

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JASON D. LEFEBVRE,

FILED

Claimant,

MAY 25 2016

vs.

WORKERS COMPENSATION

File No. 5049253

IMKO WORFORCE SOLUTIONS,

ARBITRATION DECISION

Employer,

and

WORK FIRST CASUALTY COMPANY,

Insurance Carrier,
Defendants.

Head Note Nos.: 1402.40; 1804; 2500

STATEMENT OF THE CASE

Jason LeFebvre, claimant, filed a petition in arbitration seeking workers' compensation benefits from IMKO Workforce Solutions, and their workers' compensation carrier, Work First Casualty Company. Hearing was held on January 11, 2016. Presiding at the hearing was Deputy Workers' Compensation Commissioner Erin Q. Pals.

Claimant, Jason LeFebvre, and Nicole LeFebvre, testified live at trial. Carolyn Phillips, LISW testified at the trial via telephone. The evidentiary record also includes claimant's exhibits 1-15 and defendants' exhibits A-B. It should be noted that at the hearing claimant objected to defendants' exhibit A which is a report from Bruce D. Gutnik, M.D., dated December 14, 2015. Claimant objected on the basis that the report was not received by claimant until January 5, 2016. In order to alleviate any prejudice to claimant that may have resulted from receiving the report so close in time to the hearing date, claimant was given 60 days to file rebuttal evidence. On March 7, 2016, the undersigned was advised that claimant would not be filing any such evidence.

The parties submitted a hearing report at the commencement of the evidentiary hearing. On the hearing report, the parties entered into certain stipulations. Those stipulations are accepted and relied upon in this decision. No findings of fact or conclusions of law will be made with respect to the parties' stipulations.

The parties requested the opportunity for post-hearing briefs, which were submitted on March 21, 2016.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained temporary disability as a result of the May 13, 2014 work injury. Specifically, whether claimant is entitled to temporary benefits from August 9, 2014 through August 15, 2015.
2. The extent, if any, of permanent disability claimant sustained as a result of the May 13, 2014 work injury.
3. Whether claimant is entitled to payment of past medical expenses.

FINDINGS OF FACT

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

At the time of hearing, Jason LeFebvre was 36 years of age and living with his wife, Nicole, in Sioux City, Iowa. Jason was hired by IMKO Workforce Solutions and placed at Sabre Industries. He worked there from March 2014 to August of 2014 when he was terminated due to attendance issues. While at Sabre Industries he performed inspecting work in Quality Control. Jason was paid \$10.00 per hour. He operated a crane. It was his job to supply steel to 6 welders. He worked 9-11 hours per day, 6 days per week. (Testimony; Exhibit B)

On the date of the injury, May 13, 2014, Jason was trying to lift a huge sheet of steel with a double magnet crane. He was having difficulty picking up one sheet of metal. He exited his crane so he could measure the sheet of metal. When he touched his tape measure to the metal he was shocked. He estimates he felt the electricity for 6-8 seconds and then he was able to fight free. Jason testified that he felt like he was cooked and that there was heat coming out of his chest. He was disoriented and staggered around. He tried to find his supervisor, Chris, so he could report that he had been shocked. He found the safety guy and was told he could go to the doctor. He was taken to Mercy Business Health. (Testimony)

The records show that Jason was seen at Mercy Business Health Services, urgent care. He reported he experienced a shock at work for several seconds. He was experiencing heart palpitations and feeling lightheaded, near syncopal. The assessment was electrical shock, incomplete right bundle branch block on EKG, likely preexisting; however, there was no prior EKG for comparison. Because he was experiencing ongoing palpitations and near syncopal sensation he was referred to the emergency room for further evaluation. (Ex. 3, page 1)

He was taken to Mercy Medical Center in Sioux City for electric shock, dizziness, and rapid heart. The notes indicate he was shocked by 480 AC, unknown amperage.

The assessment was electrical injury. He was to follow-up with his primary care physician. (Ex. 2)

Jason returned to Mercy Business Health on May 14, 2014, for a recheck. He still felt weak, lightheaded, and vertiginous. However, he was significantly better than the prior day. Rodney L. Cassens, M.D. assessed him as having electrical injury. Dr. Cassens kept him off of work for the remainder of the day, he was to increase his fluids, and use Tylenol. Jason was instructed to return the following day for recheck. (Ex. 3, p. 6) Jason returned on May 15 and reported continued improvement. He was to remain home the remainder of the day. If orthostasis and symptoms improve he could return to restricted duty the next day. (Ex. 3, p. 8) On May 16, Jason was again seen by Dr. Cassens. He reported feeling better. Dr. Cassens placed him at maximum medical improvement and released him from treatment. He was released to return to work without restrictions. (Ex. 3, pp. 10-11)

Jason testified that he did return to work. However, while back at work in August, he stepped on a scale and felt like he was shocked and relived the injury all over again. Jason testified that his heart raced, he felt dizzy, and had sharp pains in his chest. He thought he was having a heart attack. He could not figure out why he was having this flashback. He was told that he did not look good and he received permission to leave work. He was seen at St. Luke's emergency room either that same day or the next day. Jason could not even see straight, so his wife drove him to the hospital. (Testimony)

The medical records indicate that Jason was seen on August 8, 2014, at Unity Point Health emergency room. He was having trouble breathing and felt like he was going to pass out. The records note he has a history of asthma. Jason reported panic like symptoms while at work and virtually no symptoms at home. He said that he first started noticing these episodes this week, but thinks perhaps they were present prior to this week. The doctor noted shortness of breath, pounding heart sensation, lightheadedness, vertigo, blurry vision, and left cheek numbness. The doctors note that he was shocked by electricity while at work three months ago. One EKG showed signs of T wave elevation; a second EKG did not. The impression was normal chest. He was diagnosed as having anxiety. He was discharged home in stable condition. (Ex. 4, pp. 1-14)

On August 9, 2014, Jason was seen again at the emergency room of Unity Point Health. He was experiencing shortness of breath and chest pain. He reported he was at home relaxing when he very suddenly developed right-sided neck pain, right ear pain, numbness and tingling on the right side of his face. His wife adamantly stated that she "knows that this isn't a panic attack and that she has them and this is [sic] not the symptoms she gets." (Ex. 4, p. 17) He denied any recent financial, work, or home stressors. He reported he had never felt like this before in his life. Again, the impression was that his symptoms were due to a panic attack. Jason wanted Ativan at home to help with his shortness of breath and an antibiotic for his right ear problems. He was discharged home with azithromycin and Ativan. The assessment was panic attack, otitis media, right. He was to follow-up with Daniel Irwin, M.D. (Ex. 4, pp. 15-24)

Late in the afternoon on August 11, 2014, Jason saw Dr. Irwin. He reported that he was seen in the emergency room Friday and Saturday nights because he felt like he was having a heart attack. He "felt better yesterday and today" until about "1 hour ago." Dr. Irwin noted that the patient presented with anxiety, difficulty concentrating, excessive worry, nervousness, panic attacks, shaky hands and sweaty palms. The symptoms occurred intermittently and seemed to be exacerbated by stress, new situations, financial problems, and job stress. Dr. Irwin also noted that associated symptoms included shocking sensation, diaphoresis, dizziness, flushing, heart palpitations, hyperventilation, racing heart, shortness of breath and tremors. Additionally, the doctor noted that Jason lost a baby two or three weeks ago and was shocked while at work. The shock entered through both hands and he believes it exited through his feet. Dr. Irwin assessed Jason with electrocution and nonfatal effects of electric current. He also assessed panic disorder. Dr. Irwin referred Jason to neurology for blurry vision and generally feeling different neurologically. Dr. Irwin also referred him to a counselor to further evaluate and treat the anxiety. (Ex. 5, pp. 1-2)

On August 20, 2014, Jason saw Aruntha R. Swampilial, M.D. with complaints of blurred vision. Jason reported that the onset had been gradual and intermittent for approximately two weeks. He also reported feeling light-headed at times. Dr. Swampilial noted chest tightness, mostly due to anxiety. Jason was prescribed medications. (Ex. 5, pp. 3-4)

On August 21, 2014, Jason was seen at the Unity Point Health emergency room. The records indicate he had been seen the day before by Dr. Irwin for shortness of breath related to anxiety and was started on a selective serotonin reuptake inhibitor (SSRI) for anxiety/depression. Jason took his first pill the night of August 20, 2014 and stated that he developed cramps in his arms and legs and was still short of breathe. Jason reported he was electrocuted at work in May of 2014 and has had "terrible anxiety" ever since that time. He denied having anxiety attacks prior to the electrocution. Since the accident he reports having them all the time and from no identifiable cause. Jason was given a duo-nebulizer treatment and his shortness of breath resolved. He was also given Ativan and this resolved his anxiety. The assessment was anxiety. (Ex. 4, pp. 26-30; Ex. 5, p. 5)

During this timeframe Jason was very skeptical that he was having panic attacks. He thought there was something physically wrong with him, such as a heart attack. He said even when they told him he had to see a "head doctor" he still thought the problem was something physical, like a heart attack or stroke. (Testimony)

On August 28, 2014, Jason was seen by Carolyn Phillips, LISW. He was accompanied by his wife, Nicole. Ms. Phillips noted that Jason had been electrocuted in May of 2014. He took three weeks off work and then returned to work. He had been back to work for three weeks when he had a flashback of the accident. He reported that since that time he had been unable to return to work. Ms. Phillips was informed of Jason's panic attacks. Nicole reported that he was very different than he was before the accident. Now he is sad and depressed. He will not leave the house and keeps thinking he should be dead. Jason reported that he feels like there is something off in

his brain. Ms. Phillips' diagnosis included post-traumatic stress disorder (PTSD). She noted that he was unable to work due to anxiety related to the work accident. She noted his GAF was 45. She recommended seeing Jason weekly for individual therapy to address anxiety issues as a result of the work accident. (Ex. 8, pp. 1-3)

Jason did have weekly appointments with Ms. Phillips. However, in February of 2015 this was changed to an every-other-week basis because he continued to have anxiety related to coming to the appointments. The last therapy note from Ms. Phillips is dated October 8, 2015. (Ex. 8, pp. 4-16) Jason testified that at some point after he started treating with Ms. Phillips he began to understand that he did actually have a mental problem.

Jason was seen by William J. Andrews, M.D., on September 10, 2014. He reported the electrocution at work in May of 2014. He was experiencing discrete sensations that occurred several times per week. The sensations came on suddenly and he would have difficulty focusing on objects. He also felt a sensation of vertigo which could take an entire day to resolve. The impression was vertigo; there was also mention of components of PTSD. (Ex. 6)

On October 1, 2014, Jason was seen for intermittent anxiety, difficulty concentrating, excessive worry, nervousness, panic attacks, shaky hands and sweaty palms. The notes reflect a history of loss of a baby and that he was shocked while at work. Jason felt his anxiety was improving, but he was still having problems. He had decreased the Ativan to two times per day. Dr. Taylor adjusted his medications and gave him a psychiatric referral. (Ex. 5, pp. 7-8)

On October 7, 2014, Jason was seen at Associates for Psychiatric Services, P.C. by Jeannie L. Franklin, ARNP. The notes indicate that the patient has had many panic attacks since he got electrocuted in May. Jason was treated with medications and told to follow-up in one month. (Ex. 7, pp. 1-3)

On November 5, 2014, Jason returned to Nurse Practitioner Franklin. The notes indicate Jason was experiencing anxiety that could be triggered by just about anything. She also noted depression, inability to concentrate, memory loss, nervousness, and panic attacks. Jason reported he was afraid to take the medication Geodon but had now agreed to take it. He was also instructed to take citalopram and lorazepam. The notes indicate that he had been more depressed lately. He was to follow-up in one week. (Ex. 7, pp. 4-6)

Jason returned to Nurse Practitioner Franklin on November 19 and advised that he had started taking the Geodon. He was doing a little better. The impression included PTSD, panic disorder with agoraphobia, major depressive disorder which was classified as recurrent and moderate. His medications were adjusted and he was told to follow-up in one month. (Ex. 7, pp. 6-9)

On December 19, 2014, Jason returned to ARNP Franklin. He reported that he had a bad week last week but was doing okay now. He reported sleeping during the

day or watching TV. It is noted that he could "not work right now" with the panic attacks. The assessment included major depressive disorder, recurrent and moderate, and panic disorder. His medications were adjusted and he was told to return in one month. (Ex. 7, pp. 10-12)

Jason was seen at Siouxland Medical by Nielsen H. Burns, M.D., on January 23, 2015. He was there for a wellness exam for insurance and his left ear was bothering him. He reported feeling well. However, the notes do indicate that he felt down, depressed or hopeless nearly every three days. The screening was positive for depression. The notes indicate that anxiety was present and that he received treatment for this at another office. (Ex. 5, pp. 10-11)

Jason returned to Associates for Psychiatric Services, P.C. on February 5, 2015. He was seen by Philip Muller, D.O., because Nurse Practitioner Franklin was no longer with that office. The notes indicate that Jason appeared anxious. Jason reported having flashbacks and nightmares. He went back to work for about a month and was doing somewhat okay but then he began having flashbacks and is now off work and cannot go back due to anxiety and flashbacks. Dr. Muller noted Jason was also seeing a therapist by the name of Carolyn Phillips. Dr. Muller's assessment included PTSD, panic disorder, and major depressive disorder. Dr. Muller adjusted Jason's medications and noted that he was not able to work. (Ex. 7, pp. 13-16)

Jason continued to see Dr. Muller. (Ex. 7, pp. 17-25) On July 22, 2015, Dr. Muller sent a letter to claimant's counsel. He noted that Jason had been treated by his office for panic disorder, PTSD, and depression. Dr. Muller opined that these conditions were the result of a work-related accident that happened in May 2014. The doctor noted that Jason had flashbacks and nightmares. He tried to go back to work for about one month but then began having flashbacks and had been off work since that time. As long as Jason was on medications he did better. However, Jason reported having panic attacks if he even went out to mow the yard. His heart rate begins to race and his anxiety returns. He also has difficulty driving and gets panic attacks while driving. When he has anxiety, things go numb and his vision gets blurry. Dr. Muller opined that Jason's symptoms were consistent with panic disorder and PTSD and that the medications Jason was taking were consistent with those diagnoses. (Ex. 7, pp. 26-27)

On August 15, 2015, Dr. Muller sent another letter to claimant's counsel to respond to some questions posed by the attorney. Dr. Muller opined that Jason would continue to need additional treatment for PTSD, panic disorder, and depression. He felt it was reasonable for Jason to continue to see Carolyn Phillips, LISW every two weeks unless Ms. Phillips decides to see him less often. Dr. Muller felt Jason would likely continue to need some type of individual therapy for the next two years. Additionally, Jason would need to continue to follow up for medication management with Dr. Muller. The doctor also indicated that this appeared to be a chronic condition and that Jason would likely need to be on some type of medication for two to four years. He opined that Jason has reached maximum medical improvement as of August 15, 2015. He noted Jason continued to have problems with panic symptoms in stressful situations.

He noted that Jason has difficulty with any type of stress. He also noted that Jason continued to have problems with agoraphobia. Dr. Muller stated that Jason's condition was permanent. Dr. Muller restricted Jason from any type of stressful situations at work. He noted Jason described having difficulty even at home with panic symptoms. Dr. Muller stated Jason would not be able to drive or operate any type of heavy machinery. (Ex. 7, pp. 28-29)

On November 10, 2015, Jason underwent a neuropsychological evaluation with Clayton J. Toddy, Psy.D., clinical psychologist. He was referred to Dr. Toddy by Dr. Muller. Dr. Toddy diagnosed Jason with panic disorder with agoraphobia, PTSD, major depressive disorder, and mild neurocognitive disorder due to electrocution and significant emotional distress caused by the accident. Dr. Toddy documented that Jason had tried to return to work but he experienced flashbacks, as if getting shocked again and reliving the experience. He also noted that Jason missed working. Dr. Toddy opined that Jason was experiencing PTSD related to his May 2014 work injury. He felt Jason also had panic disorder with agoraphobia and major depressive disorder. Dr. Toddy believed his significant emotional distress was affecting his cognitive functioning. Dr. Toddy noted that Jason's reported emotional distress was consistent with the formal testing, clinical interview, and his review of the medical records. Dr. Toddy opined that Jason demonstrated moderate to marked limits on his sustained concentration and persistence, social interaction, and adaptation due to anxiety issues related to the May 2014 work injury. Dr. Toddy's diagnosis included panic disorder with agoraphobia, PTSD, and major depressive disorder. He recommended continued psychotropic medication management with Dr. Muller, continued outpatient psychotherapy with Carolyn Phillips, LISW and continued treatment for medical conditions by resident doctors at Siouxland Medical Education Foundation. He noted that Jason's condition was permanent. Dr. Toddy stated that Jason "would not be able to handle work stress including operating heavy machinery." (Ex. 7, pp. 30-38)

On December 14, 2015, Bruce D. Gutnik, M.D. evaluated Jason at the request of the defendants. In addition to examining Jason, Dr. Gutnik also reviewed his medical records. Dr. Gutnik was not able to rule out the possibility that Jason suffered from panic disorder, unspecified depressive disorder or PTSD. Dr. Gutnik noted that Jason's presentation was unusual. Dr. Gutnik felt that if Jason did have these conditions he would likely benefit from ongoing treatment with an antidepressant, but he doubted further psychotherapy would be helpful. Dr. Gutnik opined that Jason was clearly physically capable of returning to work at any time. Dr. Gutnik did not address whether Jason was emotionally capable of returning to work. He felt psychological testing would be helpful. (Ex. A)

At hearing Jason testified that he still has panic attacks on a regular basis. For example, if he leaves the house he experiences shortness of breath, stabbing pain in his chest, and it feels like he is having a heart attack. However, he now understands that they are panic attacks. He also experiences dizziness and blurred tunnel vision. The length of the attacks vary anywhere from ten minutes to two days. Jason testified that they are triggered by anything stressful; leaving the house, crowds, people, tight

spaces. If he has a severe panic attack he takes some of his prescription medication and sleeps it off. He admitted he only really leaves the house when his wife makes him. His wife makes him leave the house at least once every couple of weeks. They have been out to a restaurant when he has had a panic attack and they have had to cancel their order and leave. He testified that during an attack his body shuts down, it is difficult for him to walk, so sometimes when shopping he has to use a motorized scooter. He said the attacks are very exhausting.

Jason said that he would like to return to work but he does not know what he would be able to do in his current condition. Jason testified that prior to his injury he thought mental injuries were not real. (Testimony)

Carolyn Phillips, LISW, testified telephonically at the arbitration hearing. She testified that one of Jason's biggest challenges was physical exertion because it seems to trigger anxiety and a panic attack. Ms. Phillips opined that Jason could not return to work in any job that requires physical exertion. She feels that he is not able to work at this time; she is not certain when he could return to work, if ever. Ms. Phillips notes that Jason not being able to work is a struggle for him because it makes him feel inadequate as a man. Jason has told her that he does want to return to work. However, she recognizes that Jason's current condition may be as good as he ever gets. She feels that if Jason's anxiety would improve to a point where he could manage his anxiety without having a panic attack then she has no doubt that he would return to the workforce in a heartbeat. In support of her opinion that Jason's PTSD is related to the work injury, she points out that the triggers for his initial attack were similar to the injury. For example, both events happened on a cloudy day, at his work, and while he was working with electrical equipment. This is how she knows that the work injury triggered his current mental health problems, and not the miscarriage that defendants contend triggered his problems. Additionally, Ms. Phillips has witnessed him have anxiety in her office in response to a light flickering. Defendants point out that Ms. Phillips has not seen all of Jason's treatment records. It is also not clear if Ms. Phillips has a complete history from Jason. For these reasons, Ms. Phillips' opinions are not given great weight.

Nicole LeFebvre testified live at the hearing. She has been married to Jason since 2008. She first met Jason sometime around 2006. When she first met him she became aware that he had a history of substance abuse but she believes everyone deserves a second chance. She testified that after they met, Jason changed. For example, Jason stopped drinking in May of 2008 before they were married. She believes Jason recognized how important family is to her and that he changed for her and for his son, Sam.

On the date of the injury she received a phone call advising her that Jason had been electrocuted and that she needed to come take him to the hospital. She received a second call telling her to just meet them at the hospital. When she arrived at the hospital she said Jason looked disoriented and generally "not with it." For example, she attempted to talk to Jason but he would not answer her. (Testimony)

She remembers when Jason was cleared by the doctor to return to work. He went back to work. She testified about Jason's panic attacks beginning in August of 2014. Jason was convinced he was having a heart attack. She said Jason wanted to go to the emergency room on more occasions but she was able to talk him out of going to the hospital.

She said Jason still experiences panic attacks. When this happens she can see that his eyes are dilated, he becomes sweating, fidgety, and generally shuts down. He has panic attacks frequently that usually last for one hour, sometimes longer. She testified that he sleeps a lot during the day when she is at work because he does not feel safe when he is alone.

From the time they were married up until the time of the injury she said that Jason was a hard worker and he cared for his family. He worked his regular job as well as a paper route. He would get up at 4:00 a.m. to deliver papers and then go to work until 10:30 p.m. He loved spending time with his son and hanging out with the family. He also enjoyed social activities. Nicole said that she is not a good housekeeper. Prior to the injury Jason cleaned the house and did the laundry all the time. These things were his responsibility. During the time she knew him Jason did not have any panic attacks prior to the injury. Jason also did not have any problems with depression. (Testimony)

She now does the housework because he does not. Since the accident she has had to take care of him basically all the time; it is almost like she has another nine-year-old child. She often has to beg him to get up and move around. This never happened prior to the injury. She does not believe he is acting this way to try and avoid work. She believes he truly wants to return to work because right now he does not feel like he is performing his duties as a husband or father because he is not contributing. She knows that prior to meeting her he did not have a good work history but since she met him he has been hard-working and responsible.

Nicole believes that the treatment has helped him to manage some of his symptoms but she feels the treatment has not helped enough. She testified that Jason is a totally different man now than the man she married; he is simply not him, he is just there.

Nicole testified that she did have a miscarriage sometime between May and August of 2014. However, she has a history of miscarriages. She does not believe this caused him to have the panic attacks because the two of them having miscarriages is "natural to them" because she is not able to carry a child.

Based on a preponderance of the evidence, I find that Jason suffers from mental illness. Dr. Toddy and Dr. Muller have diagnosed Jason with PTSD, depressive disorder, and panic disorder. (Ex. 7, pp. 28-30) Ms. Phillips diagnosed him with PTSD. (Ex. 8, p. 3) Even defendants' IME doctor cannot rule out PTSD, depressive disorder or panic disorder. (Ex. A)

The next issue to be addressed is whether claimant's mental condition is related to the work injury. Defendants contend that the cause of his mental condition was his wife's miscarriage in late July of 2014. Jason testified that when he went to the emergency room in August of 2014 he was not even aware of the miscarriage. He believes the reference to the miscarriage in the hospital record is based on information his wife provided to the doctor. Sadly, Nicole has miscarried on more than one occasion. Jason and Nicole have experienced miscarriages prior to May 13, 2014, and Jason was not diagnosed with a mental illness as a result of these miscarriages. Defendants also contend that Jason's mental condition is the result of other possible life stressors. These life stressors include his mother's gambling problem, his brother's drug problem, and the other potential life stressors set forth in the records. However, there is no expert support for defendants' contentions. The record is void of any expert opinion to support defendants' contention. Dr. Muller was Jason's treating psychiatrist for almost one year prior to the hearing and he concluded his mental conditions were caused by the work injury. (Ex. 7, p. 26) Likewise, Dr. Toddy opined that Jason's work injury was the cause of his mental condition. I note that Dr. Toddy reviewed all of Jason's medical records, including those noting the miscarriage in the summer of 2014. (Ex. 7, pp. 30-38) Even the defendants' IME doctor does not attribute Jason's mental condition to the miscarriage or the other potential stressors in Jason's life. Although he does not relate his condition to the work injury, he also does not relate his condition to the non-work stressors in Jason's life. (Ex. A) I find the opinions of Dr. Toddy and Dr. Muller to be the most persuasive. Their opinions are consistent with one another and with the record as a whole. The preponderance of the evidence demonstrates that Jason's mental condition is causally connected to the work injury. I find that Jason's mental condition is related to the work injury of May 13, 2014.

The next issue is whether Jason has sustained any permanent disability as a result of the work injury. The preponderance of the evidence demonstrates that Jason has sustained permanent disability as a result of the May 13, 2014 work injury. Specifically, he has sustained permanent disability as a result of his mental condition which resulted from the physical injury.

As previously noted, Jason has demonstrated by a preponderance of the evidence that his mental condition is a result of the physical injury he sustained on May 13, 2014. Dr. Muller stated that Jason reached maximum medical improvement as of August 15, 2015. He also opined that Jason's condition was permanent. Regarding restrictions, Dr. Muller stated that Jason would not be able to handle any type of stressful situations at work. He would not be able to drive or operate any type of heavy machinery. (Ex. 7, pp. 28-29) Dr. Toddy noted that Jason's condition was permanent. Dr. Toddy stated that Jason "would not be able to handle work stress including operating heavy machinery." (Ex. 7, pp. 30-38) Dr. Toddy assigned permanent impairment pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, chapter 14.4, Assessing Impairment Severity, for Mental and Behavioral Disorders. It is also noted that Jeannie Franklin, ARNP who treated Jason indicated on November 7, 2014, that Jason was incapable of working due to his mental condition.

(Ex. 14) Dr. Gutnik opined that Jason is physically capable of returning to work. However, Dr. Gutnik's report is notably silent on the issue of whether Jason is mentally capable of returning to work. (Ex. A)

The providers who have provided treatment to Jason all agree that Jason has restrictions as a result of his mental condition. Dr. Gutnik fails to address the issue of whether Jason is mentally capable of returning to work. The restrictions expressed by Dr. Muller, Dr. Toddy, and Nurse Practitioner Franklin are consistent with the testimony of the claimant and his wife regarding his ongoing difficulties with panic attacks. I find that Jason has restrictions as a result of the work injury; specifically, he is restricted from work stress and from operating heavy machinery. I further find the preponderance of the evidence demonstrates that Jason has sustained permanent disability as a result of the work injury.

We now turn to the issue of extent of permanent disability sustained by Jason. I find that Jason has sustained a physical-mental injury which is compensated as an injury to the body as a whole and thus is compensated on an industrial disability basis. Jason has lived in the Sioux City area his entire life. He attended school in the Sioux City Public School system and completed two years of high school before dropping out. Prior to dropping out Jason received below average grades. (Ex. 1) Later, Jason attempted to obtain his GED but he eventually lost interest and did not complete his GED. (Testimony)

Jason became a father at the age of 16. Because he needed money, he dropped out of high school and in 1997 began working at State Steel in Sioux City. He worked as a sheer helper stacking steel. He was terminated from this position in 1999 due to attendance issues. Next, Jason went to work as a machine operator for the South Sioux City Foundry in South Sioux City, Nebraska. While there he operated a molding machine, operated a forklift operator, and was a general laborer. He was paid \$12.65 per hour. He worked there until 2004 when he was again terminated for attendance issues. (Testimony; Ex. B) I find Jason's restrictions would preclude him from returning to this type of work, which includes operating heavy machinery.

Jason testified that from 2004 until approximately 2006 he took some time off and lived with his parents. He admitted he just hung out with friends and basically lived off of his parents. (Testimony; Ex. B)

Jason began work again in approximately 2006. He went to work for the City of Sioux City for one summer as a server at the Sioux City Convention Center. He served food at banquets and other events. He was paid \$10.00 per hour. Jason left this job at the end of the summer because he felt he was not getting enough hours. (Testimony; Ex. B) Given Jason's panic attacks, fear of crowds and restrictions from work stress, I find it is highly unlikely that he could handle returning to this type of employment.

Next, Jason was placed at the Sioux City Foundry through a temporary agency. He was paid \$10.50 per hour. He worked as a rebar handler and crane operator. He worked here for only a couple of months, but then left because he felt like he was not

getting hired on as fast as he wanted. (Testimony; Ex. B) I find Jason's restrictions would preclude him from returning to this type of work, which includes operating heavy machinery.

From approximately July to October 2008, Jason worked at Chesterman Company. He worked as a driver/vendor earning \$11.50 per hour, plus 3 percent of what he earned on his route. He drove what he described as a van truck and delivered pop and snacks. He quit this job because he did not like the hours. (Testimony; Ex. B) I find Jason's restrictions would preclude him from returning to this type of work, which includes operating heavy machinery.

From October 2007 to March 2009, Jason worked at Sabre Industries. He was paid \$10.00 to \$12.65 per hour. Jason worked at Knife River from October 2008 to November 2012 when he was laid off. He worked as a laborer/driver and was paid \$12.65 per hour. He collected unemployment during the off season. He said this job ended because there was not enough work for him. He collected unemployment during 2013. (Testimony; Ex. B) Again, I find Jason's restrictions would preclude him from returning to this type of work, which includes operating heavy machinery.

At hearing Jason admitted that when he was younger he chose to party with his friends and as a result he missed work frequently. However, both Jason and Nicole testified that after he met Nicole he had changed. They credibly testified that he became a hard worker who cared for his family. The record is void of any indication that Jason was not a good worker for the defendant employer. Jason's work history includes manual labor jobs, almost all of which require driving or operating machinery. The work restrictions placed on Jason by Dr. Muller prevent him from performing most, if not all, of his prior jobs.

Given Jason's limited education and severe restrictions which preclude him from performing his pre-injury jobs, Jason's prospects for employment are not good. I found the opinions of Dr. Toddy and Dr. Muller to carry the most weight. Both experts agree that Jason would not be able to handle work stress and he cannot operate heavy machinery. I find that these restrictions have a profound effect on Jason's ability to find employment. He faces significant obstacles to find work given his limited education, work history, and restrictions. Furthermore, Jason has not worked for over one and one-half years. Considering claimant's age, educational background, employment history, ability to retrain, stated desire to obtain a job, length of healing period, permanent impairment, and permanent restrictions, and the other industrial disability factors set forth by the Iowa Supreme Court, I find that Jason is wholly precluded from performing the work otherwise within his experience and training. Thus, he is permanently and totally disabled as a result of his electrocution of May 13, 2014. His restrictions preclude him from performing the only jobs he has ever held and the only jobs which he is currently qualified to perform.

Because Jason has established permanent total disability his benefits commence on the last day he performed his job, which was August 8, 2014.

Because claimant is found to be permanently and totally disabled the issue of healing period benefits is moot.

Claimant is also seeking payment of medical expenses for his treatment with St. Luke's, Dr. Muller, and Dr. Toddy. Jason testified that he received this treatment for his mental health conditions, which he believes were caused by his work injury. I previously found that his mental condition is related to the work injury. I find defendants are responsible for the medical expenses as set forth in claimant's exhibits. (Exs. 10-13)

Additionally, defendants are responsible to provide future treatment for Jason pursuant to Iowa Code section 85.27.

In claimant's post-hearing brief, claimant's counsel asserts a claim for penalty. However, this issue was not raised in the hearing report, nor was it raised at the time of hearing. (Hearing Report) Therefore, I find that this issue was not properly raised and the issue of penalty will not be addressed.

CONCLUSIONS OF LAW

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 Rule of Appellate Procedure 6.14(6)(e).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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).

Under Iowa law a worker is entitled to workers' compensation benefits if he suffers a psychological injury which resulted from a work-related physical trauma. Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 16 (Iowa 1993) (citations omitted). In such a physical-mental case the courts have not required a separate determination be made for medical causation and legal causation. Id. at 16. Rather, the claimant's burden is to show that the injuries arose out of and in the course of employment. See Menard, Inc. v. Schneberger, No. 14-0682, (Iowa App. February 11, 2015). In other words, the claimant must be able to show that his or her mental disability arose out of and in the course of employment as a result of the initial physical injury.

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).

Based on the above findings, I concluded that the preponderance of the evidence demonstrates that Jason's mental condition is causally connected to the work injury. I conclude that Jason's mental disability arose out of and in the course of employment as a result of the initial physical injury. Thus, I find that claimant sustained a physical-mental injury as a result of the work injury of May 13, 2014.

Because 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.

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 29, 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. 1982).

Having considered the relevant industrial disability factors and having found that claimant has proven by a preponderance of the evidence that he is permanently and totally disabled, I conclude that claimant is entitled to an award of permanent total disability benefits at the stipulated weekly rate of three hundred ninety-seven and 89/100 dollars (\$397.89). Iowa Code section 85.34(3).

Because claimant has established permanent total disability, his benefits commence on the last day he performed his job, which was August 8, 2014.

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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

Based on the above findings, I conclude defendants are responsible for the medical expenses as set forth in claimant's exhibits. (Exs. 10-13) Additionally, defendants are responsible to provide future treatment for Jason pursuant to Iowa Code section 85.27.

ORDER

THEREFORE, IT IS ORDERED:

Defendants pay claimant permanent total disability benefits at the weekly rate of three hundred ninety-seven and 89/100 dollars (\$397.89) commencing on August 8, 2014, and throughout the period that he remains permanently and totally disabled.

Defendants shall pay interest as provided in Iowa Code section 85.30.

That all accrued benefits shall be paid to the claimant in a lump sum plus interest.


Defendants are entitled to a credit for any weekly workers' compensation benefits previously paid to the claimant.

Defendants shall pay the claimant's prior medical expenses submitted by claimant at the hearing.

Defendants shall pay the future medical expenses of the claimant necessitated by the work injury.

Defendants 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.

Signed and filed this 25th day of May, 2016.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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EQP/srs

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.