

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LUCAS GARRIGUS,

Claimant,

vs.

A. Y. MCDONALD INDUSTRIES, INC.,

Employer,

and

TWIN CITY FIRE INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 21701057.01

ARBITRATION DECISION

Headnotes: 1108, 1402.30, 2907

Claimant Lucas Garrigus filed a petition in arbitration on September 27, 2021, alleging he sustained a cumulative injury to his respiratory system, while working for Defendant A.Y. McDonald Industries, Inc. ("A.Y. McDonald") on November 1, 2019. A.Y. McDonald and its insurer, Defendant Twin City Fire Insurance Company ("Twin City"), filed an answer on October 5, 2021. Garrigus filed a motion to amend on April 11, 2022, alleging he also sustained anxiety and depression caused by the work injury.

An arbitration hearing was held *via* Zoom video conference on March 16, 2023. Attorney Zeke McCartney represented Garrigus. Garrigus appeared and testified. Attorney Jane Lorentzen represented A.Y. McDonald and Twin City. Jackie Bettcher appeared and testified on behalf of A.Y. McDonald and Twin City. Joint Exhibits ("JE") 1 through 5 and Exhibits 1 through 9 and A through L were admitted into the record. The record was held open through May 26, 2023, for the receipt of Exhibit M and post-hearing briefs. Exhibit M was received and admitted into the record. The briefs were received and the record was closed.

The parties submitted a hearing report listing stipulations and issues to be decided. A hearing report order was entered at the conclusion of the hearing accepting the parties' stipulations and the issues to be decided. A.Y. McDonald and Twin City raised the affirmative defense of lack of timely notice under Iowa Code section 85.23 and waived all other affirmative defenses.

At the time of the hearing the parties disputed the rate. Before the record was closed the parties agreed upon the stipulated rate referenced below.

STIPULATIONS

1. An employer-employee relationship existed between A.Y. McDonald and Garrigus at the time of the alleged injury.
2. At the time of the alleged injury Garrigus' gross earnings were \$1,080 per week, he was married and entitled to three exemptions, and the parties believe the weekly rate is \$703.09.
3. Costs have been paid.

ISSUES

1. Did Garrigus sustain an injury, which arose out of and in the course of employment with A.Y. McDonald, on November 1, 2019?
2. Is the alleged injury a cause of temporary disability during a period of recovery?
3. Is Garrigus entitled to temporary benefits from March 23, 2020, through August 31, 2020, and a running award of temporary benefits from October 1, 2020?
4. Is Garrigus entitled to payment of medical expenses, including medical mileage?
5. Is Garrigus entitled to recover the cost of an independent medical examination ("IME") under Iowa Code section 85.39?
6. Is Garrigus entitled to alternate care under Iowa Code section 85.27?
7. Is Garrigus entitled to an award of costs set forth in Exhibit 4?

FINDINGS OF FACT

Garrigus lives with his wife and daughter in Dubuque. (Transcript, page 14) At the time of the hearing he was 36. (Tr.:14) Garrigus was a smoker and he quit smoking in 2017 when his wife became pregnant. (Tr.:23-24)

A.Y. McDonald hired Garrigus in July 2013. (Tr.:15) Garrigus worked as a casting inspector for 100 days and then he bid into a utility position at A.Y. McDonald in the foundry. (Tr.:15) The foundry manufactures brass parts for gas and water works. (Tr.:15) Garrigus described the work as hot and dirty. (Tr.:16) He reported he worked with sand, molten brass, molten metal with lead and without lead, zinc, core sand, and other additives. (Tr.:16) Garrigus relayed there is silica, formaldehyde, and dirt in the foundry. (Tr.:16)

During Garrigus' employment, A.Y. McDonald required employees to wear respirators while performing certain jobs. (Tr.:17) Garrigus was required to wear a

respirator a majority of the time when he worked in the plant. (Tr.:17-19) During his employment A.Y. McDonald performed regular pulmonary function testing on Garrigus. (Tr.:16) Erin Kennedy, M.D., an occupational medicine physician, reviewed the tests and determined whether Garrigus could be certified to wear a respirator. (JE 5) Garrigus relayed that before 2019 he never had a non-normal test at work. (Tr.:17)

Garrigus' counsel inquired whether he had "any history of any significant respiratory difficulties" before he worked for A.Y. McDonald and he relayed he had not, noting he had only sought treatment for a brief cold. (Tr.:15)

Garrigus reported between 2013 and 2018 he hacked up stuff and he would blow black stuff out of his nose daily before showering after working in the plant. (Tr.:19) Garrigus testified he noticed sediment or material on the inside of his respirator every day and he washed his respirator on a daily basis. (Tr.:20)

Garrigus testified in 2019 he was experiencing a lot of congestion in his chest and nasal issues. (Tr.:20) Garrigus reported he had a cold that seemed like it would not go away, so he sought medical treatment. (Tr.:21, 27)

Garrigus and his wife purchased a home in July 2019. (Tr.:22, 57) He reported the home inspection showed the home did not have mold, but he thought there was dust in the carpet, so he replaced the carpet throughout the entire home within two weeks of moving in with his family. (Tr.:22)

On November 4, 2019, Garrigus sought treatment on his own with Duane Caylor, M.D., a family medicine provider with Medical Associates, complaining of chest tightness, wheezing, and coughing for the past three days. (JE 1:1; Tr.:51) Dr. Caylor examined Garrigus, assessed him with acute bronchitis and acute bronchospasm, prescribed an albuterol inhaler, doxycycline hyclate, and a prednisone taper. (JE 1:2)

Dr. Kennedy ordered testing to determine Garrigus' levels of lead and zinc from work on November 12, 2019. (JE 2:52) Dr. Kennedy documented that his levels for zinc and lead were slightly elevated. (JE 2:52)

The Monday after Thanksgiving Garrigus' wife opened a daycare in their home. (Tr.:24) His wife cares for four children in the bottom half of their home. (Tr.:25)

Garrigus returned to Medical Associates on January 27, 2020, and he was examined by Kim Ehlers, ARNP. (JE 1:3) Garrigus complained of a persistent cough, shortness of breath, and wheezing. (JE 1:3) Ehlers assessed Garrigus with a cough and prescribed Zithromax and a prednisone taper. (JE 1:4)

Garrigus returned to Ehlers on February 5, 2020, complaining of a constant cough, shortness of breath, and wheezing. (JE 1:6) Ehlers noted his chest x-ray was negative, he worked in a foundry and wore a respirator, and always had normal pulmonary function tests. (JE 1:6) Garrigus relayed he recently purchased a new home, he had been sleeping in the basement that may have had mold, and he recently

replaced the carpet. (JE 1:6) Ehlers assessed Garrigus with an upper respiratory infection and noted if he had a third recurrence she may refer him to an allergist. (JE 1:7)

Garrigus denied telling Ehlers there was mold in the home during his appointment. (Tr.:31) Garrigus testified the carpet was dusty and had not been cleaned. (Tr.:31) He relayed the carpet was bothering him, so he and his wife decided to replace all of the carpet. (Tr.:31)

On February 19, 2020, Garrigus attended an appointment with Robert Russo, PA-C with Medical Associates, complaining of right ear pain. (JE 1:8) Russo noted Garrigus was on azithromycin for a persistent upper respiratory infection. (JE 1:8) Russo diagnosed Garrigus with right acute otitis media and prescribed Augmentin. (JE 1:9)

Garrigus returned to Ehlers on March 3, 2020, complaining of a cough, shortness of breath, and wheezing. (JE 1:10) Ehlers assessed Garrigus with a chronic cough, noted she would refer him to an allergist if he had another occurrence, and noted he would continue to follow up with an ear nose and throat specialist for his right ear issues. (JE 1:11)

On March 23, 2020, Garrigus attended an appointment with Kelsey Hill, ARNP with Medical Associates, complaining of a sore throat, cough, and chest congestion for the past four days and body aches for the past 24 hours. (JE 1:13) Hill noted Garrigus had several illnesses of bronchospasm requiring steroids and antibiotics since November and had no history of asthma. (JE 1:13) Hill assessed Garrigus with a cough, prescribed a prednisone taper, doxycycline monohydrate, and a Ventolin inhaler, restricted him from working through March 27, 2020, and referred him to an allergist. (JE 1:14-15)

Ehlers recommended Garrigus limit his exposure to COVID-19 and not work in the workplace in March and April 2020. (JE 1:16-17)

On April 9, 2020, Garrigus attended a telehealth visit with Ehlers. (JE 1:18) Ehlers noted he had been treated for walking pneumonia and he had intermittent respiratory infections ongoing for the last four months. (JE 1:19) Ehlers documented Garrigus had been treated several times with antibiotics and prednisone and while he felt better after treatment, his symptoms returned with wheezing. (JE 1:19) Ehlers assessed Garrigus with a cough, continued his prescriptions, and recommended he follow up with an allergist. (JE 1:19)

Garrigus returned to Ehlers for a telehealth visit on April 17, 2020. (JE 1:20) Ehlers assessed him with an upper respiratory infection, prescribed Advair, and noted he was waiting for an appointment with an allergist. (JE 1:21)

On May 1, 2020, Garrigus returned to Ehlers and reported he was improving since being off Advair and stating he was hesitant to return to work due to COVID-19.

(JE 1:25) Ehlers continued to recommend Garrigus limit his exposure to COVID-19 and not work in the workplace, but noted he could work from home through June 1, 2020. (JE 1:22-23, 29)

On May 5, 2020, Garrigus attended a telehealth appointment with Brad McClimon, M.D., an allergist, complaining of a cough, shortness of breath all winter, and chest tightness. (JE 1:26-27) Dr. McClimon assessed Garrigus with cough/wheezing symptoms concerning for the development of asthma and questionable allergic rhinitis, continued his prescription medications, and recommended treatment in the future with additional testing in the clinic. (JE 1:27)

Garrigus attended a telehealth appointment with Dr. McClimon on May 22, 2020, reporting he was doing better on Advair and relaying he moved to a new house in July. (JE 1:30) Dr. McClimon recommended skin testing and a pulmonary function test. (JE 1:30)

On May 27, 2020, Garrigus attended an in-person appointment with Dr. McClimon for allergy skin testing. (JE 1:31) The nurse who administered the test noted positive wheals for dog, cat, cattle, horse, and mites. (JE 1:35) Dr. McClimon also recommended Garrigus limit his exposure to COVID-19 and not work in the workplace, but noted he could work from home. (JE 1:37)

Garrigus and his wife have two cats that live in their home. (Tr.:23) The cats have resided in the home with Garrigus since 2015. (Tr.:23)

Garrigus attended a follow-up appointment with Dr. McClimon on June 5, 2020. (JE 1:38) Dr. McClimon noted his skin testing was positive for animal dander and dust mite. (JE 1:38) Dr. McClimon listed an impression of probable asthma, not controlled, and allergic rhinitis, prescribed a prednisone burst and taper with repeat spirometry, and continued his Advair and Singulair. (JE 1:39)

On July 1, 2020, Garrigus returned to Dr. McClimon reporting improvement with his medication and noting mild exertion like walking into the parking lot creates tightness. (JE 1:40) Dr. McClimon discussed treatment options and switched Garrigus from Advair to Breo, continued his Singulair, and recommended additional testing. (JE 1:41)

During a follow-up appointment on August 4, 2020, Garrigus reported he was using his rescue inhaler less and he was experiencing less chest tightness, coughing, and wheezing. (JE 1:42) Dr. McClimon documented Garrigus relayed he was able to mow the lawn with only mild wheezing after mowing. (JE 1:43) Dr. McClimon stated Garrigus had maximized therapy for his asthma and recommended Dr. Kennedy be consulted about scheduling a stress test. (JE 1:44) Garrigus agreed on cross-examination Dr. McClimon never told him his lung condition was work-related. (Tr.:54)

On September 10, 2020, Garrigus attended an appointment with Benjamin Kumor, M.D., a family medicine physician with Grand River Medical Group, to establish

care. (JE 3:75; Tr.:52) Garrigus reported he had been experiencing lung problems since November 2019. (JE 3:75) Dr. Kumor examined Garrigus, assessed him with asthma, persistent and not controlled, and obesity, and referred him to a pulmonologist. (JE 3:76)

A.Y. McDonald sent Garrigus a letter on November 3, 2020, terminating his employment for failure to provide documentation from his physician taking him off work due to his medical condition. (Ex. E:59)

In his answers to interrogatories, Garrigus reported that after his termination he worked for FedEx Freight from 2020 to 2021 as a fork truck driver until he started his own business. (Ex. K:111) Garrigus relayed he operates GT Power Washing where he power washes things for people, and since November 2021, he has also worked for Grub Hub as a delivery driver. (Ex. K:111)

On March 24, 2021, Patrick Hartley, a pulmonologist with the University of Iowa Hospitals and Clinics ("UIHC"), conducted an IME for A.Y. McDonald and Twin City. (Ex. A) Dr. Hartley examined Garrigus and reviewed his medical records. (Ex. A) Dr. Hartley noted pulmonary function testing performed at the UIHC the date of his evaluation revealed:

a mild ventilatory defect which is not clearly obstructive or restrictive, with reduced forced vital capacity (FCV) and forced expiratory volume in the first second (FEV1) with normal FEV1/FVC. There is no significant change following inhaled beta agonist bronchodilator. Lung volumes by plethysmography reveal a reduced total lung capacity (TLC) and normal residual volume. The diffusing capacity (DLCO) is normal.

(Ex. A:4) Dr. Hartley assessed Garrigus with a respiratory disorder, unspecified, and occupational exposure in the workplace. (Ex. A:6)

On April 19, 2021, Garrigus attended an appointment with Braden Powers, M.D., a pulmonologist with Grand River Medical Group on a referral from Dr. Kumor, for an initial evaluation of dyspnea. (JE 3:79) Dr. Powers noted Garrigus had been seen in Pulmonary Medicine at the UIHC. (JE 3:79) Dr. Powers examined Garrigus, reviewed his pulmonary function tests and labs, assessed him with severe persistent asthma without complication and occupational exposure in the workplace, prescribed Spiriva, continued his Singulair, Breo, and Albuterol inhaler, noted Garrigus reported being exposed to silica sand/dust, formaldehyde and cadmium fumes at A.Y. McDonald, and stated he would defer to Dr. Hartley at the UIHC on any additional work-up or testing. (JE 3:80-81)

Garrigus attended an appointment with Paige Ortiz, ARNP, with Grand River Medical Group Urgent Care on November 23, 2021, complaining of a fever, chest congestion, and cough for four days. (JE 3:82) Ortiz tested Garrigus for COVID-19 and the test was positive. (JE 3:83) Ortiz assessed Garrigus with a fever, chest congestion, cough, and COVID-19. (JE 3:83)

On January 17, 2022, Garrigus returned to Dr. Kumor. (JE 3:89) Garrigus' wife relayed she believed her husband has had anxiety since his lung problems started a few years ago. (JE 3:89) Dr. Kumor assessed Garrigus with anxiety and essential hypertension and prescribed sertraline and losartan potassium. (JE 3:90)

On June 7, 2022, Garrigus' counsel sent a letter to Dr. Powers asking whether he agreed with a referral to the Mayo Clinic and whether his work-related exposure was more likely than not a substantial contributing factor regarding his ongoing condition and symptoms. (Ex. B:46) Dr. Powers responded, writing, "I did not recommend referral to Mayo Clinic. This was at the patient's request to his PCP, Dr. Kumor. He requested another opinion other than mine regarding his lung disease. See my note for details of my recommendations." (Ex. B:47) Garrigus agreed on cross-examination Dr. Powers never told him whether or not his lung condition is work-related. (Tr.:53-54)

Garrigus attended a follow-up appointment with Dr. Kumor on March 1, 2022, reporting he believed the medication was helping with his mood and he did not feel as irritable or anxious and he had less intrusive thoughts. (JE 3:91) Dr. Kumor refilled his medications. (JE 3:92)

On September 14, 2022, Garrigus attended an appointment with Brian Gross, M.D., a pulmonologist with Pulmonary Associates, complaining of feeling wheezy and reporting he had more bad than good days. (JE 4:95) Dr. Gross examined Garrigus, noted he did not sound wheezy, but his spirometry was abnormal, he diagnosed Garrigus with asthma and shortness of breath, and recommended additional testing. (JE 4:97)

Garrigus returned to Dr. Gross on December 15, 2022, reporting he was short of breath with exertion and he has a productive cough with yellow sputum. (JE 4:107) Dr. Gross discussed treatment options and noted his asthma was not well controlled. (JE 4:108)

Dr. Hartley sent Defendants' counsel a supplemental IME report on January 13, 2023, acknowledging his initial report was incomplete and did not include his opinion regarding diagnosis, causation, or any associated work-related impairment. (Ex. A:21) Dr. Hartley noted Garrigus' pulmonary function testing performed the date of his IME revealed a mild ventilatory defect that he could not classify as clearly either obstructive or restrictive, and that he had reduced total lung capacity, and normal diffusing capacity. (Ex. A:21) Dr. Hartley noted he had not been provided with any chest imaging studies for review, but it is very unlikely a worker in his mid-30s would have radiographic evidence of silicosis, or other dust-related parenchymal lung disease, in the absence of significantly elevated levels of fibrogenic dust in the work environment, or immunological sensitization to the dust. (Ex. A:22)

Dr. Hartley opined:

Mr. Garrigus has probable asthma for which he is followed by his allergist Dr. McClimon, and has allergies to a number of environmental

allergens. Based on the information available, I cannot state within a reasonable degree of medical certainty that his occupational exposures while working at A.Y. McDonald have caused, or materially aggravated, his underlying airway disease.

It is my opinion, that Mr. Garrigus does not have any respiratory impairment, attributable to his occupational exposures at A.Y. McDonald.

As with any patient with underlying airway hyperreactivity, it would be prudent to limit his exposure to irritant or fibrogenic dusts in the work environment. He reports that he uses a respirator at work, to which he is fit tested annually, as required by OSHA. This should provide adequate respiratory protection and decrease the likelihood of exacerbating his asthma. If he has difficulty tolerating a tight-fitting air purifying respirator, due to his asthma, he could be provided with a powered air purifying respirator (PAPR) which would likely result in a lower "work of breathing."

(Ex. A:22)

On January 18, 2023, Garrigus' counsel sent Dr. Gross a check-the-box letter asking for his opinion. (Ex. 9) Dr. Gross sent an undated response agreeing with the statement, "[i]t is my opinion that the work exposure from AY McDonald was a substantial contributing factor in exacerbating Mr. Garrigus's underlying respiratory condition." (Ex. 9:51) Dr. Gross stated it was "too soon to say" whether Garrigus was at maximum medical improvement because he started a new medication in January and he stated it was too soon to assign a permanent impairment rating under the AMA Guides 5th Edition, noting "I don't have this reference." (Ex. 9:51) Dr. Gross recommended an inhaler, nebulizer, and Dupixent. (Ex. 9:51)

Garrigus testified he continues to have ongoing problems every day with tightness in his chest, a dry cough, and shortness of breath. (Tr.:46) Garrigus relayed at the time of the hearing "it feels like my lungs are kind of cleared out. It's not as gritty, I guess you could say, where it's – you know, it's hard to explain. Like it's not as congested as far as stuff coming out or – you know, yeah," in comparison to early 2020. (Tr.:46) While his condition is better, Garrigus reported he has never returned to his baseline before the fall of 2019. (Tr.:46)

Garrigus relayed since he developed his pulmonary problems he cannot run 5Ks anymore with his wife, play sand volleyball, or swim in the river. (Tr.:48) He reported when he chases his daughter around he becomes winded. (Tr.:48)

CONCLUSIONS OF LAW

I. Arising Out of and in the Course of Employment

Garrigus alleges his work at A.Y. McDonald caused him to develop a work-related respiratory condition and his respiratory condition caused him to develop depression and anxiety. A.Y. McDonald and Twin City reject his assertion.

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). 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, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa 1997). When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

It is well established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

Two physicians have given causation opinions, Dr. Hartley, a pulmonologist who conducted an IME for Defendants, and Dr. Gross, a pulmonologist who began treating Garrigus in 2022.

Dr. Hartley is a pulmonologist at the UIHC, a premier medical institution. Dr. Hartley examined Garrigus on one occasion and diagnosed him with an unspecified respiratory disorder. (Ex. A:6) Dr. Hartley reviewed all of Garrigus' medical records, including the regular testing performed by Dr. Kennedy over the course of his employment. (Ex. A) Dr. Hartley opined Garrigus has probable asthma and a number of environmental allergies, and based on the information available he could not "state within a reasonable degree of medical certainty that his occupational exposures while working for A.Y. McDonald have caused, or materially aggravated, his underlying airway disease," and opined Garrigus does not have any respiratory impairment, attributable to his occupational exposures at A.Y. McDonald. (Ex. A:22)

Dr. Gross first treated Garrigus in September 2022, nearly two years after his employment ended with A.Y. McDonald. (JE 4:97) Garrigus complained of feeling wheezy. On exam, Dr. Gross found he did not sound wheezy, but his spirometry was abnormal and he diagnosed Garrigus with asthma and shortness of breath, and recommended additional testing. (JE 4:97) Garrigus returned to Dr. Gross on December 15, 2022, where he again discussed treatment options. (JE 4:108)

Dr. Gross sent an undated response to a check-the-box letter Garrigus' counsel sent on January 18, 2023, agreeing with the statement, "[i]t is my opinion that the work exposure from AY McDonald was a substantial contributing factor in exacerbating Mr. Garrigus's underlying respiratory condition." (Ex. 9:51) Dr. Gross responded it was "too soon to say" whether Garrigus was at maximum medical improvement because he started a new medication in January. (Ex. 9:51) In his brief opinion, Dr. Gross did not identify what Garrigus had been exposed to in the workplace that exacerbated his

underlying respiratory condition. (Ex. 9:51) He did not explain how he reached his conclusion. I do not find his opinion persuasive.

In January 2022, Dr. Kumor, Garrigus' treating family physician, diagnosed him with anxiety and prescribed sertraline. (JE 3:90) Dr. Kumor did not provide an opinion finding Garrigus' respiratory condition caused Garrigus to develop a mental health condition or materially aggravated, accelerated, or lit up a mental health condition. No medical provider has opined Garrigus' respiratory condition caused him to develop a mental health condition or materially aggravated, accelerated, or lit up a mental health condition.

I do not find Garrigus has met his burden of proof he sustained a work injury arising out of and in the course of his employment with A.Y. McDonald. Given this finding, the issues of timely notice, entitlement to temporary benefits, payment of medical expenses and medical mileage, and alternate care are moot.

II. IME

On the hearing report Garrigus checked that he was seeking to recover the cost of an IME under Iowa Code section 85.39. Garrigus' post-hearing brief does not address the cost of the IME. His exhibits do not contain a charge for an IME. Garrigus was not successful in this case. I do not find Garrigus has established he is entitled to recover the cost of an IME in this case.

III. Costs

In his post-hearing brief, Garrigus states he seeks to recover costs totaling \$583.80. He did not itemize the costs. Exhibit 4 is his Statement of Costs. Exhibit 4 includes the \$103.00 filing fee. (Ex. 4:15-16) No other costs are identified in Exhibit 4. It is unclear what the remaining "costs" are that total \$480.80.

Iowa Code section 86.40 (2019), provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides:

[c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

I did not find Garrigus met his burden of proof he sustained an injury arising out of and in the course of his employment. Using my discretion, I do not find Defendants should be responsible for Garrigus' costs.


ORDER

IT IS THEREFORE ORDERED, THAT:

Claimant shall take nothing in this case.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rules 876 Iowa Administrative Code 3.1(2) and 11.7.

Signed and filed this 11th day of July, 2023.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Zeke McCartney (via WCES)

Jane Lorentzen (via WCES)

Adam Kiel (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 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.