

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANDREW STRINGER,

Claimant,

vs.

TYSON FOODS, INC.

Employer,  
Self-Insured,  
Defendant.

File No. 1640710.02

ARBITRATION DECISION

Head Notes: 1108; 1402.60;  
1403.10; 2501; 2701**STATEMENT OF THE CASE**

Claimant Andrew Stringer filed a petition in arbitration seeking worker's compensation benefits against Tyson Foods, Inc., self-insured employer, for an accepted work injury date of December 4, 2017. The case came before the undersigned for an arbitration hearing on September 7, 2021. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the ongoing COVID-19 pandemic, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via video means, using CourtCall. Accordingly, this case proceeded to a live video hearing via CourtCall with all parties and the court reporter appearing remotely.

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

The evidentiary record includes Joint Exhibits 1 through 3, Claimant's Exhibits 1 through 8, and Defendant's Exhibits A through J.

Claimant testified on his own behalf. Alberto Olguin was present via audio connection on behalf of defendant but did not testify. The evidentiary record closed at the conclusion of the evidentiary hearing on September 7, 2021. The parties submitted post-hearing briefs on October 26, 2021, and the case was considered fully submitted on that date.

**ISSUES<sup>1</sup>**

<sup>1</sup> At hearing, the parties also disputed the proper rate of compensation. However, defendant has since conceded the rate and stipulate to claimant's proposed rate of \$691.18.

1. Whether claimant is entitled to ongoing medical care under Iowa Code section 85.27;
2. Payment of medical expenses;
3. Taxation of costs.

### **FINDINGS OF FACT**

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

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

At the time of hearing, claimant was a 33-year-old person. (Hearing Transcript, p. 13) He is married and has four children. He graduated from high school, after which he attended Des Moines Area Community College (DMACC) for a short time. He then worked at a variety of jobs, including convenience stores and fast-food establishments. (Defendant's Exhibit H, pp. 4-5) In 2012, claimant began working at Tyson Fresh Meats in Perry, performing general maintenance. (Def. Ex. H, p. 5; Tr., p. 14) The Perry plant specializes in pork production. Claimant testified that his maintenance job at Tyson involved fixing machinery on the floors, changing motors, and working with electricity and hydraulics, among other things. (Tr., p. 14)

On December 4, 2017, claimant was injured while performing his work duties. On that day, claimant offered to help his coworker Aaron with a machine that needed repair in the rendering department. (Tr., p. 15) He described the rendering machine as a "pressure cooker," which takes the hair that has come off the hogs and uses steam to break it down into a "paste" that Tyson then ships out. (Tr., p. 16) Claimant explained that while he does not know the entire process involved with the rendering machine, he knows that steam is formed at 212 degrees, and that the machine creates hydrogen sulfide as a byproduct. (Tr., pp. 16, 18) Employees are therefore required to wear a special monitor when entering the rendering room that will alert them if there is a dangerous level of chemical in the air. (Tr., p. 18)

When claimant and Aaron entered the rendering room on December 4, 2017, they completed the process of locking out the electrical and steam lines. (Tr., p. 15) However, as they began to work on the machine, there was an uncontrolled release of steam that blew directly into claimant's face. (Tr., pp. 15-16) As claimant turned away from the steam, he slipped and fell in the contents of the hydrolyzer that had dumped onto the ground. (Tr., pp. 16-17) The chemical "goo" that he fell into "instantly" started to peel the skin off of his hands and also covered his legs. (Tr., p. 17) At that point he could not see his coworkers in the room any longer due to the amount of steam that had

filled the room. He called for help but believes he was alone in the room by that point. He testified that he found a corner of the room and hid there until the exhaust fans cleared the steam. (Tr., p. 18) He felt "sheer just panic" and was terrified while waiting, as his hydrogen sulfide sensor was going off continuously. He was "absolutely terrified [he] wouldn't come out of that room." (Tr., p. 18)

As the steam started to clear, claimant was able to locate the exit and made his way toward it. Around the same time his supervisor and the first responder team had made their way to the rendering department, and helped claimant to Tyson's health services department. There claimant's clothing was removed and the Perry hospital was called. (Tr., p. 19) The Perry hospital was not able to accommodate claimant's burns, so he and his coworker Aaron, who was also burned, were taken via Life Flight to Iowa City. (Tr., p. 19)

Claimant testified that he was in pain the entire time following the steam release, and could not escape the burning. He was hospitalized for eight days, and stated that his pain was very difficult to control during that time. (Tr., p. 20) His burns were treated at University of Iowa Hospitals, and once he was released he had in-home care for a period of time. (Tr., p. 20; Def. Ex. A, p. 4; Deposition Transcript, p. 16) He remained off work for about three months, after which he returned sporadically, in order to ease back into a work schedule. (Tr., p. 21) Claimant testified that he had hoped to eventually return to his job as a mechanic, but due to his injuries it was very difficult for him to resume that job. (Tr., p. 22) As such, he was initially accommodated with a supply clerk position. Eventually he was able to bid into that position permanently, and at the time of hearing he continued to work for Tyson as a supply clerk. (Tr., p. 15)

Claimant testified that at some point shortly after the accident, Sandy Larson, the workers' compensation case manager at Tyson, suggested that both he and Aaron start seeing a mental health counselor. (Tr., p. 22) At the time of hearing, claimant continued with mental health counseling. (Tr., p. 23) The records in evidence indicate claimant's first visit was January 26, 2018, with Cal Seda, Ph.D. (Joint Exhibit 1, pp. 1-2) At that appointment, claimant still had a great deal of physical discomfort, but was also experiencing mental difficulties as his mind would often wander back to the accident, especially at night. (Jt. Ex. 1, p. 2) He reported that the longer he was awake at night, the greater the chance for night terrors while asleep. As such, his sleep had been consistently interrupted. Claimant reported that he wanted to return to work at Tyson, and had gone into the plant a few weeks prior to sign insurance forms. He reported that he had to sit in the parking lot for about 30 minutes prior to entry due to anxiety, but was able to enter eventually.

Claimant and Dr. Seda discussed some personal traumas that predated the accident. Claimant reported that his brother-in-law had died in January 2017; his wife's grandfather in June of 2017; his grandfather in August 2017; and his wife had a miscarriage in September 2017. He also reported that another brother-in-law had died in 2013. He also reported a concussion with brief unconsciousness in high school. Claimant reported poor sleep since getting home from the hospital, only about 4 hours

per night. He would toss and turn, reliving the accident, and was having dreams in which his children were getting burned and their hands degloved. He also expressed concern about his friend and coworker Aaron who was also burned in the accident. (Jt. Ex. 1, p. 2)

Claimant reported that while his pain was lower when taking medications, his anxiety was higher. He was also experiencing some passive suicidal ideation at that time, but no active thoughts or plans. He explained triggers for heightened anxiety included anything that emits steam, such as humidifiers or hot showers, and that sometimes a thermostat kicking on would startle him. Dr. Seda offered psychotherapy in order to help claimant work on desensitization strategies and active coping. (Jt. Ex. 1, p. 3)

Claimant next saw Dr. Seda on February 20, 2018. (Jt. Ex. 1, p. 3) At that time he had been medically cleared for his burn injuries, and noted he had gone back to the plant a couple of times to see coworkers. He related that while at the plant he felt fairly relaxed, but upon leaving the thoughts of the accident would return and increase his anxiety. They discussed gradual desensitization. Claimant continued to see Dr. Seda for a few more sessions, but was not experiencing much improvement. (Jt. Ex. 1, p. 3; Def. Ex. A, p. 5, Dep. Tr., pp. 18-19) As such, his mental health treatment was transitioned to Michael Huston, Ph.D., at Counseling Associates of Central Iowa. (Jt. Ex. 2, p. 1)

Claimant first saw Dr. Huston on June 7, 2018. At that time, he presented with anxiety related to the work accident, panic attacks, sleep problems, depression, and pain. (Jt. Ex. 2, p. 1) He was also experiencing intrusive thoughts, and decreased attention and concentration due to fatigue. With respect to past mental health treatment, he noted being on an antidepressant for about two months at age 18 following a break-up. (Jt. Ex. 2, p. 2) He also noted the stresses and personal traumas prior to the accident with multiple family deaths in 2017. Dr. Huston's initial diagnostic impression was post-traumatic stress disorder. (Jt. Ex. 2, p. 3) Dr. Huston's "behavioral objectives of treatment" included reducing intrusive thoughts or dreams, reducing avoidance behaviors, reducing irritability, improving energy, and stopping suicidal ideation.

Claimant saw Dr. Huston again on June 19, 2018. (Jt. Ex. 2, p. 4) At that time, he reported continued persistent nightmares and sleep problems, intrusive thoughts about the accident, low stress tolerance, general anxiety and irritability, and avoidance of triggers such as loud noises and anything that looks like steam. At his next visit on July 16, 2018, he continued to discuss his PTSD triggers, such as the pain he feels from his burns when he bumps something, or being near a source of steam. (Jt. Ex. 2, p. 5) He continued to report increased irritability, lowered tolerances for frustration, and the issues of ongoing physical pain from his injuries at his next several appointments. (Jt. Ex. 2, pp. 6-8) He also noted uncertainty about his future given his reduced income since the injuries. (Jt. Ex. 2, p. 8)

At his appointment with Dr. Huston on August 23, 2018, claimant discussed his consistently high stress level over the past 2-years due to the multiple family deaths that

occurred just prior to the work accident. (Jt. Ex. 2, p. 9) Dr. Huston noted, however, that claimant appeared less frustrated and his efforts to cope were improving over time. Unfortunately at his next appointment on September 9, 2018, claimant reported feeling depressed for the past two weeks, with a lack of interest, motivation, and energy to engage in activities he normally enjoys. (Jt. Ex. 2, p. 10) On September 28, 2018, he reported recent stresses in his marriage that have increased his personal stress and interfered with his mental health recovery. (Jt. Ex. 2, p. 11) He also discussed the uncertainty regarding his job and family financial issues, as well as feeling discouraged that he has permanent nerve damage in his legs that will likely cause chronic pain.

By his next appointment on October 30, 2018, claimant reported symptoms of intrusive thoughts, strong negative reactions, and avoidance behaviors related to his accident. (Jt. Ex. 2, p. 12) He continued to have persistent leg pain, but had returned to a 48-hour workweek, which was helpful for the family finances. At his next appointment on November 8, 2018, he reported recent conflicts with his wife that involved his inability to get up in the morning, resulting in his inability to help with the children in the morning. (Jt. Ex. 2, p. 13) However, by his next appointment on November 14, 2018, his home stress had decreased after changing his schedule. He also discussed stress related to his job, but noted he felt the company had been working with him to help him cope and recover from the accident so he wanted to stay with the company if possible. (Jt. Ex. 2, p. 14)

On November 29, 2018, claimant reported to Dr. Huston that he was making progress at work and felt grateful he would not need to return to maintenance as other work opportunities at the plant may open soon. (Jt. Ex. 2, p. 15) Over the next few appointments, claimant discussed varying levels of stress at work and home, as well as increased pain levels due to the cold weather. (Jt. Ex. 2, pp. 16-18) On January 24, 2019, he talked again about the permanent nerve damage in his legs, and how this took away his sense of hope from returning to many of his previous activities, including his previous job assignment. (Jt. Ex. 2, p. 19) He discussed stress related to his current job situation. His next couple of appointments focused primarily on his work-related stressors, and coping mechanisms to use when triggered by stimuli related to his accident. (Jt. Ex. 2, pp. 20-22)

On April 22, 2019, claimant advised Dr. Huston that he was feeling some relief as he had accepted a permanent position at work in the supply area. (Jt. Ex. 2, p. 23) He expressed feeling grateful that the company raised the pay for the position in order to accommodate him. Dr. Huston noted he appeared tired but calmer and more relaxed. Over his next couple of appointments he continued to show improvement. (Jt. Ex. 2, pp. 24-25) However, he still experienced anxiety reactions in certain work situations, and Dr. Huston and claimant agreed he should continue with occasional counseling sessions. (Jt. Ex. 2, p. 25) Claimant's last visit with Dr. Huston was June 11, 2019, as Dr. Huston relocated his practice. (Jt. Ex. 2, p. 26) As such, claimant was transitioned to a new therapist, Thomas "TJ" Sunderman, MA, LMHC. (Jt. Ex. 3, p. 1)

Claimant first saw Sunderman on July 1, 2019. (Jt. Ex. 3, pp. 1-4) Claimant noted he continued to completely avoid the triggers of steam and loud noises, but his current job in an office setting had been helpful to him. (Jt. Ex. 3, p. 3) He also reported ongoing anxiety, sleep difficulties, night terrors, and being “easily agitated,” although the night terrors had lessened in frequency. (Jt. Ex. 3, p. 4) Sunderman noted goals of utilizing positive coping strategies to manage his symptoms of ongoing anxiety and depression. (Jt. Ex. 3, p. 4) At his next visit on July 22, 2019, claimant reported “constant pain” due to the nerve damage from his physical injuries. (Jt. Ex. 3, p. 5) He also reported questioning whether he wanted to stay in his new position at Tyson long term. He noted having to go near the rendering department on a daily basis to retrieve pallet jacks, which caused him to feel “increased adrenaline” and like he wanted to “run away.” (Jt. Ex. 3, p. 5)

Claimant continued to report increased stress at work, along with increased sleep struggles and ongoing chronic pain issues, over his next several appointments with Sunderman. (Jt. Ex. 3, pp. 6-10) At his appointment on December 18, 2019, he noted feeling increased agitation and anxiety as he was feeling less patient at work and at home. (Jt. Ex. 3, p. 11) He also noted the holidays as being a difficult time due to several family members who had passed, and the holidays reminding him of them. By January 15, 2020, claimant reported he was getting more accustomed to his new job and it was not that bad. (Jt. Ex. 3, p. 12) He reported feeling “anger and resentment” some days toward his employer due to the accident.

On January 8, 2020, the senior case management specialist at Tyson wrote to Mr. Sunderman with questions regarding his ongoing care. (Jt. Ex. 3, p. 13) Sunderman responded to the letter on February 12, 2020. The case manager noted that the “Official Disability Guide” suggests that for work-related psychological therapy to continue, progress should be noted. As such, Sunderman was asked whether claimant had made objective progress from the therapy, to which he responded, “yes.” The next question was when a release from treatment or decrease in frequency of therapy would be expected. Sunderman replied that claimant would be seen every 6 weeks. The final question stated that due to the “frequency that we see personal issues being addressed in therapy,” whether claimant’s therapy at that time was directly related to the work issue from December 4, 2017, to which Sunderman replied, “yes,” and directed the reader to his most recent progress note. (Jt. Ex. 3, p. 13)

The February 12, 2020 progress note indicates that claimant continued to complain of ongoing neuropathy symptoms in his legs, especially in cold weather. (Jt. Ex. 3, p. 14) As a result, claimant stated his “mental capacity” is affected, as the pain is a constant reminder of the accident. He also stated, however, that his symptoms were not as bad as they used to be, although he does continue to have bad dreams about the accident, which in turn caused increased anxiety and depression and ongoing sleep issues. They further discussed claimant’s “ongoing reminder of the accident” every time he looks at his legs, and that he feels very self-conscious about his scars. (Jt. Ex. 3, p. 14)

At claimant's next appointment with Sunderman on March 25, 2020, claimant noted that he had a neuropsychological evaluation scheduled for April 1, 2020. (Jt. Ex. 3, p. 15) They discussed his ongoing PTSD triggers of pain in his legs, and how foggy days remind him of the steam from the accident which increases stress and makes it difficult to drive to work. They also discussed increased stress from COVID-19 and his concern about it spreading within the plant. (Jt. Ex. 3, pp. 15-16)

On April 1, 2020, claimant was seen at defendant's request by Bruce Jasper, Ph.D., for an independent neuropsychological evaluation. (Def. Ex. E) Dr. Jasper's report is dated April 21, 2020. Dr. Jasper indicated that claimant self-reported physical symptoms including bilateral lower extremity pain, cognitive symptoms including memory loss, and emotional symptoms including anxiety, depression, and PTSD symptoms. (Def. Ex. E, p. 1) However, Dr. Jasper noted that throughout the interview and testing he did not observe claimant to show signs of pain, such as grimacing or atypical adjusting or shifting. He also stated that claimant described that most days he was in a good mood, and described a wide variety of consistent enjoyments and pleasures in his work, family, and social life. He also observed that claimant's "daily functioning and interview behaviors are inconsistent with his having significant memory impairments." (Def. Ex. E, p. 1)

Regarding leg pain, claimant told Dr. Jasper that his biggest issue was neuropathy, and he experienced constant numbness and tingling in his legs below his knees. He also noted that temperature changes further aggravate his symptoms. Regarding his memory loss, claimant stated "I feel like my memory is fried! I one hundred percent believe that my memory is shot!" (Def. Ex. E, p. 1) He reported having trouble remembering names and could not remember what he did the day before. With respect to his emotional symptoms, claimant stated that he was continuing to experience "terrible dreams" about twice per month, essentially replaying the accident. He also less frequently experienced "replacement dreams," in which the person being injured is a family member rather than himself. (Def. Ex. E, p. 1)

Claimant further reported to Dr. Jasper that he continued to emotionally respond to reminders of the accident, such as the sight of steam or fog, and he becomes angry faster both at home and at work since the accident. (Def. Ex. E, p. 2) When asked about his typical day, claimant related that he enjoys his work and has a good relationship with his current boss. He had also recently purchased an aquarium for his children to grow tadpoles, which he found rewarding, and in recent months had started getting together with friends on weekends to play Dungeons & Dragons and publish their sessions on a podcast.

Dr. Jasper reviewed medical records and noted that prior to the December 4, 2017 work accident, claimant had several non-work-related life stressors and traumas, specifically the series of family deaths in 2017 and resulting struggles over estates and property. (Def. Ex. E, p. 3) He noted several medical records related to claimant's treatment for his burns in which the providers noted mental distress resulting from the accident, and that he would benefit from counseling and mental health evaluation. In

one record it is noted that claimant had discontinued a medication because he had forgotten he had it. (Def. Ex. E, p. 4) In reviewing Dr. Huston's records, Dr. Jasper noted that claimant appeared to have had a good working relationship with Dr. Huston. (Def. Ex. E, p. 5) However, in reviewing the records of TJ Sunderman, Dr. Jasper noted that no symptom validity testing or "repeated quantitative measurement of subjective symptom complaints" had been performed. He noted such information would "greatly aid in determining validity of self-report and would allow for a more reliable measure of change in symptoms over time."

In reviewing his history, Dr. Jasper noted "significant" depression in high school that was treated by medication. Claimant also reported to Dr. Jasper that at the time of his accident, his marriage "wasn't real great," and he had experienced some emotional distress prior to the work incident due to the deaths in the family and communication issues with his wife.

Dr. Jasper administered approximately 13 different neuropsychological tests, some designed to provide information regarding claimant's physical pain and psychological condition, and some designed to test claimant's cognitive, motor, and sensory condition. (Def. Ex. E, pp. 7-8) On each of the physical/pain/psychological tests, claimant's scores were in the invalid/noncredible range consistent with malingering and/or somatoform presentation, or provided evidence of over-reporting/exaggeration of symptoms. (Def. Ex. E, p. 7) With respect to the cognitive, motor, and sensory testing, Dr. Jasper noted that claimant failed four stand-alone performance validity tests, which is consistent with invalid/implausible performance and malingering. (Def. Ex. E, p. 8)

In his summary and conclusion, Dr. Jasper stated that the neuropsychological evaluation findings included "strong objective evidence of both invalid/implausible symptom reporting and invalid/implausible performance deficits most consistent with claimant attempting to malingering." (Def. Ex. E, p. 9) He explained that malingering is not a medical condition, but "intentionally feigning or exaggerating symptoms of illness or injury for external gain." As a result, Dr. Jasper indicated that assessment of claimant's reported conditions "must be done with careful scrutiny." He then notes that claimant's most emphasized PTSD symptom is nightmares, but that he described a "highly atypical" nightmare presentation. He also noted that claimant described the work accident in great detail without showing any signs of distress or psychological avoidance, which is inconsistent with his having PTSD associated with the event being described. Finally, he noted claimant's intact daily functioning, including full-time work, engaged participation at home, and extended consistent maintaining of social activities and relationships outside of work and home. He stated that this "breadth and depth" of intact daily functioning is "highly inconsistent" with the distress or dysfunction necessary to be diagnosed with PTSD or major depressive disorder. (Def. Ex. E, p. 9) In conclusion, Dr. Jasper opined that claimant does not have any permanent psychological, cognitive, or pain-related impairment from the work injury; any treatment he may need going forward is not related to the work incident; and that claimant does



not have any permanent work or activity restrictions caused by the work incident. (Def. Ex. E, p. 9)

Following Dr. Jasper's report, defendant withdrew authorization of claimant's ongoing mental health treatment with Sunderman. (Tr., p. 28) Claimant filed an application for alternate medical care with this agency, however the application was dismissed after defendant filed an answer denying liability for ongoing treatment related to claimant's mental health condition. (Tr., p. 31) Claimant continued to see Sunderman at his own expense following the denial, as he believes the counseling continues to help his condition. (Tr., p. 26)

At his appointment with Sunderman on June 10, 2020, claimant related that his workers' compensation had been "cancelled" after the neuropsychological evaluation. (Jt. Ex. 3, p. 19) They discussed claimant's ongoing issues with PTSD and his need for additional treatment due to the ongoing effects of the accident. At that time, claimant reported he was still thinking about the accident 3 to 4 times per day, especially when he experienced physical discomfort related to the burns. He also stated he continued to have dreams about the accident once or twice per month, and seeing any type of steam still caused panic, although not as bad as it had been in the past. (Jt. Ex. 3, p. 19) Sunderman completed a form indicating the various indicators for PTSD, and noted that claimant still demonstrated at least one of each category of symptoms. (Jt. Ex. 3, p. 20) For example, he still felt fearful when looking into the rendering department. He continued to re-experience the accident through distressing recollections and dreams. He continued to avoid thoughts, conversations, places, and people associated with the accident, especially his coworker Aaron who was also injured. Finally, he still experienced irritability and outbursts of anger, as well as an exaggerated startle response when exposed to certain triggers. (Jt. Ex. 3, p. 20) Based on those symptoms, Sunderman maintained the diagnosis of PTSD related to the work accident.

Sunderman provided a letter on July 20, 2020, further explaining his diagnosis. (Claimant's Exhibit 1, p. 1) He noted that due to the significant nature of the accident and claimant's ongoing psychological effects, withholding coverage for future therapy sessions could have "catastrophic consequences" for his mental and emotional wellbeing. He set forth the diagnostic criteria for PTSD, and noted which criteria applied to claimant. Those criteria included the stressor of actual or threatened serious injury, through direct exposure and witnessing the trauma; intrusion symptoms including unwanted upsetting memories, flashbacks, and emotional distress and physical activity after exposure to traumatic reminders; avoidance of trauma-related stimuli; negative alterations in cognitions and mood, including exaggerated blame of self or others for causing the trauma, negative affect, decreased interest in activities, and difficulty experiencing positive affect; alterations in arousal and reactivity including irritability and/or aggression, heightened startle reaction, difficulty concentrating, and difficulty sleeping; symptoms lasting more than one month; and symptoms creating distress or functional impairment. (Cl. Ex. 1, pp. 1-3)

Sunderman then provided a summary of topics that had been discussed with claimant in therapy over the prior year, including foggy days triggering claimant's PTSD; the constant neuropathic pain in his legs serving as a constant reminder of the accident; claimant trying to avoid thinking about it; ongoing bad dreams, which cause sleep issues along with increased anxiety and depression; "fight or flight" response to situations that might cause increased pain in his legs; feelings of anger and resentment; and feeling like he wanted to run away when having to go near the rendering department where the accident occurred. (Cl. Ex. 1, p. 3) In conclusion, Sunderman requested that claimant's psychotherapy continue to be covered, as he needed to continue working through the trauma related to the accident. He further noted that "the very nature of PTSD can create intense emotional reactions by seeing and/or hearing work-related circumstances that remind him of the accident." As a result, he opined that claimant's wellbeing depends on continued coverage for psychotherapy. (Cl. Ex. 1, p. 3)

At claimant's next appointment with Sunderman on July 22, 2020, he discussed concern about his injury being "life-long." (Jt. Ex. 3, p. 23) He also noted his anxiety was "spiked" all the time, and he was not sure why. He recognized that COVID and work restrictions, along with the hot weather aggravating his leg pain causing him to limit his outdoor activities, were all contributing to his increased anxiety. He continued with therapy sessions for the remainder of 2020, discussing his stressors both at work and home, and learning additional coping strategies to deal with his PTSD related issues. (Jt. Ex. 3, pp. 24-32) At his appointment on January 27, 2021, claimant reported still having pain in his legs where he was burned. (Jt. Ex. 3, p. 35) At his next several appointments, he continued to express the same symptoms of irritability, shame, and depression related to the work accident. (Jt. Ex. 3, pp. 36-46) His last appointment prior to hearing took place on August 4, 2021, at which time he reported feeling anger about Tyson's mandatory COVID vaccination requirement, and feeling "stressed and jittery." (Jt. Ex. 3, p. 47) With respect to the vaccination issue, claimant testified at hearing that he had since been vaccinated, and no longer had any issues with Tyson about the policy. (Tr., p. 46)

Claimant also testified that at his August 4, 2021 appointment, Sunderman told him he could see him being discharged from therapy within the next year. (Tr., p. 26) Claimant stated that they have had a lot of success working together. (Tr., p. 26) He also stated that he would like to see Sunderman every three to four weeks, but cannot financially do so, and as a result sees him about every six weeks. (Tr., pp. 25, 41) Claimant also testified that he disagrees with Dr. Jasper's conclusions that he does not have any permanent impairments related to the work injury, does not need any additional mental health treatment related to the injury, and is malingering. (Tr., p. 29) He testified that none of the other mental health professionals he has treated with have ever questioned the validity of his symptoms or his truthfulness. (Tr., pp. 29-30) He further noted that he is not "gaining anything" from the injury, and the only benefits he has received other than medical is the temporary benefits he received while off work. (Tr., p. 30) It is noted that in 2019, he also received payment for a 2 percent whole body impairment rating related to his physical injuries, which amounted to \$6,848.41 with interest. (Def. Ex. B, p. 1)

With respect to the prior stresses claimant experienced in his personal life in 2017, he testified that while upsetting, he did not consider seeking mental health treatment prior to the work injury related to the deaths in the family. (Tr., pp. 38; 46-47) He further stated that the stress and sadness he experienced following the family deaths was not as long lasting as the pain and depression he has experienced following the work accident and diagnosis of PTSD. (Tr., p. 47) He continues to find benefit from his sessions with Sunderman, including improvement in his ability to handle some levels of steam such as boiling water. (Tr., p. 42) He testified that he discusses various coping strategies in his sessions with Sunderman, and then implements those strategies in his daily life. (Tr., p. 43)

When considering the evidence as a whole, I find the opinion of Mr. Sunderman more convincing and reliable than that of Dr. Jasper. Mr. Sunderman has been providing mental health treatment to claimant since July of 2019. (Jt. Ex. 3, p. 1) He is intimately familiar with claimant's ongoing symptoms, as well as the progress he has made over the years. Dr. Jasper evaluated claimant one time, and a great deal of that time was spent conducting approximately 13 different neuropsychological tests. Claimant testified that he was at Dr. Jasper's office for roughly 5 hours, and just one of the 13 tests, the MMPI, took about an hour and a half to complete. (Tr., p. 29) Dr. Jasper appears to base all of his opinions on the results of those tests, with little consideration given to the mental health treatment claimant received from Dr. Huston and Mr. Sunderman or their diagnoses regarding his condition. Claimant was diagnosed with PTSD as early as June 7, 2018, although it appears that his health care providers were questioning his mental health state almost immediately following the accident. (See Def. Ex. E, p. 3) No treating mental health provider has questioned or changed that diagnosis. Dr. Jasper's opinion is narrowly focused on test results, and in stark contrast to all of the other evidence in the record.

Additionally, there is simply no valid reason for claimant to malingering in this case. The only thing he seeks in this proceeding is ongoing mental health care. He is not seeking additional temporary or permanency benefits at this time. He simply wishes to continue with the treatment he has been receiving for years, for as long as Sunderman believes he will continue to benefit. Sunderman recently expressed that may only be another year, further indicating the great improvements claimant has received through his treatment. There is no "external gain" to be had by claimant continuing with this treatment and continuing to improve, as anticipated by the definition of malingering.

In contrast, Sunderman has provided a detailed explanation of claimant's symptoms that support his diagnosis of PTSD. (Cl. Ex. 1) His opinions are supported by the medical evidence and claimant's clear and consistent testimony. I find his opinions to be better supported by the evidence as a whole, and the most reliable. I find that claimant's ongoing mental health symptoms are causally related to the work accident of December 4, 2017. As such, he is entitled to ongoing mental health treatment for those symptoms, as well as reimbursement for the expenses he has paid out of pocket since the denial of care.

## CONCLUSIONS OF LAW

Claimant argues that defendant improperly withdrew authorization for his mental health treatment, and that he is entitled to ongoing care for his work-related mental health injury. Defendant argues that claimant is not entitled to alternate medical care, because his ongoing treatment with Sunderman is not causally related to the December 4, 2017 work accident. Defendant points to Dr. Jasper's opinions in support of its position, and further argues that the bulk of claimant's most recent therapy with Sunderman is related to claimant's personal "everyday stresses," as opposed to the work accident.

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e). 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).

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 Systems, Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). In considering Dr. Jasper's opinion, I found it to be narrowly focused on test results, and in stark contrast to all of the other evidence in the record. Dr. Jasper provided a one-time evaluation, a great deal of which was spent administering 13 different neuropsychological evaluations. Further, there is no other evidence in the record to support his conclusion that claimant is malingering. Claimant's

condition has continued to improve with the treatment he has been receiving, he is not seeking any additional compensation for his injuries at this time, and he continues to work at Tyson.

In contrast, Mr. Sunderman provided a detailed explanation of claimant's symptoms that support his diagnosis of PTSD. His opinions are supported by the medical evidence and claimant's clear and consistent testimony. I found his opinions to be better supported by the evidence as a whole, and the most reliable. As such, I found that claimant's ongoing mental health symptoms are causally related to the work accident of December 4, 2017.

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Iowa Code § 85.27(4). The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999). Right to choose the care means the right to choose the provider, not the treatment modalities recommended by the provider. Employer must provide the treatment, testing, imaging, or other treatment modalities recommended by its own authorized treating physician, even if a consulting physician disagrees with those recommendations. Haack v. Von Hoffman Graphics, File No. 1268172 (App., July 31, 2002); Cahill v. S & H Fabricating & Engineering, File No. 1138063 (Alt Care, May 30, 1997); Leitzen v. Collis, Inc., File No. 1084677 (Alt Care, September 9, 1996); Hawxby v. Hallett Materials, File No. 1112821 (Alt Care, February 20, 1996). The right to choose the care does not authorize the employer to interfere with the medical judgment of its own treating physician. Boggs v Cargill, Inc., File No. 1050396 (Alt Care, January 31, 1994).

In addition to Dr. Jasper being a consulting practitioner, his opinions were not convincing. Given the above, I find that defendant unreasonably interfered with the care being provided by Mr. Sunderman, its own authorized treating provider. Dr. Jasper's opinions do not justify such interference. As a result, defendant has lost the right to further choose the care for claimant's mental health injury.

Claimant seeks reimbursement for treatment he continued at his own expense following defendant's denial of further mental health care. Defendant argues that claimant is not entitled to reimbursement because he knew that Mr. Sunderman's care was no longer authorized after May of 2020. However, under Iowa law, once defendant denied compensability for ongoing mental health treatment, it lost the right to choose the medical providers for that care during the period of denial. "[T]he employer has no right to choose the medical care when compensability is contested." Bell Bros., 779 N.W.2d at 204. Further, when compensability is contested, "the employer cannot assert an authorization defense in response to a subsequent claim by the employee for the expenses of the alternate medical care." R. R. Donnelly, 670 N.W.2d at 197-198.

Ultimately, therefore, defendant is precluded from asserting an authorization defense as to any treatment during the period of denial, and defendant lost the right to

control the medical care claimant sought during the period of denial. Brewer-Strong, 913 N.W.2d at 247; Bell Bros., 779 N.W.2d at 204. As such, claimant is entitled to reimbursement for the treatment he received for his mental health injuries during the period of the denial, as reflected in claimant's exhibit 3.

Claimant seeks a taxation of costs for the expenses listed in claimant's exhibit 6, which include the filing fee, certified mail fee, and fee for the IME report of Charles Wenzel, D.O. Assessment of costs is a discretionary function of this agency. Iowa Code § 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33.

The costs claimant seeks are all allowable under 876 IAC 4.33. As claimant was successful in his claim, I use my discretion and award him \$607.15 in costs.

### ORDER

THEREFORE, IT IS ORDERED:

Claimant is entitled to alternate medical care. Defendant shall immediately authorize and timely pay for claimant's continuing mental health care with TJ Sunderman.

Defendant shall reimburse claimant for all out-of-pocket expenses he has incurred in seeking mental health treatment during the period of denial, including but not limited to the expenses reflected in claimant's exhibit 3.

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

Defendant shall reimburse claimant's costs in the amount of six hundred seven and 15/100 dollars (\$607.15).

Signed and filed this 16<sup>th</sup> day of February, 2022.



JESSICA L. CLEEREMAN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jerry Jackson (via WCES)

Jason Wiltfang (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.