughs having the flexibility to move to new labor markets increases his potential employment opportunities. (Testimony).

On June 28, 2023, Dr. Segal issued an addendum to his previous report following review of several medical records, surveillance records, and an IME conducted by John Parkerson, M.D. (CE 1:77-86). Dr. Segal leads off his report by opining that he continued to hold all of the conclusions from his previous report. (CE 1:77). Dr. Segal outlined another phone interview that he conducted with Mr. Burroughs on June 27, 2023. (CE 1:78). According to Mr. Burroughs, he attempted three jobs since his injury, and his pain or symptoms precluded him from completing these jobs. (CE 1:78). As discussed further herein, this contradicts some of the evidence in the record, and calls into question both the credibility of Mr. Burroughs and the persuasiveness of Dr. Segal's report(s). (CE 1:78). Dr. Segal provides comments on the various medical records which he reviewed. (CE 1:78-82). I did not find Dr. Segal's commentary of value, so the specific comments are not reviewed herein. Dr. Segal then indicated his disagreement with the IME conducted by Dr. Parkerson. (CE 1:82-86). Dr. Segal states that it is unclear whether Mr. Burroughs has been diagnosed with diabetes and whether or not he has neuropathy therefrom. (CE 1:83-84). He expressed confidence that the nerve issues experienced by Mr. Burroughs were due to radiculopathy and not diabetic neuropathy. (CE 1:84). Dr. Segal felt that the surveillance videos contradicted any evidence of symptom magnification. (CE 1:86).

Dr. Segal issued another supplemental report on July 12, 2023, which again indicates no change to his opinions. (CE 1:99-100).

Dr. Levin responded to a check-box letter from defendant's counsel dated July 17, 2023. (DE U:142-144). He agreed that Mr. Burroughs could return to work full duty with no restrictions, and noted: "Mr. Burroughs underwent an uncomplicated minimally invasive outpatient lumbar decompression on 11/8/2020. Accordingly, once recovered, there are no contraindications to resuming regular functional capacity from a spine surgical standpoint, and no permanent disability from a spine surgical standpoint." (DE U:142). Dr. Levin reiterated his belief that Mr. Burroughs displayed signs of symptom magnification during his treatment. (DE U:142-143). Dr. Levin confirmed that he conveyed to Mr. Burroughs that he would be happy to examine him again. (DE U:143).

Dr. Levin agreed that his office had no record of Mr. Burroughs requesting any follow-up appointments following June of 2022. (DE U:143). Dr. Levin noted no symptoms identified regarding post-concussive conditions. (DE U:143). He concluded by agreeing that, if Mr. Burroughs requested follow-up care, he was willing to examine and treat him. (DE U:144).

At the time of the hearing, Mr. Burroughs was located in Maryland. (Testimony). He testified that he was homeless and living out of his vehicle for at least the last two years. (Testimony). He noted sleeping in homeless shelters, parks, and living in his children's homes and out of his vehicle. (Testimony). He testified that he left his son's home in Texas because the situation was "untenable" for him, as he needed increasing help and had no money. (Testimony).

At the time of the hearing, Mr. Burroughs testified that he experienced pain every minute of every day. (Testimony). He did not have feeling in his feet. (Testimony). He experienced jolts of pain that made him jump. (Testimony). He did not drive anymore due to these jolts. (Testimony). He also noted falling due to numbness in his legs. (Testimony). Walking, standing, laying down, and moving the wrong way all increase the claimant's back pain. (Testimony). He no longer turned his head to the left, as it caused electrical pain in his left side. (Testimony). He also experienced numbness and tingling in his left arm. (Testimony). He testified to difficulties getting and staying asleep. (Testimony).

He testified that he may have received medical care in 2010 for his lower back, but he never had any neck issues or left arm issues. (Testimony). He testified that prior to the work incident, he was in good health, ran six miles per day on average, played soccer, and played basketball. (Testimony). He worked without any permanent restrictions. (Testimony). He testified that since his injury, he developed high blood pressure, which he attributed to the amount of pain he was in. (Testimony).

The claimant sought employment through a temporary agency. (Testimony). Glenn Dorris, of Beacon Staffing, testified on behalf of the defendant. (Testimony). He testified that Beacon Staffing ensured that Mr. Burroughs could walk, stand, enter and exit vehicles, work in the rain, and work outdoors, due to the demanding nature of a position they placed Mr. Burroughs with at an auto auction. (Testimony). If a potential employee provided Beacon Staffing with certain restrictions, Mr. Dorris testified that he would send the potential employee to a difference position. (Testimony). Mr. Dorris testified that Mr. Burroughs did not see any reason for concern with placing Mr. Burroughs at the auto auction, as he did not claim any restrictions. (Testimony).

While working at the auto auction, Mr. Burroughs moved cars and drove cars through the auction on a full-time basis. (Testimony). He earned fourteen and 50/100 dollars ($14.50) per hour. (Testimony). He testified that he could not continue working that job because it required too much walking. (Testimony). He testified further that he was not aware that the job was physically demanding when he accepted the assignment from the temporary agency. (Testimony). He admitted that the auto auction sent him a text message indicating that he was doing a great job. (Testimony). Mr. Dorris further testified that the claimant had no issues with performing his job

functions. (Testimony). He recounted asking coworkers for help in retrieving cars. (Testimony). He was terminated from this position, in his view, because he fell several times. (Testimony). He testified that he was told that he stole services from the auto auction in the form of a discounted oil change. (Testimony). He testified that he felt he could not perform the functions of that job, anyway. (Testimony).

Mr. Dorris testified that Mr. Burroughs was released from employment with the auto auction for two specific reasons. (Testimony). The first was the above-noted maintenance on his personal vehicle. (Testimony). The second was an incident in which Mr. Burroughs claimed to have hit himself in his face with a door causing a broken tooth; however, when the auction reviewed video evidence, they found the claimant sleeping in the back of a vehicle. (Testimony).

In summer or fall of 2022, Mr. Burroughs worked at an Amazon Fulfillment Center. (Testimony). He initially applied to be a supervisor, but he ended up sorting packages. (Testimony). Mr. Burroughs was offered a full-time position with Amazon as a sortation associate on August 25, 2022. (DE M:98). He would be earning nineteen and 00/100 dollars ($19.00) per hour. (DE M:98). He testified that he was late a lot or missed a lot of work, and then after being hired as a permanent employee, he was fired due to his tardiness. (Testimony). A letter from Amazon indicated that Mr. Burroughs was involuntarily terminated on September 14, 2022. (DE M:99). He testified that he could not do this job because he was required to stand too much. (Testimony).

Mr. Burroughs also worked at UPS in Gaithersburg, Maryland. (Testimony). He initially applied for a supervisory position there, but he was provided a seasonal position on a small belt. (Testimony). He stacked empty bags, lifted bags and boxes, and placed packages on a belt. (Testimony). He was fired from this job, but was rehired after his union filed a grievance on his behalf. (DE D:29). Following his return to UPS, he scanned packages on a conveyor belt in order to determine on which truck the package should be placed. (DE D:29). The position required no lifting, and he worked four hours per day for four to six days per week. (DE D:29). He testified in his deposition that he previously was “written up” for poor performance due to his alleged difficulty standing. (DE D:29). He acknowledged in his deposition that he never told UPS about any restrictions on his work activity because “then [he] wouldn’t have gotten [*sic*] a job.” (DE D:32).

Ms. Mentzer testified that CRST still considered Mr. Burroughs an employee, and that if he obtained DOT requalification or recertification, he would be welcomed back as a driver. (Testimony). Mr. Burroughs testified in his deposition that no one from CRST ever contacted him to discuss returning to work. (DE D:38).

Mr. Burroughs testified that he knew what certain computer programs like Microsoft Excel and Microsoft Word were, and had used them; however, he was not comfortable using them and noted difficulty typing. (Testimony). He owned a tablet, but did not have a home computer. (Testimony).

Mr. Burroughs applied for Social Security Disability benefits, but was turned down. (DE D:31-32).

Finally, the record included some selected surveillance images. The claimant was seen in these videos walking unsteadily and grabbing at his back on at least one occasion.

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 Rule of Appellate Procedure 6.904(3).

Causation

There is a dispute in this case as to whether the claimant's injury is a cause of permanent disability. There are a number of conflicting opinions as to this issue.

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.

Iowa employers take an employee subject to any active or dormant health problems, and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is "proximate" when it is a substantial factor, or even the primary or most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

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 an employer is being pursued. It is only when there is 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. Ce. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

It is well settled in Iowa that an employer is liable for all consequences that naturally and proximately flow from an accident to an employee in the usual course of their employment. Oldham v. Scofield & Welch, 222 Iowa 764, 767-68, 266 N.W. 480, 482 (1936). Further disability is compensable when the further disability is the proximate result of the original injury. Id.

The claimant injured himself when he fell backwards from a height off of his semi-truck on August 13, 2019. The result of the fall was injuries to the claimant's back and neck. He also alleges an injury to his left arm. Mr. Burroughs underwent treatment for a lengthy period of time. The course of his treatment was complicated by his moving from Georgia, to New Jersey, to Texas, and eventually to Maryland. It was also further complicated by the claimant's homelessness.

By January of 2020, Mr. Burroughs was diagnosed by Dr. Foster with a cervical strain, mild bilateral neural foraminal stenosis, lumbar strain, disc issues in the lumbar spine, bilateral cubital tunnel syndrome, and bilateral carpal tunnel syndrome. After moving to New Jersey, Mr. Burroughs established care with Dr. Levin. In his initial appointment with Dr. Levin, it was recommended that Mr. Burroughs proceed with a surgical decompression and stabilization procedures to "reestablish foraminal heights at L4-5 and L5-S1" following the failure of conservative care. Mr. Burroughs was set to have the surgical procedure performed, but was found to have uncontrolled diabetes. Once the diabetes and blood sugar issues were controlled, Dr. Levin performed an L4-5 bilateral decompressive laminectomy with decompression of the L5 nerve roots bilaterally and L4 nerve roots, along with an L5-S1 bilateral foraminotomy. Following initial improvement, Mr. Burroughs' pain returned.

Several doctors have opined as to whether Mr. Burroughs' August 13, 2019, work injury caused permanent disability. The first was an opinion based upon a records review by Dr. Wojciehoski. Dr. Wojciehoski opined that Mr. Burroughs had no permanent impairment based upon the Guides. Dr. Wojciehoski's opinion is quite brief. It is based upon a medical record review. It holds the least amount of weight in my review of the record.

Dr. Segal conducted an IME via Zoom on the claimant, and opined that Mr. Burroughs' August 13, 2019, fall caused him to sustain permanent impairment to his lower back, neck, and left elbow. Dr. Segal provided a thorough analysis and outline of the reasons for his causation opinions. He also opined that the claimant had a concussion and post-concussion syndrome. He is the only doctor to diagnose the claimant with these issues. Based upon a lack of sufficient evidence, I find that the claimant did not carry his burden of proof to show that he sustained a permanent disability based upon a concussion or post-concussion syndrome. There is not objective evidence in the record that was convincing to show any lingering head injury or issues. No other provider diagnosed the claimant with a head injury or concussive-type issue.

Dr. Parkerson, who performed an IME on behalf of the defendant, opined that the claimant sustained permanent impairment due to his lumbar issues. He also opined that the claimant had permanent impairment due to other issues; however, he opined that these were not connected to the August 13, 2019, work incident. Dr. Parkerson's opinion is quite odd, as he apportions impairment rating between non-accident-related impairments and accident-related impairments. There is no indication that the defendant is arguing for apportionment. This casts doubt on Dr. Parkerson's opinions. Additional doubt is cast on Dr. Parkerson's opinions, in that he provided limited to no justification or evidence as to how he arrived at his apportionment figures. Finally, the evidence points to the fact that the claimant was not having a majority, if any, of the claimed symptoms prior to his fall, and then began experiencing them shortly thereafter.

I find the opinions of Dr. Segal with regard to causation to be the most persuasive. He provided the most thorough account and explanation of the claimant's symptoms. These opinions are bolstered to some extent by the opinions of Dr. Parkerson. Even though his opinions are quite odd on their own, Dr. Parkerson's opinions support the proposition and conclusions of Dr. Segal that the August 13, 2019, work incident caused permanent impairment to the claimant's low back, neck, and left arm. Additionally, Mr. Burroughs' testimony and the medical records support this proposition. While Mr. Burroughs absolutely displayed symptom magnification as noted by several physicians, it does not outweigh the relevance of the other items as noted by Dr. Segal and Dr. Parkerson. However, as noted above, I find insufficient evidence that the claimant sustained a permanent injury or disability involving a concussion or post-concussion syndrome.

Permanent and Total Disability

Before moving on to discussion of other alleged issues, such as entitlement to healing period benefits or temporary disability benefits, I want to first examine whether the claimant has proven that he is permanently and totally disabled.

The claimant alleges that his permanent disabilities have caused him to be permanently and totally disabled under the odd-lot doctrine.

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. State, 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 based upon the statutory definition. Therefore, the question is whether the claimant is permanently and totally disabled pursuant to the odd-lot doctrine.

At the time of the hearing, the claimant was 58 years old. He is a high school graduate, who received average grades. He proceeded to pursue post-high school training through Brownsville Minority Workers' Training program, Big Apple in New York City, and Rutgers University. His training at these places, and a number of certifications, confirm that he obtained education in environmental and asbestos remediation. This included working in site investigation, site classification, removing asbestos, and performing air and water testing. After all of his subsequent training and education, Mr. Burroughs had enough credits to obtain an associate's degree; however, he was never officially awarded one. Overall, it seems that Mr. Burroughs is of average intelligence.

The claimant worked for a time in the dry-cleaning industry. He performed a number of tasks including working in machine maintenance, cleaning, and pressing, clothes. He described this work as less physically demanding. Mr. Burroughs also worked in various roles in environmental remediation, which included performing site investigations, containment set up, and decontamination. He described this work as physically demanding, requiring a great deal of climbing and bending. He then worked as a floor manager at a Kohl's distribution center.

Starting in 2018, Mr. Burroughs worked as a truck driver for CRST. This position required him to drive a semi-truck. He did not testify much as to the physical requirements of the position. The defendant's exhibits contained a job description. The claimant was expected to transport and deliver products, drive a truck, meet DOT standards, communicate effectively, perform simple math. Occasionally, he would be expected to load and unload trailers, handling weights up to 75 pounds. He also was to potentially have to stand, sit, bend, reach, stoop, and see for two hours or more per day. He eventually was promoted to a driver lead position where he trained new drivers. Upon completion of their training, the new driver would drive with Mr. Burroughs as a team driver for a short period of time.

Mr. Burroughs has a relatively diverse background of employment. His experience is across the dry-cleaning industry, environmental remediation, at a clothing distribution center, and in the transportation industry. This shows a tremendous ability to learn new skills and industries, and indicates a strong propensity for retraining.

As noted in my discussion of causation, there are four main medical opinions as to the claimant's restrictions and/or permanent impairment. There also are opinions from two FCEs. The first opinion was from Dr. Wojciehoski in his records review of August 5, 2021. Dr. Wojciehoski, who is board certified in internal and emergency medicine, felt that the claimant had no permanent impairment based upon the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. He listed no restrictions in his report. Dr. Wojciehoski's report is relatively sparse and does not contain sufficient detail to allow me to evaluate how he arrived at this conclusion. Dr.

Wojciehoski also never examined the claimant. This casts doubt on his opinions and evaluation pursuant to language in the Guides regarding evaluations of permanency.

The next opinion is from Dr. Levin. Dr. Levin performed the surgical procedure on the claimant, and followed up with him after the surgery. In June of 2022, Dr. Levin opined that Mr. Burroughs could return to work full duty with no restrictions. Dr. Levin provided no opinions on permanent impairment.

The next opinion is provided by Dr. Segal. Dr. Segal opined that, as a result of the claimant's August 13, 2019, work injury, he sustained permanent impairment. Specifically, Dr. Segal diagnosed the claimant with the following:

Lumbar Spine:

1. Spondylolisthesis L4-L5
2. Lumbar spinal instability L4-L5
3. Disc herniation L4-L5 and L5-S1
4. Annular tear
5. Spinal and foraminal stenosis L4-L5 and L5-S1
6. Lumbar radiculopathy, bilateral but primarily left L4 and L5 nerve root signature
7. Status post lumbar decompression L4-L5 and L5-S1
8. Post laminectomy syndrome
9. Permanent aggravation/acceleration of degenerative spine disease
10. Permanent aggravation/acceleration of facet arthropathy/SI joint arthropathy
11. Mechanical low back pain syndrome

Cervical Diagnoses:

1. Cervical radiculopathy (primarily right C6 and C7)
2. Disc bulge/herniation C5-C6
3. Traumatic cervical facet arthropathy
4. Occipital neuralgia

Left Elbow:

1. Ulnar neuropathy

Traumatic Brain Injury and Post-Concussive Syndrome:

1. Traumatic Brain Injury and Concussion

2. Post-concussion syndrome with cognitive and language deficits, memory deficits, tinnitus and hearing deficit, balance deficits, sleeping disturbance, post traumatic headache, as well as psychiatric sequelae of brain injury with emotional lability.

(CE 1:28-29). I previously determined that the diagnoses regarding concussion or post-concussive syndrome were not related to the work injury of August 13, 2019, due to a lack of evidence. Dr. Segal found the claimant to have a 28 percent whole person impairment based upon the DRE lumbar spine category V. He provided the claimant with an 8 percent whole person impairment based upon his cervical issues. Finally, he provided the claimant with an 8 percent whole person impairment for his left ulnar neuropathy issues. These impairments combined to a 39 percent whole person impairment. Dr. Segal also provided the claimant with permanent work restrictions as follows:

- Sitting: 20 minutes, total 3 hours with breaks as needed
- Standing: 20 minutes at one time sit for 10 minutes, total 2 hours per day
- Walking: 15 minutes at one time sit for 10 minutes, total 1 hour per day
- Bending, one bend: Rarely
- Bending, repetitive: Never
- Reaching Overhead: Rarely
- Fine Motor left: Occasionally
- Fine Motor, repetitive left: Never
- Lifting: 20 pounds Occasionally, 30 pounds Rarely
- Carrying both arms: 20 pounds Occasionally, 30 pounds Rarely
- Carrying left arm: 5 pounds Occasionally, 10 pounds Rarely
- Pushing/Pulling: 40 pounds on wheels Occasionally
- Stairs, 1 flight: Rarely (needs to go up or down backwards and must have railing)
- Use of vibrating tools/machinery and vehicles: Never
- Kneeling: Never
- Crouching/Squatting: Never
- Ladders: Never

(CE 1:48).

Dr. Parkerson performed an IME on behalf of the defendant. Dr. Parkerson concluded that the claimant qualified for a DRE lumbar category IV rating based upon Table 15-3 of the Guides. As a result, he provided a 20 percent whole person impairment for lumbosacral issues. With no explanation for why he did so, Dr. Parkerson attributed 8 percent of the rating to a pre-existing condition and 12 percent to the work incident. He then provided the claimant with a 10 percent impairment to each upper extremity, but then attributed none of this impairment as being caused by the August 13, 2019, work injury. Dr. Parkerson allowed the claimant to work full time, but on a light duty basis with permanent restrictions of sitting, standing, and walking, based upon the claimant's pain tolerance, and avoiding any activities that would exacerbate

his symptoms such as frequent bending or prolonged static positions. Dr. Parkerson also restricted the claimant to lifting no more than 15 pounds on a regular basis.

In February of 2023, Mr. Burroughs attended an FCE in Baltimore, Maryland, as conducted by Dr. Winston. The FCE was limited due to Mr. Burroughs' excessive hypertension, which is attributed to his high levels of pain. The result of this was the removal of major portions of the FCE evaluation. Nevertheless, Dr. Winston found the claimant to have provided appropriate levels of physical effort. Mr. Burroughs displayed the ability to stand, walk, push a 40 pound cart, pull a 40 pound cart, balance, kneel, and climb stairs. He displayed limitations with sitting or crouching. Dr. Winston opined that the performance by Mr. Burroughs would preclude him from returning to work as a truck driver.

The second FCE was performed by Ms. Kornides, also in Maryland. Mr. Burroughs arrived 30 minutes late to the appointment, neglected to tell Ms. Kornides about his employment at UPS and Amazon, and also appeared to answer questions in a "purposefully vague" manner. Ms. Kornides also found Mr. Burroughs to consistently underperform during the FCE; however, she does not elaborate as to how she arrived at this opinion. Despite these opinions, Ms. Kornides found the claimant had a valid FCE on May 15, 2023. She found that he could carry up to 10 pounds with both arms and shoulders. However, he could not successfully bend, squat, kneel, crawl, or perform dynamic balance off of the ground. She also found that he could complete 61.7 percent of the physical demands of work as a truck driver and trainer. Ms. Kornides concluded that Mr. Burroughs could perform job tasks within the sedentary physical demand category, but that he was not capable of full-time work at the time of the FCE due to his sitting and standing capabilities.

It should be noted that, subsequent to his treatment and surgery, Mr. Burroughs attempted to work at three locations. Unfortunately, for various reasons, his efforts to return to work at three separate locations were unsuccessful. His first attempt at a job was at an auto auction in Maryland. He was placed in this position through a temporary employment agency. He testified that the position was too difficult for his physical condition. The greater weight of the evidence casts doubt on this, as there were several instances that led to the claimant's firing. There is a text message indicating that the claimant was performing his job well. There were also two incidents indicating dishonesty by the claimant towards his employer. I found the testimony offered by Mr. Dorris to be accurate and credible. Mr. Dorris has no vested interest in this case, and therefore has no reason to provide inaccurate testimony as to his knowledge of the dispute between Mr. Burroughs and the auto auction.

Mr. Burroughs then worked at an Amazon location. He sorted light packages, but the job required him to be on his feet for long periods of time. He testified that he missed a great deal of work due to his ongoing pain and issues. The veracity of this is bolstered by the fact that the claimant was fired for tardiness or attendance issues shortly after being offered a permanent position with Amazon.

Mr. Burroughs then worked at UPS in Gaithersburg, Maryland. He stacked empty bags, lifted boxes and bags, and placed small packages on a belt. He then

scanned packages to sort them onto different trucks. This position required no lifting, and allowed him to work four hours per day for four to six days per week. He worked there until he was written up for poor performance due to his difficulties standing. He was fired from this position, but rehired after a union grievance. Mr. Burroughs testified that this position was difficult to perform in light of his injuries.

Mr. Burroughs never provided his work restrictions to any of the above employers. He testified that he felt that he would not have been offered work at these locations had he provided them with his restrictions. While the defendant argues that the claimant performed well at the above jobs, the evidence indicates that Mr. Burroughs left the jobs at Amazon and UPS due to performance issues. I have no reason to disbelieve the testimony of Mr. Burroughs that his low back issues and ongoing pain caused him to have performance problems at Amazon and UPS. I do have concerns about the claimant's job at the auto auction, but those concerns are ultimately outweighed by the bulk of the evidence. Mr. Burroughs did not provide evidence that he applied to any other jobs following his departure from UPS.

Finally, there are two conflicting vocational expert reports. The first report, provided by Ms. Laughlin, at the request of claimant's counsel, used the OASYS computer program to run an analysis as to the claimant's employability. Ms. Laughlin performed a transferable skills analysis using the opinions of Drs. Levin and Segal, along with those provided by the valid FCE. She found that there would be no vocational impact if the restrictions of Dr. Levin were found to be applicable. If the FCE restrictions were used, she found that Mr. Burroughs had a 100 percent occupational loss for occupations defined as closest matches to his skills, a 98.2 percent occupational loss for "good match occupations," and a 99.9 percent occupational loss for unskilled occupations. The end result based upon the FCE restrictions was four occupations available to Mr. Burroughs. Ms. Laughlin then ran the program using Dr. Segal's restrictions. Based upon these restrictions, Mr. Burroughs had a 98.4 percent occupational loss for his closest match occupations, a 95.8 percent occupational loss for good match occupations, and a 99.0 percent loss for unskilled occupations. Ms. Laughlin found that Dr. Segal's restrictions made it so that the claimant failed to meet the criteria for sedentary or light duty work, thus placing Mr. Burroughs at "essentially less than sedentary work." (CE 2:116).

Ms. Laughlin also performed a labor market analysis in which she identified four jobs in the Maryland area which Mr. Burroughs may be capable of performing based upon his restrictions. These positions included an election clerk, a maintenance dispatcher, an appointment clerk, and an animal shelter clerk. Ms. Laughlin concluded that Mr. Burroughs would not be able to obtain and maintain competitive employment, as there were no jobs in any quality, quantity, or dependability available to him.

The defendants point to their vocational expert Greg Macera. Mr. Macera drafted an "Employability Report." Mr. Macera placed the claimant in a light duty physical demand category on a full-time basis based upon Mr. Burroughs' physical capabilities. Mr. Macera opined that Mr. Burroughs could lift 15 pounds on a regular basis, sit, stand, and walk in accordance with his pain tolerance, and should avoid frequent bending and static positions. These are the restrictions provided by Dr. Parkerson. Of note, Mr.

Macera does not appear to have been provided with the opinions of Dr. Levin or Dr. Segal or the results of both of the FCEs. Mr. Macera opined that Mr. Burroughs' experience in the transportation industry was an asset and outlined various skills that may be transferable to various transportation positions that were not driver positions. Mr. Macera did not perform analysis indicating that the claimant could perform these positions with the restrictions provided by Dr. Parkerson. Mr. Macera conducted a labor market analysis and found five positions that he felt were suitable for Mr. Burroughs. These positions included a sedentary semi-skilled position as an assignment clerk, a light duty skilled position as a dispatcher, a light duty skilled position as a safety coordinator, a sedentary skilled position as a driver recruiter, and a light duty skilled position as a vocational training instructor. Mr. Macera then found ten different jobs in the Maryland area fitting within the foregoing categories.

Mr. Burroughs sustained injuries to his neck, low back, and left arm, when he fell from a truck in August of 2019. These injuries necessitated surgery. The surgery appears to have been unsuccessful based upon the very detailed opinions of Dr. Segal. While there is an argument that Mr. Burroughs was magnifying his symptoms, there is objective medical evidence, as documented by Dr. Segal, that the claimant has serious ongoing issues. Dr. Segal provided opinions that are most persuasive in this matter. The only other doctor who provided opinions that are mildly persuasive, are those of Dr. Parkerson. Even Dr. Parkerson concedes that the claimant sustained permanent disability as a result of the August of 2019 fall. While his restrictions are not as stringent, they still result in occupational loss. Dr. Levin was the treating physician; however, Dr. Segal quite astutely rebuffs the opinions of Dr. Levin using objective evidence from the medical records. The opinions of Dr. Segal are backed by the testimony of the claimant and the medical evidence in the record, including the results of the FCE.

Moreover, the opinions of Ms. Laughlin are most persuasive as to the claimant's vocational capabilities. Ms. Laughlin performed a thorough analysis using the restrictions of Dr. Levin, the restrictions found in the FCE, and the restrictions provided by Dr. Segal. Based upon these, she only identified four jobs in the Maryland area for which Mr. Burroughs may qualify. Mr. Macera's vocational report was not based on the breadth of the evidence insofar as he does not appear to have been provided with Dr. Segal's report. Even without that, Mr. Macera only found ten jobs in a limited amount of categories in the Maryland area.

Based upon the evidence in the record as noted herein, I find that the claimant produced substantial evidence that he is not employable in the competitive labor market. Therefore, the burden to provide evidence showing availability of suitable employment shifts to CRST. CRST's own vocational expert, Mr. Macera, concludes that there are very few jobs available to the claimant. The defendants do not present any other persuasive evidence to prove availability of suitable employment. Their argument that the claimant could work by pointing to his experience at Amazon and UPS rings hollow, as the claimant was let go from those jobs due to attendance and performance issues stemming from his lower back pain and physical limitations. The overwhelming

weight of the evidence points to the claimant being permanently and totally disabled based upon considerations related to the odd-lot doctrine.

Dr. Segal determined that Mr. Burroughs achieved MMI for his neck and left elbow on February 11, 2020, and for his lumbar spine on June 8, 2022. Based upon Dr. Segal's opinions, I find that the claimant's permanent total disability benefits should commence on June 8, 2022, as the bulk of his restrictions that limit his employability in the competitive labor market stem from his lumbar spine issues.

Temporary Disability and/or Healing Period Benefits

The claimant seeks healing period benefits from August 14, 2019, to June 8, 2022. In the hearing report, the claimant indicates that these benefits are only sought "…if Claimant is not permanently and totally disabled." Since I found the claimant is permanently and totally disabled, it appears that these benefits are no longer in dispute.

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.

The claimant argues that his gross earnings were nine hundred sixty-seven and 36/100 dollars ($967.36) per week. The defendant asserts that the claimant's gross earnings were eight hundred fifty-six and 60/100 dollars ($856.60) per week. The claimant was paid on a weekly basis. The dispute between the parties is the inclusion of two weeks of pay, May 22, 2019 to May 28, 2019, and June 19, 2019 to June 25, 2019, in the calculation of the weekly rate. The claimant argues that the June 19, 2019, to June 25, 2019, period should be excluded because the claimant only delivered one load, and then went on "home time" until early July of 2019. The claimant asserts that this week is not representative of the claimant's earnings. The defendant argues that the claimant's exclusion of these two weeks results in a rate calculation based upon only 11 weeks of earnings, and not 13 weeks, as required by the law. The defendant asserts that including these two weeks fairly represents the claimant's customary earnings.

Mr. Burroughs was paid based upon the mile. Therefore, Iowa Code section 85.36(6) applies. 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.

For the week of May 15, 2019, to May 21, 2019, the claimant earned two hundred forty-five and 28/100 dollars ($245.28). For the week of June 19, 2019, to June 25, 2019, the claimant earned two hundred eighty-nine and 59/100 dollars ($289.59). After reviewing the pay records provided, it is shown that during the thirteen weeks immediately preceding the work incident, these two weeks are unique insofar as they are the only weeks that the claimant did not come close to at least five hundred seventy-five and 00/100 dollars ($575.00) in earnings. The defendant included two pay periods that were not a fair representation of the claimant's earnings in the thirteen weeks preceding the work incident. Therefore, it is appropriate to replace those two weeks with representative weeks. However, there is no evidence in the record that provides me with any alternative pay periods to replace the two in question. Considering the statute and the burden remaining with the claimant, I find that the claimant failed to carry their burden on this issue. I simply cannot calculate a rate based upon 11 weeks when the statute dictates replacing incorrectly calculated weeks with additional weeks.

For the reasons set forth above, I conclude that the claimant's gross weekly wages are eight hundred fifty-six and 60/100 dollars ($856.60). The claimant is single and entitled to one exemption. Thus, the claimant's weekly workers' compensation rate is five hundred thirty-nine and 29/100 dollars ($539.29).

Payment of Medical Expenses

There is a dispute as to unauthorized medical expenses incurred by the claimant on December 25, 2020.

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); McClellon 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. Woodward 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. Veith Construction Corp., File No 5044438 (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).

Nothing in Iowa Code section 85.27 prohibits an injured employee from selecting his or her own medical care at his or her own expense following an injury. Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 205 (Iowa 2010). In order to recover the reasonable expenses of the care, the employee must still prove by a preponderance of the evidence that unauthorized care was reasonable and beneficial. Id. The Court in Bell Bros. concluded that unauthorized medical care is beneficial if it provides a "more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id. Iowa Code section 85.27(4) also allows for a claimant to choose their own care at the employer's expense in the event of an emergency, provided an agent for the employer cannot be immediately reached.

On December 21, 2020, Mr. Burroughs visited with Dr. Levin. He reported falling after exiting a vehicle, and that his physical therapist requested medical clearance from Dr. Levin before he would continue therapy. Dr. Levin found no change in the claimant and allowed him to continue physical therapy.

On December 25, 2020, Mr. Burroughs reported to an emergency room in Newark, New Jersey. He complained of worsening back pain, that he rated 10 out of 10. He also complained of lower extremity and foot numbness. This visit resulted in an unauthorized medical bill of twenty-four thousand nine hundred sixty-five and 00/100 dollars ($24,965.00).

The defendant argues that the care was not more beneficial, and that the claimant's symptoms on December 25, 2020, did not necessitate emergent care. The claimant argues that it was Christmas Day, and he had no way of contacting anyone at the defendant's offices to seek care due to the holiday.

The claimant's contention that it would be difficult to contact someone from the defendant's offices on Christmas Day logically makes sense. However, in reviewing the record, I do not find any evidence or testimony provided by the claimant that he attempted to contact anyone at CRST in order to inform them that he felt as though he needed emergent care. At the time, the claimant was in extreme pain. He was not bleeding, he did not suffer from a fracture, nor was he exhibiting any other symptoms that would seemingly necessitate emergent care.

Additionally, the claimant needs to prove that unauthorized care was reasonable and beneficial. Specifically, the claimant must prove that a more favorable outcome occurred from the unauthorized care. The claimant received no active treatment, no surgical care, reported no significant improvement in his issues, and continued treating as normal following his hospitalization. Therefore, I conclude that the claimant failed to prove, by a preponderance of the evidence, that he obtained a more favorable outcome from the unauthorized care. Additionally, I find that the claimant failed to prove that he attempted to contact anyone at CRST on the date in question. Therefore, I find that the claimant is not entitled to reimbursement for the unauthorized medical care in question.

Penalty

The claimant argues that an award of penalty benefits against CRST is appropriate in this case.

Iowa Code section 10A.315(4) provides the basis for awarding penalties against an employer. Iowa Code section 10A.315(4) states:

> (a) If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.
>
> (b) The workers' compensation commissioner shall award benefits under this subsection if the commissioner finds both of the following facts:
>
> (1) The employee has demonstrated a denial, delay in payment, or termination of benefits.
>
> (2) The employer has failed to provide a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.
>
> (c) In order to be considered a reasonable or probable cause or excuse under paragraph "b", an excuse shall satisfy all of the following criteria:
>
> (1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.

(2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.

(3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

If weekly compensation benefits are not fully paid when due, Iowa Code 10A.315 requires that additional benefits be awarded unless the employer shows reasonable cause or excuse for the delay or denial. Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229 (Iowa 1996). Delay attributable to the time required to perform a reasonable investigation is not unreasonable. Kiesecker v. Webster City Custom Meats, Inc., 528 N.W.2d 109 (Iowa 1995).

It is also not unreasonable to deny a claim when a good faith issue of law or fact makes the employer's liability fairly debatable. An issue of law is fairly debatable if viable arguments exist in favor of each party. Covia v. Robinson, 507 N.W.2d 411 (Iowa 1993). An issue of fact is fairly debatable if substantial evidence exists which would support a finding favorable to the employer. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001). An employer's bare assertion that a claim is fairly debatable is insufficient to avoid imposition of a penalty. The employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

If an employer fails to show reasonable cause or excuse for the delay or denial, the commissioner shall impose a penalty in an amount up to 50-percent of the amount unreasonably delayed or denied. Christensen v. Snap-On Tools Corp., 554 N.W.2d 254 (Iowa 1996). The factors to be considered in determining the amount of the penalty include: the length of the delay, the number of delays, the information available to the employer, and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

For purposes of determining whether an employer has delayed in making payments, payments are considered "made" either (a) when the check addressed to a claimant is mailed, or (b) when the check is delivered personally to the claimant by the employer or its workers' compensation insurer. Robbennolt, 555 N.W.2d at 235-236; Kiesecker, 528 N.W.2d at 112).

Penalty is not imposed for delayed interest payments. Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 338 (Iowa 2008); Davidson v. Bruce, 593 N.W.2d 833, 840 (Iowa 1999).

The claimant contends that they are owed penalty benefits. The defendant terminated weekly benefits on August 3, 2021, and then did not pay weekly benefits from August 4, 2021, to September 7, 2021. On September 9, 2021, the defendant was informed that they did not issue an Auxier letter. The defendant then issued an Auxier letter and terminated benefit payments again effective October 7, 2021. The defendant has not paid benefits since that time.

The defendant indicates that their denial of benefits is based upon the report of Dr. Wojciehoski. Dr. Wojciehoski opined on August 5, 2021, that the claimant had no permanent impairment according to the Guides. The claimant contends that the adjuster for CRST admitted that CRST did not "necessarily agree" to the findings in Dr. Wojciehoski's report. On October 15, 2021, counsel for the claimant wrote to CRST's counsel requesting weekly benefit payments resume. Counsel for CRST responded indicating that they stood by the opinions of Dr. Wojciehoski, and would not recommence benefit payments.

The defendant argues that they relied upon the opinions of Dr. Wojciehoski in denying benefits. They note that Dr. Wojciehoski was the only opinion regarding permanency until Dr. Segal's May 11, 2023, report. The defendant also contends that Dr. Segal's report is fraught with inaccuracies and should not be relied upon. The claimant contends that it was not reasonable to rely upon Dr. Wojciehoski's report, as his opinions are not properly based in the Guides.

Mr. Burroughs has demonstrated a termination of benefits. The question is whether CRST has provided a reasonable or probable cause or excuse for said termination. Dr. Wojciehoski's medical records review is certainly simplistic. Section 2.6 of the Guides lays out standards for preparing a report, which includes elements that should be included in said report. See Guides, Section 2.6, page 21-22. The Guides indicates that a report should contain a narrative history of the medical conditions, which includes "the onset and course of the condition, symptoms, findings on previous examination(s), treatments, and responses to treatment…" Id. at 21. The report should include an assessment of the patient's current clinical status, such as their current symptoms. Id. The report should also include a listing of the diagnostic results and any outstanding diagnostic studies. Id. The report should also contain any medical basis for a determination as to the claimant's achievement of MMI, along with diagnoses and impairments. Id. at 21-22. The Guides continues by indicating that the report should include impairment rating criteria, prognoses, residual function, and limitations. Id. Finally, the Guides discusses that the impairment rating should be calculated, and a discussion should be included with how the examiner arrived at the impairment rating. Id.

Dr. Wojciehoski's report contains a number of these elements, but is deficient insofar as it simply states the following with regard to his evaluation of permanent impairment, "Based on the information provided as well as the associated documentation, I would asses 0% permanent partial impairment consistent with AMA Guides to Evaluation of Permanent Impairment Fifth Edition." (DE A:4). Perhaps Dr. Wojciehoski meant to opine that the claimant's injuries were not caused by his August 13, 2019, work incident. However, he did not do this. He simply made a deficient report pursuant to the standards put forth by the Guides. Dr. Wojciehoski also made no opinion in his report as to whether or not Mr. Burroughs achieved MMI. This should have been apparent to the defendant in their review of the same. It is therefore unreasonable to rely on the opinions of Dr. Wojciehoski in terminating benefit payments. Imposition of a penalty is appropriate, as the defendant failed to prove reasonable or probable cause or excuse for termination of benefit payments. Therefore, the claimant

is awarded penalty benefits from August 4, 2021, to September 7, 2021, and then from October 7, 2021, to the date of the hearing. This represents 99.429 weeks at the above found rate. I find that based upon the length in delay, and the information available to the employer, namely that Dr. Wojciehoski's report is woefully inadequate, that the penalty for termination of benefits should be 35 percent of the unreasonably delayed benefits. The result is eighteen thousand seven hundred sixty-seven and 37/100 dollars ($18,767.37) in penalty benefits (99.429 x $539.29 = $53,621.06 x 0.35 = $18,767.37).

IME Reimbursement Pursuant to Iowa Code section 85.39

The claimant requested reimbursement for the initial report of Dr. Segal through Iowa Code section 85.39. The parties indicate that the defendant reimbursed the claimant for the costs of Dr. Segal's initial IME. Therefore, no determinations will be made as to whether the claimant is entitled to reimbursement pursuant to Iowa Code section 85.39.

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 15. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code 86.40. 876 Iowa Administrative Code 4.33(6) provides:

> [c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

Pursuant to the holding in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), only the report of an IME physician, and not the examination itself, can be taxed as a cost according to 876 IAC 4.33(6). The Iowa Supreme Court reasoned, "a physician's report becomes a cost incurred in a hearing because it is used as evidence in lieu of the doctor's testimony," while "[t]he underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." Id. (noting additionally that "[i]n the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition"). The commissioner has found this rationale applicable to expenses incurred by vocational experts. See Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App., December 17, 2018); Voshell v. Compass Group, USA, Inc., File No. 5056857 (App., September 27, 2019).

The claimant seeks the following costs:

Filing Fee	$103.00
Dr. Segal Supplemental Report	$1,133.33
Dr. Segal Supplemental Report	$133.33
Deposition Transcript	$123.95
Laughlin Vocational Report	$1,862.50

(CE 15:228-234). Based upon my discretion, I award the claimant the cost of the filing fee. Based upon my discretion, I decline to award the costs of the deposition transcript, as those are outside the bounds of 876 Iowa Administrative Code 4.33(6).

In reviewing the invoices of Dr. Segal, I find that it is appropriate to award the claimant the costs of the supplemental report of one thousand one hundred thirty-three and 33/100 dollars ($1,133.33). I decline to award the claimant the costs for the additional supplemental report from Dr. Segal of one hundred thirty-three and 33/100 dollars ($133.33).

I also find it appropriate to award the claimant for a portion of Ms. Laughlin's initial report from the invoice dated June 15, 2023. This amounts to one thousand and 00/100 dollars ($1,000.00), as I am not including time for the consultative portion of her invoice, nor am I requiring the defendant to reimburse the claimant for the one hundred and 00/100 dollars ($100.00) user fee for the OASYS system.

Therefore, I award the claimant two thousand two hundred thirty-six and 33/100 dollars ($2,236.33) in costs.

ORDER

THEREFORE, IT IS ORDERED:

That the August 13, 2019, work incident and subsequent injuries were a cause of permanent disability.

That the claimant is permanently and totally disabled pursuant to the odd-lot doctrine effective June 8, 2022.

That the claimant's gross earnings were eight hundred fifty-six and 60/100 dollars ($856.60) per week, that the claimant was single, and was entitled to one exemption. Therefore, the claimant's weekly workers' compensation rate is five hundred thirty-nine and 29/100 dollars ($539.29) per week.

That the claimant is not entitled to reimbursement for certain unauthorized medical expenses.

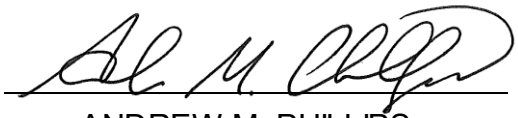
That the defendant shall pay the claimant a penalty of eighteen thousand seven hundred sixty-seven and 37/100 dollars ($18,767.37).

That the defendant shall reimburse the claimant two thousand two hundred thirty-six and 33/100 dollars ($2,236.33) for costs incurred.

That the defendant shall pay accrued weekly benefits in a lump sum together with interest. All interest on past due weekly compensation benefits shall be payable 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).

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

Signed and filed this ____21ST__ day of December, 2023.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Benjamin Roth (via WCES)

Chris Scheldrup (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.