BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERT SMITH, Claimant, vs. HOOVESTOL, INC., Employer, and PROTECTIVE INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5068802 A R B I T R A T I O N D E C I S I O N Head Note Nos.: 1802, 1803

STATEMENT OF THE CASE

Claimant, Robert Smith, filed a petition for arbitration against Hoovestol, Inc., as the employer and Protective Insurance Company, as the insurance carrier. The hearing occurred before the undersigned on October 19, 2020. This case was scheduled to be an in-person hearing occurring in Des Moines, Iowa. However, due to the outbreak of a pandemic in Iowa, 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.

The parties filed a hearing report at the commencement of the hearing. In the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision, and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are bound by their stipulations.

The evidentiary record consists of Joint Exhibits 1 through 6, Claimant's Exhibits 1 through 8, and Defendants' Exhibits A through F. Claimant testified on his own behalf. No other witnesses were called. The evidentiary record closed at the conclusion of the evidentiary hearing on October 19, 2020. The case was considered fully submitted upon submission of post-hearing briefs on November 18, 2020.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant is entitled to temporary total disability (TTD), temporary partial disability (TPD), or healing period benefits from March 18, 2019, to May 19, 2019;

2. The extent of claimant's entitlement to permanent partial disability (PPD) benefits, if any;

3. Whether costs should be assessed against either party and, if so, in what amount.

FINDINGS OF FACT

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

Robert Smith was born on March 21, 1974, making him 46 years old as of the date of the evidentiary hearing. (Hearing Transcript, page 10) Mr. Smith is a high school graduate. (Id.) As of the date of hearing, he also possessed an active Commercial Driver's License (CDL). (Hr. Tr., p. 11)

Mr. Smith has a significant medical history that includes two prior back surgeries. Mr. Smith underwent a laminectomy at L4-L5 in 2004, and a laminectomy at L5-S1 in 2016. (See Exhibit 1, p. 6; Joint Exhibit 1, p. 3) He was released to return to work without restrictions following the L5-S1 laminectomy on May 15, 2016. (JE1, p. 1)

Claimant's employment history largely consists of work as a welder or truck driver. (See Ex. 3, pp. 27-28) Immediately prior to working for Hoovestol, Inc., claimant worked as a welder/fabricator and side-dump truck driver at DeLong Construction (DeLong). He worked at DeLong for a little over seven years. (Ex. 3, p. 28)

Hoovestol, Inc. is a United States mail contractor. (See Hr. Tr., p. 13) Mr. Smith began working as a full-time, over-the-road truck driver for Hoovestol Inc. on July 31, 2017. (Ex. 3, p. 28) As an over-the-road truck driver, claimant would haul a truck from Iowa City, Iowa to either Chicago, Illinois or Omaha, Nebraska. Once he reached his destination, Mr. Smith would then swap trailers, complete an unload/reload, or swap the entire truck and drive back to Iowa City, Iowa. Performing an unload/reload required claimant to climb into his trailer and push a cart full of containers to the back of his truck. From there, postal service workers would unload and reload said containers. (Hr. Tr., pp. 14-15)

On August 9, 2018, Mr. Smith was climbing down from his truck in a post office distribution center parking lot in Chicago, Illinois when he slipped and came down on his right foot. (Hr. Tr., p. 16) Mr. Smith asserts he landed on, and twisted, his right foot to keep from falling to the ground. (Id.) Mr. Smith did not fall to the ground. (JE1, p. 3) At the time of the injury, claimant believed he had broken his leg. (Hr. Tr., p. 16)

Claimant then drove the four hours back to Iowa City, Iowa, and presented for medical treatment with the Emergency Department at the University of Iowa Hospital and Clinics. (See JE1, p. 3) Claimant was able to ambulate, but his gait was altered. He reported severe right back, hip, and knee pain. (JE1, p. 3) He further reported numbness/tingling below the right knee. (Id.) The medical staff at UIHC noted claimant's reported history and physical examination were concerning for fractures and spinal cord impingement. (JE1, p. 7) An x-ray of claimant's knee revealed no acute fracture or dislocation. (JE1, p. 6)

Cassim Igram, M.D., was consulted for recommendations and to establish a treatment plan as part of claimant's emergency room visit on August 9, 2018. (See JE1, pp. 8-11) An MRI of claimant's lumbar spine revealed degenerative changes at multiple levels. The diagnostic imaging also revealed a new disc herniation at L4-5, with moderate foraminal stenosis on the right. (JE1, pp. 12-13) Dr. Igram recommended conservative treatment and instructed claimant to follow-up with the spine clinic. (JE1, p. 11) Claimant was subsequently discharged with a one-week work excuse. (JE1, p. 7)

When claimant continued to complain of pain at an August 22, 2018, follow-up appointment, Dr. Igram referred claimant to physical therapy. (JE1, p. 19) When physical therapy did not improve claimant's condition, Dr. Igram recommended a selective nerve root block or transforaminal injection at L2-L3 on the right in an attempt to identify a pain generator. (JE1, pp. 24, 25) After some coaxing, claimant agreed to consider the targeted injection and Dr. Igram referred claimant to the UIHC pain clinic for further evaluation. (JE1, p. 24)

Amy Pearson, M.D., administered the nerve root block to claimant's lumbar spine on October 19, 2018. (JE1, p. 36)

When conservative measures failed to alleviate claimant's pain, defendants scheduled claimant for a neurosurgical evaluation with Chad Abernathey, M.D. (JE2, p. 44) The evaluation occurred on November 16, 2018. (See id.) Given claimant's significant neurologic deficits with atrophy of the quadriceps musculature, Dr. Abernathey believed it was reasonable to proceed with a right L2-3 microdiscectomy. (Id.) The recommended surgery was conducted on December 18, 2018. (See JE2, p. 45)

Claimant reported excellent relief of his pre-operative symptomatology, with only modest residual low back pain and lower extremity paresthesia, at his post-op appointments on December 26, 2018, February 4, 2019, and May 20, 2019. (See JE2, p. 45) That being said, claimant demonstrated significant right quadriceps weakness and atrophy at his February 4, 2019, follow-up appointment. (JE2, p. 45) Carolyn Lochner, R.N. opined said weakness would require a lengthy recovery. (Id.)

Following a period of recovery, Dr. Abernathey allowed claimant to return to his normal work activities on March 18, 2019. (Id.) He subsequently placed claimant at maximum medical improvement (MMI) and conducted an evaluation of claimant's permanent impairment on May 20, 2019. (JE2, p. 46) Claimant sought no additional

treatment for his low back condition after his release from Dr. Abernathey's care on March 18, 2019.

Claimant attempted to return to work for the defendant employer; however, he was told that the route he used to drive was no longer available to claimant. Claimant was given the option to re-apply with the employer for other positions/routes; however, the available routes were not feasible for claimant. (See Hr. Tr., pp. 19-21) Claimant subsequently applied for, and was awarded, unemployment insurance benefits. (Ex. 5, p. 40)

Claimant was unemployed for approximately one week before he was able to find seasonal employment as a welder and dump truck driver for Jerry's Hauling. (Hr. Tr., p. 21) Claimant worked for Jerry's Hauling from April 1, 2019, to August 20, 2019. (Hr. Tr., p. 48) He earned $22.00 per hour and worked over 40 hours per week. Claimant ultimately left Jerry's Hauling for a job with the United States Postal Service. (See Hr. Tr., p. 52) Claimant felt the Postal Service job would be a welcomed change of pace considering that driving a dump truck was hard on his back. (See Hr. Tr., p. 52) He earns $18.56 per hour, plus $0.73 per mile.

Claimant subsequently accepted a seasonal, local truck driving job with DeLong Construction on May 11, 2020. (Ex. B, p. 4; see JE5, p. 83) Records from DeLong include a job description which lists the essential functions of the Side Dump Truck driver position as standing, sitting, stooping, bending, walking and lifting heavy objects (50 pounds) during the course of the workday. (Ex. B, p. 14) He earned a base rate of $17.00 per hour; however, that number increased if he was working on a federal project. Claimant was also working his part-time job with the Postal Service as a rural carrier associate. (See JE5, p. 83) He was performing both jobs without restrictions in May, 2020. (See JE5, p. 83) Claimant worked approximately six days per week between May, 2020 and the date of the evidentiary hearing. (Hr. Tr., p 38)

At defendants' request, Dr. Abernathey assessed claimant's permanent impairment on May 20, 2019. (JE2, p. 45) Based upon the AMA Guidelines for chronic pain, decreased range of motion, previous disc extrusion, and subsequent surgery, Dr. Abernathey assigned a nine percent (9%) whole person impairment rating. (JE2, pp. 45-46)

Daryl Short, DPT administered a functional capacity evaluation (FCE) of claimant on July 21, 2019. (Ex. 2, p. 9) Mr. Short determined that claimant gave consistent effort throughout the evaluation. Claimant demonstrated significant limitations with forward bent standing, lifting 35 pounds from floor-to-waist, lifting 25 pounds from waist-to-crown, and front carrying up to 35 pounds. (Ex. 2, p. 10) Mr. Short opined that due to claimant's decreased strength and endurance in his low back, claimant's functional capabilities would appropriately fall under the lower medium category of physical demand. (Ex. 2, pp. 10-11)

In a letter, dated July 26, 2019, Dr. Abernathey documented his approval of the conclusions reached by Mr. Short's FCE report. (Ex. 2, p. 20)

Despite the positive tone depicted in Dr. Abernathey's medical records, when speaking to his primary care physician on July 30, 2019, claimant reported that his low back pain wasn't any better than it was prior to surgery. (JE4, p. 71)

After being released by Dr. Abernathey, claimant sought an independent medical examination (IME), performed by Richard Kreiter, M.D., on December 17, 2019. (Ex. 1) In addition to addressing claimant's low back issues, Dr. Kreiter discussed issues within claimant's right knee. Dr. Kreiter diagnosed claimant with patellar instability and quad insufficiency and weakness. (Ex. 1, p. 4) Dr. Kreiter opined that it was possible claimant experienced a subluxing episode when he landed on his right leg. (Id.) Dr. Kreiter was of the opinion that the emergency department at UIHC did not do a thorough examination of the right knee on the date of injury. (Id.) Dr. Kreiter placed claimant in DRE Category III and assigned 10% whole person impairment as a result of claimant's lumbar spine injury. (Id.) Dr. Kreiter assigned 3% whole person impairment, or 7% lower extremity impairment, as a result of claimant's patellar residual instability. (Id.)

As a result of his injuries, Dr. Kreiter opined that claimant should avoid jumping, climbing ladders, walking on rough or uneven ground, and driving vehicles with a rough ride. He further recommended claimant have the ability to alternate sitting, standing, and walking as needed. (Ex. 1, p. 5)

In May of 2020, claimant requested an evaluation of his right knee. Claimant felt that his right knee had been overlooked due to the focus his treating physicians placed on his low back complaints.

Claimant next presented to John Machuta, D.O. on May 26, 2020, for an evaluation of weakness in his right leg and pain in his right knee. (JE5, p. 83) Claimant reported to Dr. Machuta that he twisted his right leg upon landing on the ground back on August 9, 2018. (Id.) According to the medical record, claimant's right knee complaints were put on hold back in 2018 while Drs. Igram and Abernathey evaluated claimant's neurological deficit in the low back area. (Id.) Following his examination, Dr. Machuta diagnosed claimant with arthralgia and referred claimant for an MRI. (JE5, p. 84)

The MRI, dated June 4, 2020, revealed no evidence of internal derangement or high-grade osseous or soft tissue abnormality. Aside from possible low-grade patellar tendinitis, the deeper structures appeared normal. (JE5, p. 86)

In a letter addressed to defendants' attorney of record, dated June 16, 2020, Dr. Machuta agreed with the statement, "The August 9, 2018 accident was a substantial factor in bringing about the current condition of arthralgia in the right knee." (JE5, p. 90)

Defendants subsequently authorized a referral to John Langland, M.D., of Steindler Orthopedic Clinic. (See JE6, p. 91) Claimant first presented to Dr. Langland for an evaluation of his right knee on July 16, 2020. (JE6, p. 91) Interestingly, the July 16, 2020, medical record provides that claimant did not feel as though there were any issues with his right knee. (Id.) Dr. Langland agreed with claimant, and assessed right

quad weakness secondary to his low back injury. Dr. Langland specifically opined claimant's issues are not related to the right knee. (JE6, p. 93)

At the time of hearing, claimant continued to experience low back pain, with radiating pain down to his right knee. (Hr. Tr., p. 29) He was also experiencing weakness and locking in his right leg/knee. (Id.) Claimant was not taking any prescription or over-the-counter pain medications. (Hr. Tr., p. 30) According to claimant, he is limited in what he can take for pain medication due to chronic kidney disease. (Id.)

The initial disputed factual issue for me to decide is whether claimant is entitled to temporary disability benefits from March 18, 2019, to April 1, 2019. Prior to hearing, defendants paid claimant temporary benefits from August 10, 2018, through March 17, 2019. Claimant asserts entitlement based on the fact the defendant employer could not return claimant back to work following his release on March 18, 2019, and he did not begin his employment with Jerry's Hauling until April 1, 2019.

Claimant did not return to work for the defendant employer. The defendant employer did not have a route available for him. The defendant employer did not offer to return claimant to work; rather, it told claimant he could re-apply for another position. The evidentiary record supports a finding that claimant was not medically capable of returning to substantially similar employment. While claimant was released to return to his normal work activities as of March 18, 2019, the employer could not return claimant to his full duty position. When claimant was able to secure alternative employment, he did not return to a substantially similar job. Moreover, Dr. Abernathey would later agree with the findings of the July, 2019, FCE report. The findings of the FCE report would preclude a return to the position claimant previously held for the defendant employer. (Compare Ex. A, p. 2 with Ex. 2, pp. 10-11) Claimant did not achieve MMI until May 20, 2019; however, he did return to work on April 1, 2019. Therefore, I find claimant is entitled to additional healing period benefits between March 18, 2019, and April 1, 2019.

The next disputed factual issue is the extent of claimant's entitlement to permanent partial disability (PPD) benefits. The parties stipulate that the low back injury is a cause of permanent disability. (Hearing Report, p. 1)

An assessment of claimant's permanent disability necessarily requires the undersigned to determine which medical opinion or opinions carry the most weight in this case. As a preliminary matter, I do not accept Dr. Kreiter's opinions with respect to claimant's right knee condition. Dr. Kreiter's opinions are conclusory in nature. Moreover, they are contradicted by the clinical observations and conclusions of Drs. Machuta and Langland.

The medical experts in this case agree that claimant has sustained permanent disability as a result of the August 9, 2018, work injury. Their impairment ratings for the low back injury are similar.

Dr. Abernathey was claimant's treating neurosurgeon. He had the opportunity to examine claimant on a number of occasions, including intraoperatively. His opinions

are entitled to significant consideration given his credentials, experience, and firsthand knowledge of claimant's condition.

Claimant's chosen expert, Dr. Kreiter, is a certified orthopedic surgeon. He examined claimant on a one-time basis for purposes of an independent medical examination. He sufficiently explained how he reached the 10% whole person impairment rating, and the work restrictions outlined in his report are in line with Mr. Short's FCE. As previously discussed, I do not accept Dr. Kreiter's opinions with respect to claimant's right knee injury. His cursory and conclusive opinions regarding the right knee injury lead me to question the credibility of the other opinions in his report.

Considering all of the evidence in the record, I find Dr. Abernathey's opinions to be more persuasive than those of Dr. Kreiter. While it is slightly concerning that Dr. Abernathey did not go into great detail when explaining how he reached the 9% whole person impairment rating, he is more than qualified to assess permanent impairment, he notes that he utilized the AMA Guides, he was in the best position to opine as to claimant's impairment rating, and his impairment rating is substantially similar to the impairment rating assigned by Dr. Kreiter. Therefore, I accept Dr. Abernathey's opinion that claimant reached maximum medical improvement on May 20, 2019. I similarly accept Dr. Abernathey's impairment rating (9%) as accurate.

With respect to permanent restrictions, claimant has returned to gainful employment since being released to return to work in March, 2019. Between April 1, 2019, and August 20, 2019, claimant worked full-time as a welder and dump truck driver. While claimant was able to handle all job duties expected of him in this position, claimant credibly testified that he sought alternative employment, in part, because of how his low back reacted to his work as a dump truck driver. Since August, 2019, claimant has worked part-time as a rural carrier associate for the Postal Service. Claimant enjoys this position and wishes to do this type of work on a full-time basis. As a rural carrier associate, claimant has to carry and deliver packages that do not fit in a mailbox. In addition to the Postal Service position, claimant was able to return to full-time work for DeLong Construction on May 11, 2020. Claimant credibly testified he has not had to lift anything greater than 25 pounds in this position. Claimant was still working for DeLong Construction and the Postal Service on the date of the evidentiary hearing. Claimant testified to working between 50 and 60 hours every week since approximately May 11, 2020.

Mr. Smith appears to be a motivated worker. He returned to work despite his injury and ongoing symptoms. While it is clear claimant maintains a strong work ethic and the ability to handle full-time work, it cannot be said that claimant maintains the same functional ability he held on August 8, 2018. Drs. Abernathey and Kreiter agree with the conclusions of the July 21, 2019, FCE report. Claimant's testimony regarding his abilities is consistent with the July 21, 2019, FCE report. I find that claimant has proven the need for permanent restrictions.

Considering claimant's age, educational background, employment history, permanent impairment, permanent restrictions, motivation, ability to retrain, his

proximity to retirement, as well as all other factors of industrial disability as outlined by the Iowa Supreme Court, I find that claimant has proven a 30 percent (30%) loss of future earning capacity as a result of the August 9, 2018, work injury.

Costs will be discussed in the Conclusions of Law section.

CONCLUSIONS OF LAW

In March 2017, the legislature enacted changes (hereinafter "Act") relating to workers' compensation in Iowa. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71,86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23, section 24, the changes to Iowa Code section 85.34 apply to injuries occurring on or after the effective date of the Act. This case involves an injury occurring after July 1, 2017. Therefore, the provisions of the new statute apply to this case.

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).

In this case, the parties stipulate that claimant sustained an injury on August 9, 2018, which arose out of and in the course of his employment with Hoovestol, Inc. The parties further stipulate that the injury is a cause of both temporary and permanent disability. On the hearing report, defendants dispute that any permanent disability would be compensated as an industrial disability pursuant to Iowa Code section 85.34(2)(v); however, it appears defendants are actually arguing that claimant did not sustain any industrial disability as a result of the August 9, 2018, work injury.

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 Ry. Co. of Iowa, 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."

It is important to note, particularly in light of the loss of earning capacity analysis provided in the defendant employer's post-hearing brief, the operative phrase is loss of earning capacity, not loss of actual earnings.

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).

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code section 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(v). When considering the extent of disability, the deputy commissioner considers all evidence, both medical and nonmedical. Evenson v. Winnebago Industries, Inc., 818 N.W.2d 360, 370 (Iowa 2016).

Considering claimant's age, educational background, employment history, permanent impairment, permanent restrictions, motivation, ability to retrain, his proximity to retirement, as well as all other factors of industrial disability as outlined by the Iowa Supreme Court, I find that claimant has proven a 30 percent (30%) loss of future earning capacity as a result of the August 9, 2018, work injury. This is equivalent to a 30 percent industrial disability and entitles claimant to an award of 150 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(v) (2018).

Claimant asserts entitlement to additional healing period benefits from March 18, 2019, to April 1, 2019.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Mr. Smith did not return to work on March 18, 2019. The evidentiary record supports the finding that claimant was not medically capable of returning to substantially similar employment between March 18, 2019, and April 1, 2019. Dr. Abernathey did not place claimant at MMI until May 20, 2019; however, claimant secured alternative employment and returned to work for a different employer on April 1, 2019. As such, I found claimant carried his burden of proving entitlement to additional healing period benefits between March 18, 2019, and April 1, 2019.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Claimant requests taxation of the cost of the filing fee ($100.00), the cost of Dr. Abernathey's report ($900.00), and the cost of Mr. Short's FCE ($900.00).

The cost of the filing fee is appropriate and assessed pursuant to 876 IAC 4.33(7).

Agency rule 4.33(6) permits the assessment of the reasonable costs of "obtaining no more than two doctors' or practitioners' reports." The agency has previously determined this administrative rule permits assessment of the cost of FCE expenses and vocational expert reports. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21,2009); Pastor v. Farmland Foods, File No. 5050551 (Arb. April 2016); Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010). However, the Iowa Supreme Court has held that only the cost of drafting the expert's report is permissible in lieu of testimony. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 845-846 (Iowa 2015).

Claimant's Exhibit 8 provides that Mr. Short attributed $350.00 to the cost of drafting the FCE report. This is the only portion of the FCE report that is reimbursable. Exhibit 8 further provides Dr. Abernathey charged $900.00 for the cost of his report.

I find the costs of Mr. Short's FCE report and Dr. Abernathey's report are appropriate and assessed pursuant to 876 IAC 4.33(6).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay healing period benefits from March 18, 2019, through April 1, 2019, at the stipulated weekly rate of seven hundred sixty-eight and 86/100 dollars ($768.86).

Defendants shall pay claimant one hundred fifty (150) weeks of permanent partial disability benefits commencing on April 1, 2019, at the stipulated weekly rate of seven hundred sixty-eight and 86/100 dollars ($768.86).

Defendants shall pay accrued weekly benefits in a lump sum together with interest payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent, as required by Iowa Code section 85.30.

Defendants shall pay costs of one thousand three-hundred fifty and 00/100 dollars ($1,350.00).

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 _____30th_____ day of August, 2021.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Thomas M. Wertz (via WCES)

Terrence Donohue (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.