BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

THOMAS J. LINDEMOEN,

Claimant,

vs.

SODEXO, INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5055222

ARBITRATION

DECISION

Head Note Nos.: 1402.30; 1802; 1803; 2701

STATEMENT OF THE CASE

Claimant, Thomas Lindemoen, filed a petition in arbitration seeking workers' compensation benefits from Sodexo, Inc., employer (Sodexo), and New Hampshire Insurance Company, insurer, both as defendants. This case was heard in Des Moines, Iowa, on October 13, 2016 with a final submission date of November 22, 2016.

The record in this case consists of claimant's exhibits 1 through 16, defendants' exhibits A through I, and testimony of claimant, Sara Wonderlin, Bridget Allen, John Harris, and Andy Bottorrff.

ISSUES

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

2. The extent of claimant's entitlement to temporary benefits.

3. Whether claimant is due alternate medical care under Iowa Code section 85.27.

4. Interest due on late payments.

FINDINGS OF FACT

Claimant was 52 years old at the time of the hearing. Claimant graduated from high school. Claimant has worked in food services and as a custodian. (Exhibit 7)

Claimant began with Sodexo in February 2003. Sodexo supplies janitorial services to customers. At the time of injury, claimant worked as a custodian at Simpson College. Claimant's job duties as a custodian included, but were not limited to, cleaning bathrooms, vacuuming, scrubbing and polishing floors, and cleaning classrooms. (Ex. 6)

Claimant's medical history is relevant. Claimant testified he is a diabetic. Records from 2010, 2011, and 2012 indicate claimant was noncompliant with taking medication to control his diabetic condition. The records also indicate claimant has gone, in some occasions for two years without taking medication. (Ex. 6, pp. 46, 49, 52-54)

On February 24, 2013, claimant slipped and fell on ice after leaving a staff meeting at the beginning of his night shift. Claimant and coworkers left the meeting to go to their cars to drive to the buildings on Simpson campus to work.

The location where claimant's car was parked is shown in Exhibit D, pages 6-7. Claimant testified his car was backed into the parking space shown in Exhibit D. When claimant approached the driver's side of his car, he reached for the door with his left hand. Claimant slipped and his feet went out from under him. Claimant's right shoulder hit the curb being shown in Exhibit D. (Ex. D, pp. 6-7; Tr. pp. 150)

Claimant testified he believed he fell on his neck, head, and shoulder. Claimant testified in hearing that he saw stars and blacked out as a result of the fall. (Tr. pp. 29-31) Claimant testified that the next thing he knew, he saw a coworker standing over him asking him if he was okay. Claimant testified, in hearing, that when he regained consciousness he was in bad pain. (Tr. pp. 29-31)

Andy Bottorff testified that he was the lead nightshift janitor at Simpson for Sodexo. Mr. Bottorff testified he was the person in charge on the night shift on claimant's janitorial crew. Mr. Bottorff testified that on February 24, 2013, after the janitorial shift finished their meeting, he was walking behind claimant in the Simpson parking lot. He said he was a few steps behind claimant. Mr. Bottorff said he saw claimant fall. Mr. Bottorff said he had a clear view of claimant. (Tr. pp. 144-148)

Mr. Bottorff said claimant went to open the door to his vehicle with his left hand when he slipped and fell on ice. He said he saw claimant land on the curb in Exhibit D, on his right shoulder. Mr. Bottorff said claimant did not strike his head on the ground or the curb, and claimant was not unconscious. Mr. Bottorff said that by the time he walked a few steps to claimant, claimant was already getting up. (Tr. pp. 148-150)

Claimant said that he was sore, but he proceeded to go to work. (Tr. pp. 150-151)

Claimant testified he tried to work the rest of his shift, but could not. Mr. Bottorff testified that around the time of the scheduled lunch on the night shift, at approximately 3:00 a.m., claimant contacted him and said his shoulders were hurting. Claimant was advised to go home. (Tr. pp. 151-12)

On February 25, 2013, claimant was evaluated by Sally Bennett, PA-C, with Mercy East Family Practice and Urgent Care. Claimant had pain in the left and right shoulders and pain in the hip. Claimant reported no head injury or loss of consciousness. Claimant had no complaint of headaches. Claimant was assessed as having right and left shoulder pain. He was prescribed medication and physical therapy. (Ex. H, pp. 55-57)

Claimant disagreed that he did not tell Physician's Assistant Bennett that he had no head injury or loss of consciousness. He testified he was certain he told health care practitioners he injured his neck and hip on the fall. (Tr. p. 31)

Sara Wonderlin, testified she is claimant's wife. She testified claimant told Physician's Assistant Bennett he fell on his shoulder, neck, head, lower back, and hip. Ms. Wonderlin testified that Physician's Assistant Bennett focused on claimant's shoulder injury. (Tr. pp. 105-106)

Claimant returned to Physician's Assistant Bennett on March 26, 2013 with left and right shoulder and back pain. Claimant was treated with medication and given a prescription for more physical therapy. He was also referred to an orthopaedist. (Ex. H, pp. 60-62)

On April 5, 2013, claimant was evaluated by Timothy Vinyard, M.D., for left shoulder pain. Claimant indicated he fell on his right shoulder. An MRI was recommended. (Ex. H, pp. 63-66)

An MRI showed a full thickness supraspinatus tear. (Ex. H, pp. 67-70) Surgery was discussed and chosen as a treatment option. (Ex. H, pp. 71-72)

On October 7, 2013, claimant underwent left shoulder surgery with Dr. Vinyard consisting of a rotator cuff repair on the left. (Ex. 12, pp. 1-3)

In February 2014 claimant was seen by Dr. Vinyard in follow up for his left shoulder pain. Claimant also had right shoulder pain. An MRI showed a right shoulder rotator cuff tear. Surgery was discussed and chosen as a treatment option. (Ex. H, pp. 91-96)

On March 5, 2014, claimant underwent a right rotator cuff repair. Surgery was performed by Dr. Vinyard. (Ex. 12, pp. 4-5; Ex. H, pp. 101-102)

On July 9, 2014, claimant was returned to work with no restrictions. (Ex. H, p. 116)

Claimant began receiving physical therapy in March 2014 following his right shoulder surgery. Records indicate claimant complained of neck and headaches during physical therapy. (Ex. 11, pp. 75, 77, 85, 90) Records also indicate claimant's headaches were caused by neck pain. (Ex. 11, pp. 128, 141, 150) Claimant was discharged from physical therapy in December 2014 with limited improvement with physical therapy due to neck pain. (Ex. 11, p. 151)

Claimant testified he returned to work at Simpson in July of 2014. He said he returned to work on the day shift and worked with another custodian for a few weeks.

John Harris testified he is the director for Sodexo, for the facilities at Simpson. Mr. Harris said that in the capacity that he knows claimant and is familiar with claimant's workers' compensation injury.

Mr. Harris said that after claimant's surgery, claimant was put on a transitional position for a few weeks before he was returned to work full time. He said that after the transitional period, lasting approximately 2-3 weeks, claimant was returned to work on the night shift to work at the same building that he worked prior to the February 2013 injury. He said that by September 2014 claimant was allowed to return to his normal job duties.

Mr. Harris said claimant did not say he was unconscious after his fall of February 2013. He said that after claimant returned to work in July 2014, claimant never complained of loss of balance or dizziness.

On September 22, 2014, claimant underwent a functional capacity evaluation (FCE) performed by Steve Olsen, DPT. Claimant gave consistent effort in the FCE. Based upon the FCE, claimant was found to be able to perform in the medium work category. Claimant was found to be able to occasionally lift up to 55 pounds below waist level. (Ex. H, pp. 125-143)

On September 26, 2014, claimant was evaluated by Kurt Smith, M.D., for neck pain. Claimant was returned to work with no restrictions. (Ex. H, pp. 147-151)

Claimant returned in follow up with Dr. Vinyard on November 13, 2014 with complaints of right shoulder pain. Claimant's right shoulder pain had improved since his return to work. Claimant had mild symptoms from time to time. He denied any other complaints. Dr. Vinyard based claimant's permanent restrictions on his September 2014 FCE. (Ex. H, pp. 152-156)

In a January 12, 2015 letter, Dr. Vinyard found claimant was at maximum medical improvement (MMI) for the left shoulder as of March 25, 2014. Claimant had permanent restrictions as per his FCE. Dr. Vinyard opined that claimant had a one percent permanent impairment to the right shoulder based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Figures 16-40, 16-43, and 16-46. This converted to a one percent permanent impairment to the body as a whole under the Guides. (Ex. H, p. 160)

In a January 14, 2015 letter, Dr. Smith found claimant was at MMI for the cervical spine as of December 5, 2014. He found claimant had a 5 percent permanent impairment to the body as a whole for his neck based upon Table 15-5 of the Guides. (Ex. H, p. 161)

On February 4, 2015, claimant stumbled and fell at work at Simpson. Claimant was vacuuming bleachers. Claimant injured his left knee, ankle, and left foot. (Ex. 1, pp. 8, 10) This injury is not an issue in this case.

Claimant testified he has not returned to work at Sodexo since this fall from the bleachers. Claimant later had a left knee surgery for this fall. Claimant testified he believed he fell because he was dizzy. (Ex. 1, pp. 8, 10, 13)

On September 22, 2015, claimant was evaluated by Marshall Greiman, M.D., an ENT specialist. Claimant had approximately 2-3 year history of imbalance. Claimant had a history of diabetes and peripheral neuropathy. Claimant also smoked. Claimant was recommended to have an EMG. Claimant was also told to stop smoking. (Ex. 13, pp. 1-6.

Claimant returned in follow up with Dr. Greiman. Claimant's ENG was normal. (Ex. 13, p. 15; Ex. H, p. 176)

On September 29, 2015, claimant underwent a video nystagmography (VNG) to test for claimant's dizziness and balance disorder. Claimant had a normal VNG testing. Notes indicate claimant began having instability approximately four years prior when he went to stand. Claimant's spells had increased in frequency. (Ex. H, pp. 174-175)

In a May 31, 2016 report, Sunil Bansal, M.D., gave his opinions regarding claimant's condition following an independent medical evaluation (IME). Claimant indicated the February 24, 2013 fall resulted in an injury to his head, back, shoulders, and right hip. Claimant indicated he blacked out because of his fall. Claimant complained of pain from his shoulders to his neck and into his head, producing headaches. Claimant complained of dizziness. Claimant had headaches since the fall. (Ex. 1, pp. 1-15)

Dr. Bansal assessed claimant as having a post-concussive syndrome, cervical myofascial syndrome, and post-surgery left and right rotator cuff tears. He opined claimant's head, neck, and shoulder injuries were all caused by the February 24, 2013

fall. He agreed with permanent restrictions pursuant to the FCE and also restricted claimant to lifting only 20 pounds occasionally. Dr. Bansal found claimant had a 13 percent permanent impairment to the right upper extremity, converting to an 8 percent permanent impairment to the body as a whole. He found claimant had an 8 percent permanent impairment to the left upper extremity, converting to a 5 percent permanent impairment to the body as a whole. He found claimant had a 5 percent permanent impairment to the body as a whole for his neck condition. He recommended claimant have an MRI for the neck and also treatment with a neurologist. (Ex. 1, pp. 15-27)

On June 10, 2016, claimant was evaluated by James Bice, D.O., for back pain, neck pain, hip pain, shoulder pain, headaches and dizziness. Claimant was not checking his blood sugars at home and was not compliant with taking medication. Claimant was referred for a neurological exam for his headaches. (Ex. 14)

On July 6, 2016, claimant was assessed by Paul Babikian, M.D., for headaches. Claimant said he fell three years prior, hit his head, and had headaches ever since. Claimant was assessed as having dizziness and analgesic overuse headache. Claimant was advised to stop smoking and discontinue use of Ibuprofen. (Ex. H, pp. 181-185)

On August 8, 2016, claimant had an MRI of the brain. The MRI showed diminished blood flow to the right vertebral artery. Dr. Babikian indicated claimant's vascular condition could be congenital. It could also be related to smoking, diabetes, and hypertension. Dr. Babikian did not believe claimant's vascular condition contributed to his headaches or dizziness. (Ex. H, pp. 186-187)

In a September 9, 2016 note, Dr. Bansal again opined he believed claimant's headaches and dizziness were the results of a post-concussive syndrome. He recommended claimant seek further evaluation with a neurologist. (Ex. 1, pp. 28-30)

In a September 9, 2016 report, Lewis Vierling, gave his opinions of claimant's employment opportunities. Mr. Vierling opined that due to claimant's physical and mental health status, claimant had a severely diminished work capacity. He opined that claimant had a 100 percent loss of access to the jobs within the labor market which claimant was qualified for. This opinion was based, in part, on claimant's complaints of headaches, nausea, dizziness, loss of range of motion in the neck, pain in the left and right trapezius, pain in both upper extremities and lower extremities. (Ex. 3)

In an October 10, 2016 note, written by defendants' counsel, Dr. Babikian indicated diminished flow of the right vertebral artery, shown on claimant's MRI of the head, was not necessarily related to a traumatic event. Dr. Babikian did not believe the finding was caused by an injury. He noted smoking, diabetes and hypertension could have a vascular impact. He also did not believe the diminished right vertebral artery contributed to claimant's complaints of headaches or dizziness. (Ex. H, pp. 186-187)

Claimant testified that since the February 2013 injury, he has loss of balance and bad headaches. He said he also has shoulder pain, pain in his hands and arms up through his neck. He said he also has pain in his left hip down to his foot. Claimant said he spends most of his days lying down. He said he is able to drive a little. He also said he has difficulty standing or sitting for extended periods of time. Claimant said he believes he has difficulty talking and concentrating.

Claimant testified that before the February 2013 injury, at his home, he did cooking, cleaning, mowed the lawn, removed snow, did laundry, and went grocery shopping. He said that since his fall at work he does none of these activities.

Claimant testified that since leaving Simpson, he has looked for work. Exhibit 8 is a list of 15 jobs claimant said he has applied for to work since leaving Simpson. Claimant said he has not received call backs for any of these job applications. Claimant said that even though he has made applications to the employers, he does not believe he could do any of the jobs that he applied for.

Ms. Wonderlin testified that claimant did not have headaches before his 2013 fall. She said claimant has difficulty in his ability to focus and concentrate. She said claimant has shown loss of memory. Ms. Wonderlin said claimant did not have these symptoms before his fall.

CONCLUSIONS OF LAW

The first issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits. Defendants accept liability for claimant's right and left shoulder injury and for his cervical injury. Defendants deny claimant sustained a closed head injury as a result of his February 24, 2013 fall.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy

of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

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

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

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

Claimant testified that when he fell on February 24, 2013 he struck his head, neck, and shoulder. Claimant testified he blacked out. He testified that when he came to, he saw a coworker standing over him. (Tr. pp. 28-31)

Mr. Harris testified that he worked for Sodexo and oversaw the facilities at Simpson. Mr. Harris said that claimant never indicated he hit his head or was unconscious as a result of his February 24, 2013 accident. (Tr. pp. 132-140)

Mr. Bottorff testified that he was the lead janitor on claimant's crew. He testified he and a coworker were walking a few steps behind claimant when claimant fell. Mr. Bottorff said he saw claimant fall. Mr. Bottorff testified claimant did not strike his head and did not lose consciousness. He said by the time he got to claimant, claimant was rising from his fall. (Tr. 144-148)

Claimant received treatment on February 25, 2013 at the Mercy Clinic from Physician's Assistant Bennett. Records from that visit indicate claimant did not report a head injury, loss of consciousness, or headaches. (Ex. H, pp. 55-57)

Claimant's wife testified that claimant told Physician's Assistant Bennett that he hit his head at the fall. (Tr. p. 103)

Claimant returned to Physician's Assistant Bennett on March 26, 2013. There is no record of headaches or loss of consciousness in this visit. (Ex. H, pp. 60-62)

Claimant was also seen by Dr. Vinyard for shoulder pain on April 15, 2013. There is no indication of headaches or loss of consciousness at this visit. (Ex. H, pp. 63-66)

Claimant continued to treat with Dr. Vinyard through 2013 and 2014. There is no mention in any of the records from this period of time of a head injury, loss of consciousness or discussion of headaches. (Ex. H, pp. 71-102) Claimant was returned to work in July 2014 with no restrictions. (Ex. H, p. 116)

Claimant did have physical therapy from March 2014 through December 2014. There are references in the physical therapy records of claimant having headaches. (Ex. 11, pp. 75-77, 85, 90) However, the records from physical therapy indicate the claimant's headaches were caused by neck pain, and not a closed head injury. (Ex. 11, pp. 128, 141, 150)

Claimant returned to work in July 2014. He returned to work in the same building in September 2014. Claimant continued to work at full duty as a custodian until he fell on bleachers on February 4, 2015. Claimant's fall on bleachers is not at issue in this case. Records indicate claimant never complained about headaches or dizziness when he returned to work. (Tr. pp. 134, 136, 140)

The first indication in the record of claimant hitting his head due to a fall in February 2013, and losing consciousness, does not appear until Dr. Bansal's report of May 31, 2016. (Ex. 1, p. 13) Dr. Bansal opined claimant's alleged head injury caused a post-concussive syndrome. (Ex. 1, p. 19)

As noted, claimant treated for over three years before he was evaluated by Dr. Bansal. Up until his evaluation with Dr. Bansal, there is no record claimant struck his head from the February 2013 fall. There is no record that claimant lost consciousness from that fall. There are some references to headaches in physical therapy notes. However, as noted, physical therapy notes indicate claimant's headaches were caused by neck pain. Given this record, Dr. Bansal's opinion that claimant had a post-concussive syndrome from a closed head injury caused by the February 24, 2013 fall is not convincing.

Claimant treated for three years before he was evaluated by Dr. Bansal in March 2016. During that period, there is no record claimant struck his head as a result of the February 2013 fall. There is no record claimant lost consciousness as a result of the February 2013 fall. Medical records indicate claimant did not strike his head as a result of the February 2013 fall. Dr. Bansal's opinions regarding post concussive symptoms

caused by the February 2013 fall are not convincing. Records indicate that claimant's dizziness may have occurred back in 2011 and is unrelated to his work. (Ex. H, pp. 174-175) Dr. Babikian indicated claimant's problems may have to do with his diabetes, hypertension and smoking. (Ex. H, pp. 181, 187) Given this record, claimant has failed to carry his burden of proof that he sustained a closed head injury as a result of the February 24, 2013 fall.

Claimant was 52 years old at the time of hearing. He graduated from high school. Claimant has worked as a food service worker and as a custodian.

Both Dr. Bansal and Dr. Smith opine that claimant has a 5 percent permanent impairment to the body as a whole due to a cervical injury. (Ex. H, p. 161; Ex. 1, p. 25)

Dr. Bansal found claimant had a 5 percent permanent impairment to the body as a whole for the left shoulder injury. (Ex. 1, p. 26) No other opinions exist in the record regarding permanent impairment to claimant's shoulder. It is found claimant has a 5 percent permanent impairment to the body as a whole for the left shoulder injury.

Dr. Bansal opined that claimant had an 8 percent permanent impairment to the body as a whole for the right shoulder. (Ex. 1, p. 25) Dr. Vinyard found that claimant had a 1 percent permanent impairment to the body as a whole for the right shoulder injury. (Ex. H, p. 160) Dr. Vinyard treated claimant for an extended period of time and for both the claimant's shoulder surgeries. As a factual matter, Dr. Vinyard has a far greater familiarity with claimant's condition and his medical history than does Dr. Bansal, who only evaluated claimant on one occasion. Based, in part, on Dr. Vinyard's familiarity with claimant's history and condition, it is found that Dr. Vinyard's opinion regarding permanent impairment carried greater weight than those of Dr. Bansal. For this reason, it is found claimant has a 1 percent permanent impairment to the body as a whole for the right shoulder injury.

A 5 percent permanent impairment to the body as a whole combined with 5 percent permanent impairment to the body as a whole and a 1 percent permanent impairment to the body as a whole results in a 11 percent combined permanent impairment to the body as a whole based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, page 604.

An FCE found claimant could work in the medium level work category. (Ex. H, p. 125) Claimant did return to work full duty from approximately December 2014 until his fall on the bleachers in February 2015. The fall from the bleachers is not at issue in this case and any impairment resulting from the bleacher fall is not considered in determining claimant's industrial disability in this case.

Mr. Vierling opined that claimant has lost 100 percent access to jobs available to him prior to the February 2013 fall. There are several problems with Mr. Vierling's opinion. First, Mr. Vierling indicates claimant's alleged closed head injury and problems from that injury limit claimant's access to the job market. As noted, it is found claimant

has failed to carry his burden of proof he sustained a closed head injury caused by the February 2013 fall.

Second, as noted above, claimant returned to full duty work in September 2014 and continued to work full duty until his February 2015 fall. It is unclear how claimant has a loss of 100 percent access to jobs, when claimant was able to work full duty, full time, for approximately 8 months after his February 2013 fall. Given these discrepancies, the opinions of Dr. Vierling are found not convincing.

Claimant has an 11 percent permanent impairment to the body as a whole. The FCE indicates claimant could work in the medium work category. Claimant failed to carry his burden of proof he has a closed head injury caused by the February 2013 fall. Claimant returned to work from July 2014 through February 2015. He returned to work full duty from September 2014 through February 2015. Claimant's February 2015 fall from the bleachers is not a factor in determining industrial disability in this matter. When all relevant factors are considered, it is found that claimant has a 30 percent loss of earning capacity or industrial disability. Claimant returned to work on July 14, 2014. (Ex. E, p. 12) Permanent partial disability benefits shall commence on July 14, 2014.

The next issue to be determined is the extent of claimant's entitlement to healing period benefits.

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

The parties stipulated claimant received temporary benefits from February 25, 2013 through July 9, 2014. Defendants exhibit E, page 12 indicates claimant returned to work on July 14, 2014. Claimant is due healing period benefits from July 9, 2014 through July 14, 2014.

The next issue to be determined is if claimant is entitled to alternate medical care.

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

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

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

Claimant indicates in his post hearing brief that he seeks treatment for a closed head injury and for his cervical spine. (Claimant's post hearing brief, pp. 15-18) As noted, claimant has failed to carry his burden of proof that his February 2013 fall resulted in a head injury. As a result, claimant has failed to show entitlement to alternate medical care for any treatment related to an alleged closed head injury.

Regarding the cervical spine condition, defendants have accepted liability for claimant's neck condition. Defendants have provided care for claimant for the cervical condition with Dr. Smith. Claimant seeks to have further treatment that has been recommended by Dr. Bansal. The statute specifically requires that for a claimant to show entitlement to alternate medical care, claimant shall communicate to defendants the basis for the dissatisfaction for the care provided. There is no evidence in the record claimant has ever communicated with defendants regarding the basis for any dissatisfaction with the care provided by Dr. Smith. Given this, claimant has failed to carry his burden of proof that he is due the alternate medical care for cervical injury recommended by Dr. Bansal. Defendants shall continue to authorize and provide care to claimant's cervical injury.

The final issue to be determined is if defendants are liable for interest for alleged late payments.

Claimant has offered no evidence regarding any alleged interest due for alleged late payments. As a result, claimant has failed to carry his burden of proof he is due interest for alleged late payments of benefits.

ORDER

THEREFORE IT IS ORDERED:

That defendants shall pay claimant healing period benefits from July 9, 2014 through July 13, 2014 at the rate of three hundred seventy-four and 54/100 dollars ($374.54) per week.

That defendants shall pay claimant one hundred fifty (150) weeks of permanent partial disability at the rate of three hundred seventy-four and 54/100 dollars ($374.54) per week commencing on July 14, 2014.

That defendants shall pay accrued weekly benefits in lump sum.

That defendants shall pay interest on unpaid weekly benefits as ordered above and as set forth in Iowa Code section 85.30.

That defendants shall receive a credit for benefits previously paid.

That defendants shall pay costs.

That defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this 31st day of January, 2017.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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 in writing and received by the commissioner's office 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 a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.