BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARTIN BEECHER, Claimant, vs. WAL-MART, Employer, and ILLINOIS NATIONAL INSURANCE COMPANY, Insurance Carrier, Defendants.	FILED APR 15 2015 WORKERS' COMPENSATION	File No. 5042997 ARBITRATION DECISION Head Note Nos.:1108.20; 1402.40; 1804; 2204; 2907

STATEMENT OF THE CASE

Martin Beecher, claimant, filed a petition in arbitration seeking worker's compensation benefits from Wal-Mart, as his employer, and Illinois National Insurance Company, as the insurance carrier. This case proceeded to an arbitration hearing on February 18, 2015, in Des Moines, Iowa.

Claimant testified on his own behalf and defendants called Ramona Priebe to testify. Claimant offered exhibits 1 through 12. Defendants offered exhibits A through D and F through G. All exhibits were received into the evidentiary record without objection.

The parties also submitted a hearing report, which contains stipulations. The parties' stipulations are accepted and relied upon in entering this decision. No findings or conclusions will be entered with respect to the parties' stipulations and the parties are bound by those agreements.

Counsel for the parties requested the opportunity to file post-hearing briefs. This case was considered fully submitted upon the simultaneous service of post-hearing briefs on March 13, 2015.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the stipulated May 8, 2011 low back work injury caused a temporary disability.

2. Whether claimant refused an offer of light duty work such that he forfeited any claim or entitlement to temporary disability benefits during his period of recovery.

3. Whether the stipulated May 8, 2011 work injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits.

4. Whether claimant is entitled to an award of past medical expenses.

5. Whether costs should be assessed against either party.

In his post-hearing brief, claimant asserts a claim as an odd-lot employee. This issue is not included within the disputed issues and the claim for odd-lot status will not be considered. The parties noted on the hearing report that the issue of whether claimant is an odd-lot worker was "Not Applicable." That stipulation was accepted by the undersigned at the time of hearing and defendants had no advance notice of the odd-lot claim being asserted until receipt of the claimant's post-hearing brief. Therefore, the odd-lot claim asserted in the claimant's post-hearing brief is not permitted, considered, or decided.

FINDINGS OF FACT

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

Martin Beecher is a 48 year old man, who sustained a stipulated low back injury on May 8, 2011 while working at Wal-Mart in Clinton, Iowa. On that date, Mr. Beecher was transporting a pallet of bananas using a pallet jack. Either because of a malfunction or because the pallet jack hit a metal strip on the floor, the pallet jack stopped suddenly and Mr. Beecher experienced pain in his low back with radiating symptoms into his stomach, genitals, and left hip. (Transcript, pages 15-16) Mr. Beecher asserts that he has sustained temporary and permanent disability as a result of the low back injury as well as mental sequela arising from that low back injury.

Claimant graduated from high school in 1984 and describes himself as a successful student. He reported having his intelligence quotient (IQ) tested during his high school years and that he has an IQ of 185. Mr. Beecher attended Clinton Community College where he took math and computer courses. However, he did not obtain a degree from Clinton Community College and has no further higher education.

Mr. Beecher has worked as a security guard for a period of approximately 20 years. He testified that he worked for a private contractor but served as a security guard for undisclosed military installations. Mr. Beecher has also worked for a short period of time on an assembly line as well as in a shoe factory. He has some quality control experience at the shoe factory and experience as a supervisor while working as a security guard. Mr. Beecher has work experience as a sales associate and working for a telephone answering service.

In December 2008, Mr. Beecher began his employment with Wal-Mart. He worked at Wal-Mart continuously from December 2008 until his termination on May 27, 2011. His job duties at Wal-Mart included work as a stocker and as a sales associate.

Following the May 8, 2011 work injury, Mr. Beecher was scheduled to have May 9, 2011 off work and he called in sick on May 10 and May 11. Mr. Beecher initially sought medical treatment with his family physician with his first treatment occurring on May 12. His family physician, Stephen Harrison, M.D., took claimant off work from May 12 through May 16.

On May 17, 2011, claimant reported his injury to a Wal-Mart supervisor. After reporting the injury to Wal-Mart, Mr. Beecher was directed to Mary Shook, M.D. Dr. Shook evaluated claimant on May 19, 2011, recommended a lumbar MRI and prescribed a Medrol Dosepak to start claimant on a course of prednisone.

Claimant started taking the prednisone on May 20, 2011 and experienced a feeling of euphoria. He reported to work that evening and the evening of May 21, 2011. He was assigned to light duty work these evenings. At the end of his overnight shift on the morning of May 22, 2011, claimant's supervisor approached claimant and asked if he would agree to change his work shift.

Claimant testified that he experienced an overwhelming urge to rip his supervisor's head and arms off and to paint the foyer of the Wal-Mart with the supervisor's blood. Mr. Beecher testified the urge to kill his supervisor left once his supervisor turned and left his presence. However, claimant recognized the violent urge was abnormal and attempted to contact Dr. Shook's office to determine if he should discontinue his use of prednisone. He had to leave a message so he also called his pharmacist, who advised him not to discontinue prednisone without physician orders.

Mr. Beecher continued to take his prednisone prescription until he was seen by Dr. Shook again on May 23, 2011. Despite discontinuing the prednisone, Mr. Beecher testified that his psychotic symptoms continued. On May 24, 2011, he describes seeing dead people on television. He describes bouts of inappropriate laughing and crying. He described an episode of paranoia in which he could not get out of his bed because he believed he would die if he did.

Nevertheless, claimant reported to work on the evening of May 24, 2011. After a staff meeting, a supervisor approached Mr. Beecher and requested he attend a meeting in the human resources office. Two supervisory personnel, Jason Dennis and Ramona Priebe attended the meeting with Mr. Beecher.

Mr. Beecher testified he had difficulty sitting at this meeting. After being threatened with termination, Mr. Beecher eventually sat down. However, the meeting went poorly and Mr. Beecher testified that he ended up becoming enraged, threw a water bottle at Mr. Dennis and stormed out of the office into the Wal-Mart store. Mr. Beecher recalls knocking product off Wal-Mart displays, he recalls seeing a can of beans originate near his hand and then fly across an aisle, and he recalls yelling profanities and noting he would kill Wal-Mart customers if they did not get out of his way.

Understandably, Wal-Mart interpreted this event as workplace violence and terminated Mr. Beecher's employment on May 27, 2011. Mr. Beecher has not attempted to work, or even applied for work, since his termination on May 27, 2011.

Ultimately, Mr. Beecher's low back symptoms were treated conservatively. The radiologist interpreting the MRI opined that claimant had degenerative changes with a broad-based central bulging and mild protrusion of the disk at L5-S1 with mild right S1 nerve encroachment. The radiologist also noted moderate narrowing of the disc space at L4-L5 but no impression of disc herniation at that level. (Exhibit 3, page 58) After receipt of the MRI report, Dr. Shook ordered an EMG/NCV test to check for radiculopathy. That EMG/NCV demonstrated no evidence of radiculopathy from claimant's low back. (Ex. 4) Dr. Shook referred claimant for evaluation by an orthopaedic surgeon, Abdul Foad, M.D.

Dr. Foad evaluated claimant on June 7, 2011. Dr. Foad identified no objective signs of injury either in his physical examination or via the diagnostic studies that had been performed. (Ex. A, p. 4) Dr. Foad noted that claimant did not "have significant clinical evidence of motor weakness, long tract signs, or radiculopathy." (Ex. A, p. 4) Dr. Foad opined that claimant had significant myofascial pain causing his symptoms and recommended physical therapy. Dr. Foad also suggested that many of claimant's symptoms came from non-organic (psychological) aspects.

Dr. Foad categorized the physical aspects of the May 8, 2011 work injury as a temporary aggravation of an underlying chronic degenerative condition. Dr. Foad further opined that no work restrictions were required as a result of the low back injury on May 8, 2011. (Ex. A, p. 5) Dr. Foad opined that no formal impairment rating should be assigned for claimant's low back injury. (Ex. A, p. 8)

Dr. Shook appears to have ultimately agreed with Dr. Foad. She released claimant to return to work at regular duty as of October 11, 2011. (Ex. 2, pp. 27, 37) Dr. Shook also concurred that claimant did not sustain any permanent impairment as a

result of the May 8, 2011 low back injury. (Ex. 2, p. 29) The opinions of Dr. Foad and Dr. Shook regarding claimant's functional abilities related to his low back injury appear to be corroborated by a physical therapy functional assessment performed in December 2012. Following that assessment, the therapist opined that the assessment "reveals no significant limitation to this client's ability to perform activities such as lifting, carrying, pushing or pulling." (Ex. 9, p. 125)

Following Dr. Shook's discharge from care, Mr. Beecher sought chiropractic care for his low back. However, he has not received any significant, ongoing or invasive treatment for his low back since being discharged by Dr. Shook in 2011.

Mr. Beecher's treating chiropractor, Pamela LeRoux-Troxell, D.C., opines that claimant is not capable of sustained movement or sitting for long periods of time, that he can lift up to 20 pounds for 30 minute intervals to be followed by a 15 minute rest period. She specifically imposed a 15 minute sitting and standing limitation.

Claimant obtained an independent medical evaluation performed by a neurosurgeon, Robert Milas, M.D., on December 15, 2014. Dr. Milas diagnosed claimant with herniated discs at the L4-L5 and L5-S1 levels, as well as lumbar stenosis at these same levels. Dr. Milas did not impose any work restrictions, but opined that Mr. Beecher sustained a 23 percent permanent impairment as a result of his low back injury on May 8, 2011.

Mr. Beecher admits that he continues to cut, carry, load and unload wood to heat his home. He admits activities in excess of those outlined by Dr. LeRoux-Troxell. (Ex. G, p. 24 (deposition transcript, p. 96)) I find that the opinions of the orthopaedic surgeon, Dr. Foad, and those of Dr. Shook are more persuasive than those of Dr. LeRoux-Troxell on the issue of physical restrictions. Claimant clearly exceeds the restrictions his chiropractor believes should apply without additional injury. I find that claimant has not proven any permanent physical restrictions are required as a result of his low back injury.

With respect to the issue of permanent impairment, I do not find the opinion of Dr. Milas to be convincing. Typically, someone with a 23 percent permanent impairment of the lumbar spine will have submitted to surgical intervention, be actively continuing medical treatment, and/or be in significant distress. The AMA Guides also have certain guidelines to qualify for such a rating.

Dr. Milas places Mr. Beecher into DRE Category IV under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition . To qualify for Category IV status, there should be objectively documented loss of segment integrity. No such x-ray evidence exists in this case.

Alternatively, a person in Category IV of the DRE Lumbar Spine should have significant limits in back ranges of motion, successful or unsuccessful surgical fusion, or significant compression fractures. See AMA Guides, Fifth Edition, Table 15-3, p. 384.

Even Category III of the DRE Lumbar Spine requires objective evidence of radiculopathy, which is not present in this case. See AMA Guides, Fifth Edition, Example 15-4, p. 386. Mr. Beecher does not have symptoms or objective findings consistent with the impairment rating offered by Dr. Milas. I reject the impairment rating offered by Dr. Milas in this case.

Instead, I find the opinions of Dr. Foad and Dr. Shook are accurate with respect to claimant's low back. I find that claimant failed to prove any permanent impairment resulting from his May 8, 2011 low back injury. Having found no permanent impairment and no permanent restrictions related to claimant's low back injury, I find that Mr. Beecher has not proven any future loss of earning capacity as a direct result of his May 8, 2011 low back injury.

However, Mr. Beecher also asserts mental injuries resulting as sequela of his treatment for the low back. Specifically, Mr. Beecher asserts that his violent outburst and inappropriate social actions on May 27, 2011, which led to his termination, were caused by a reaction to the prednisone prescription he took. Mr. Beecher testifies that he has ongoing mental difficulties that he also attributes to the prednisone.

Mr. Beecher's claims are supported to some extent by his personal family physician (Dr. Harrison), his treating psychiatrist (Todd Pogue, D.O.), his evaluating psychologist (John Keraus, Ph.D.), his treating licensed mental health social worker (Dan Fullerton), as well as his evaluating neurosurgeon (Dr. Milas). Defendants counter with the opinions of Dr. Shook, Dr. Foad, and an evaluating psychologist (John Brooke, Ph.D.).

Having reviewed all of the competing opinions, I give very little weight to the opinions of Dr. Harrison, Dr. Shook, Dr. Milas, and/or Dr. Foad. None of these physicians are mental health experts. When the weight of their opinions is compared to those of the treating or evaluating psychiatrists, psychologists, and licensed mental health social worker, the opinions of these physicians are clearly outside of their expertise and are not convincing.

However, even the mental health professionals have differing opinions in this case. Mr. Fullerton was the first mental health professional to evaluate claimant on June 7, 2011. Mr. Fullerton's initial impressions were less than definitive. He opined, "Somehow the medications that he was put on caused him to have some sort of a psychotic experience or a break of some kind." (Ex. 6, p. 74) Mr. Fullerton continues to treat Mr. Beecher, seeing claimant twice a month at the present time. In a report dated January 20, 2015, Mr. Fullerton opines, "Mr. Beecher is still suffering from acute anxiety and periodic panic attacks." (Ex. 6, p. 113) Mr. Fullerton explains:

> Mr. Beecher's social effectiveness is very limited. It is very difficult for him to interact with other people. Mr. Beecher finds it very difficult to carry out any kind of meaningful activity with people other than his immediate family.

> Based on my evaluation of the client's mental status in my opinion that [sic] he significantly lacks the ability to remember work related procedures. His ability to understand and remember very short and simple instructions is very limited. His ability to carry out short and simple instructions is very limited. His ability to maintain attention for an extended period of time of two hours or more is extremely limited. His ability to maintain regular attendance and be punctual within customary tolerances is extremely limited. His ability to sustain an ordinary routine without specific supervision is very limited. His ability to work in coordination or in the proximity of other people without being unduly distracted by them is very limited.

(Ex. 6, p. 113) Mr. Fullerton suggests that claimant's limitations and difficulties are not likely to resolve within the next year. (Ex. 6, p. 114)

In a report dated January 23, 2015, Mr. Fullerton opines, "It is my professional belief that the incident that took place in his work place and the negative reactions that he had to the medications are definitely a contributing factor to his psychological problems." (Ex. 7, p. 115)

Defendants had Mr. Beecher evaluated by a psychologist, Dr. Brooke, on June 24, 2011. Dr. Brooke administered an MMPI test on claimant and found the results to be valid and normal. (Ex. B, p. 7) Ultimately, he concluded that Mr. Beecher's "episode of emotional and cognitive turmoil resolved within one to two weeks of discontinuing the prednisone and being terminated from work." (Ex. B, p. 1) Dr. Brooke opined that claimant "is considered as emotionally stable as he was prior to his reported work injury at this time and no treatment is recommended." (Ex. B, p. 1) Interestingly, however, Dr. Brooke addresses the potential and concern that Mr. Beecher may be violent at some time after his evaluation in June 2011.

Dr. Brooke concludes that "Mr. Beecher suffered from symptoms which suggest (but do not meet the criteria for) a Brief Psychotic Disorder (I: 298.8), including paranoid thoughts, frightening images and emotional lability." (Ex. B, p. 8) Dr. Brooke attributes this episode of brief psychotic disorder, or similar symptoms, to claimant's medication changes, work stress, pain, sexual/somatic concerns and characterological tendencies. However, Dr. Brooke opines that claimant recovered from this psychological condition within one to two weeks and that as of June 24, 2011, claimant did not qualify for any mental health diagnosis. (Ex. B, p. 8)

At the recommendation of Mr. Fullerton, a psychiatrist (Dr. Pogue) evaluated claimant on July 14, 2011. Dr. Pogue rendered a diagnosis at that time of "Probable steroid-induced psychotic disorder." (Ex. 6, p. 77) Dr. Pogue further opined that it was unlikely claimant's psychotic episode was caused by anything other than his prednisone exposure. (Ex. 6, p. 79)

Dr. Pogue continued to monitor claimant's situation. By December 12, 2012, Dr. Pogue diagnosed with "Adjustment disorder with anxious mood." He noted that claimant also carried a diagnosis of "Past steroid-induced psychotic disorder that is resolved." (Ex. 6, p. 100)

Dr. Pogue also ordered psychological testing, which was performed by Dr. Keraus on September 23, 2011. Dr. Keraus noted that claimant had some "premorbid personality features of eccentricity, garrulousness, narcissism, and underachievement." (Ex. 6, p. 104) However, Dr. Keraus noted that claimant's diagnosis as of September 2011 was "a major adjustment disorder secondary to his brief psychotic break." (Ex. 6, p. 104) He confirmed that the psychological testing performed in September 2011 support this diagnosis and related the conditions to claimant's "psychotic reaction to medication." Dr. Keraus recommended ongoing psychiatric evaluation and ongoing counseling as of September 2011. (Ex. 6, p. 105)

Defendants solicited a responsive report from Dr. Brooke in 2015 and prior to trial. Dr. Brooke reviewed the notes from Mr. Fullerton through his reports of January 23, 2015. In response, Dr. Brooke reiterated that claimant was back to pre-incident functional levels by his evaluation in June 2011. Dr. Brooke opined that it is unlikely that claimant's condition significantly deteriorated after the June 2011 evaluation and is still causally related to the work events in May 2011. (Ex. B, p. 9)

Dr. Brooke's analysis causes some concern. If claimant's mental status improved and resolved within one to weeks of the initial exposure to prednisone and the initial psychotic episode, I find Dr. Brooke's analysis convincing that it is unlikely claimant deteriorated significantly after the June 2011 evaluation at Dr. Brooke's office.

However, Mr. Beecher testifies that his symptoms have continued since May 2011. The notes from his personal physician, Dr. Shook, his licensed mental health social worker, and his treating psychiatrist do not support a conclusion that claimant's mental health condition resolved prior to Dr. Brooke's evaluation. I also find it odd that Dr. Brooke would address the future concerns of violence by Mr. Beecher in his report if his mental health condition was completely resolved. If Mr. Beecher was "back to baseline" by the time of Dr. Brooke's evaluation, there should be no concerns of future violence.

Defendants introduce no evidence that claimant had a violent history. Defendants introduce no evidence that claimant had a history of mental health treatment or difficulties. Claimant testified that he had no prior mental health treatment before his May 8, 2011 injury.

Even Wal-Mart's supervisor (Ramona Priebe) testified that claimant's outward behaviors and tendencies had changed since the May 8, 2011 injury date. Ms. Priebe specifically testified that she supervised claimant before the date of injury. She conceded that claimant did not exhibit any evidence of paranoia, rapid speech, or mood swings before May 8, 2011. (Tr., p. 91) Ms. Priebe conceded that Mr. Beecher had no

difficulty staying on task, focusing, or doing his job during the months prior to the May 8, 2011 work injury. (Tr., p. 91) Mr. Beecher clearly has experienced difficulties with paranoia, rapid speech, anxiety, mood swings, difficulty staying on task, and focusing since he ingested prednisone in May 2011.

I find Dr. Brooke's analysis of complete resolution of symptoms and return to baseline by his evaluation on June 24, 2011 to be difficult to accept. Dr. Pogue evaluated claimant on July 14, 2011, only 20 days after Dr. Brooke's evaluation and testing. Mr. Beecher's psychological condition was clearly not resolved and back to baseline 20 days after Dr. Brooke's evaluation, when evaluated by Dr. Pogue.

Rather, I find the observations and conclusions of Dr. Pogue, Dr. Keraus, and Mr. Fullerton to be relatively consistent and most convincing. I find that Mr. Beecher developed a brief steroid-induced psychotic episode after ingesting prednisone at the recommendation and order of Dr. Shook. I find that this psychotic episode is causally related to the May 8, 2011 back injury because it developed following and as a result of treatment for that low back injury.

I find that the steroid-induced psychotic episode has resolved. However, that episode appears to have permanently changed claimant's psychological make-up and left him with a diagnosis of adjustment disorder with anxiety. The adjustment disorder makes it difficult for claimant to interact with other individuals outside of his immediate family. For instance, claimant appeared quite anxious and spoke very rapidly while testifying. Mr. Beecher refused to shake the undersigned's hand at the commencement of hearing and testified that he cannot stand being touched by other people.

Mr. Beecher is, unfortunately, not back to a functional baseline. Clearly, prior to the May 8, 2011 work injury, Mr. Beecher was capable of interacting with other individuals. He worked as a sales associate for Wal-Mart for over two years before the injury and has experience working as a security guard. Mr. Beecher clearly had sufficient ability to follow work directives and to attend work on a sufficiently regular basis before the psychotic episode that Wal-Mart kept him employed for over two years before the injury date.

Since the ingestion of the prednisone, however, Mr. Beecher has not returned to his pre-injury psychological baseline. I find the description offered by Mr. Fullerton of claimant's functional limitations in January 2015 to be consistent with my observations at the time of hearing. Mr. Beecher would have an extremely difficult time holding a job that involved interaction with other individuals at the present time. He is distracted easily, anxious, and his interpersonal skills are not likely to allow him to obtain or maintain steady employment.

Therefore, given his ongoing psychological difficulties, I find that Mr. Beecher is wholly disabled from performing work that is consistent with his experience, training, education, intelligence, physical and mental capacities as those existed prior to the May 8, 2011 work injury. I find that Mr. Beecher is not currently capable and is not likely

to be capable into the foreseeable future of performing substantial gainful employment within the competitive labor market.

CONCLUSIONS OF LAW AND REASONING

The initial dispute between the parties is whether the May 8, 2011 work injury caused either temporary or permanent disability. 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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

Having found that the May 8, 2011 low back injury caused the need for claimant to take prednisone and having found that claimant sustained a permanent mental injury as a result of the use of the prednisone, I conclude that claimant has proven entitlement to permanent disability benefits.

Low back injuries and mental injuries are both unscheduled injuries compensated pursuant to Iowa Code section 85.34(2)(u). 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.

There are no weighting guidelines that indicate how each of the factors is to be considered. Neither does a rating of functional impairment directly correlate to a degree of industrial disability to the body as a whole. In other words, there are no formulae which can be applied and then added up to determine the degree of industrial disability. It therefore becomes necessary for the deputy or commissioner to draw upon prior experience as well as general and specialized knowledge to make the finding with regard to degree of industrial disability. See Christensen v. Hagen, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 529 (App. March 26, 1985); Peterson v. Truck Haven Cafe, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 654 (App. February 28, 1985).

Assessments of industrial disability involve a viewing of loss of earning capacity in terms of the injured workers' present ability to earn in the competitive labor market without regard to any accommodation furnished by one's present employer. Quaker Oats Co. v. Ciha 552 N.W.2d 143, 158 (Iowa 1996); Thilges v. Snap-On Tools Corp., 528 N.W. 2d 614, 617 (Iowa 1995).

Having found that claimant failed to prove either permanent restrictions or permanent impairment related to his May 8, 2011 low back injury, I also found that claimant had not proven any reduction in his future earning capacity related to that low back injury. As such, I conclude that claimant failed to prove entitlement to any industrial disability as a result of the low back injury.

However, Mr. Beecher contends that he is permanently and totally disabled as a result of the May 8, 2011 work injury and specifically as a result of the mental sequela resulting from his use of prednisone. 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 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

In this case, I found that Mr. Beecher is not capable of performing work that his experience, education, intelligence, as well as his physical and mental capabilities would otherwise permit him to perform. I found that Mr. Beecher is essentially unable to perform gainful employment activities as a result of the mental sequela resulting from his medical treatment for the low back injury of May 8, 2011. As such, I conclude that Mr. Beecher is entitled to permanent total disability benefits. Iowa Code section 85.34(3). The parties stipulated any permanent disability benefits awarded should commence on October 11, 2011. (Hearing Report)

The parties also submitted a disputed issue pertaining to claimant's entitlement to healing period benefits. It should be noted that the parties stipulated the commencement date for permanent disability benefits is October 11, 2011. That commencement date was accepted at the time of hearing.

Temporary disability benefits are only payable under Iowa Code section 85.33 if there is not a permanent disability. Having found claimant proved permanent disability, claimant is not entitled to an award of temporary disability pursuant to Iowa Code section 85.33.

Healing period benefits are payable under Iowa Code section 85.34(1) only if the claimant sustains a permanent partial disability compensable under Iowa Code section 85.34(2). In this instance, I have determined that claimant is entitled to permanent total disability benefits pursuant to Iowa Code section 85.34(3). Therefore, healing period benefits are not payable pursuant to Iowa Code section 85.34(1).

Although the parties submit a dispute about whether claimant voluntarily refused light duty work offered by Wal-Mart, I find that dispute to be moot at this point. Since the parties' stipulation that permanent disability commences on October 11, 2011 was accepted and since healing period benefits are not payable in a permanent total disability situation, there is no remaining dispute about healing period benefits that arguably would have accrued before October 11, 2011. Iowa Code section 85.34. Claimant failed to prove entitlement to benefits before October 11, 2011 by stipulating that permanent disability should commence on October 11, 2011. (Hearing Report)

On the hearing report, the parties note a claim and dispute pertaining to claimant's entitlement to an award for past medical expenses. However, neither party identifies or argues this as a disputed issue in their post-hearing brief. Claimant introduced no past medical expenses into the evidentiary record. I find no viable dispute to be resolved and conclude that claimant has failed to preserve or prove any claim for past medical expenses.

Mr. Beecher seeks assessment of his costs and attached a specific list of requested costs to the hearing assignment order. Assessment of costs is a discretionary function of the agency. Iowa Code section 86.40. Claimant has prevailed on the major disputed issues. Therefore, I conclude it is reasonable and appropriate to assess costs against defendants.

Claimant seeks reimbursement of his filing fee ($100.00), which is a reasonable cost to be assessed pursuant to 876 IAC 4.33(7).

Agency rule 876 IAC 4.33(6) permits the assessment of costs that include "the reasonable costs of obtaining no more than two doctors' or practitioners' reports." Claimant seeks assessment of the cost of a medical report from Clinton Occupational Health ($25.00) and the cost of a medical report from Medical Associates ($21.40). Both are reasonable costs and should be assessed against defendants pursuant to 876 IAC 4.33(6).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant permanent total disability benefits on a weekly basis from October 11, 2011 through the date of the arbitration hearing and continuing into the future during the period of claimant's total disability.

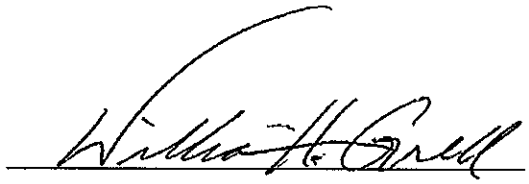
Permanent total disability benefits shall be paid at the stipulated weekly rate of two hundred ninety-four and 65/100 ($294.65).

Defendants shall pay all accrued weekly benefits in lump sum with applicable interest pursuant to Iowa Code section 85.30.

Defendants shall reimburse claimant's costs totaling one hundred forty-six and 40/100 dollars ($146.40).

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 15th day of April, 2015.



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WHG/kjw

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.