BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHARLES PENCE,

Claimant,

vs.

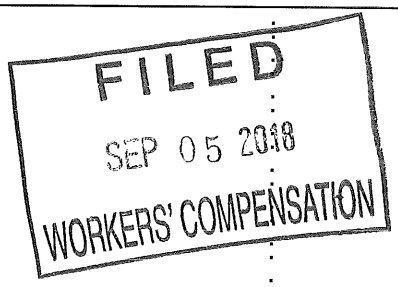
JOHNSON COUNTY,

Employer,

and

IMWCA,

Insurance Carrier,
Defendants.



File No. 5056887

ARBITRATION

DECISION

Head Notes: 1402, 1803, 2206, 2500, 2601, 2907

STATEMENT OF THE CASE

Charles Pence, claimant, filed a petition in arbitration seeking workers' compensation benefits from defendants Johnson County, employer, and IMWCA, insurance carrier. The hearing occurred before the undersigned on July 11, 2018, in Des Moines, Iowa.

The parties filed a hearing report at the commencement of the arbitration 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 now bound by their stipulations.

The evidentiary record consists of: Joint Medical Exhibits JE 1 through JE 5, Claimant's Exhibits 1 through 4 and 6 through 11, and Defendants' Exhibits A through H.

Claimant testified on his own behalf. Claimant's wife, Diana Pence, and claimant's co-worker, Mitch Peters, testified on claimant's behalf, and Kevin Braddock, claimant's supervisor, testified on behalf of defendants.

The evidentiary record closed on July 1, 2018. The case was considered fully submitted upon receipt of the parties' briefs on August 27, 2018.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant's stipulated work injury on June 10, 2013, is a cause of permanent disability.

2. If claimant sustained a permanent disability, the extent of claimant's industrial disability.

3. If claimant sustained a permanent disability, the commencement date for permanent partial disability (PPD) benefits.

4. Whether healing period benefits were timely paid.

5. Whether claimant is entitled to payment of medical expenses as set out in Claimant's Exhibit 4.

6. Costs.

FINDINGS OF FACT

After a review of the evidence presented, the undersigned finds as follows:

Claimant was 54 years old at the time of the hearing. (Hearing Transcript, page 19) He began working for defendant-employer in 1986. (Hrg. Tr. p. 24) He was originally hired to do general road maintenance, which included snowplowing, backhoeing, and excavating. (Defendants' Exhibit A, p. 4 [Deposition Tr. pp. 11-12]) He performed these road maintenance duties until 2009 when he became a district patrol person. (Def. Ex. A, p. 4 [Depo. Tr. p. 13]) As a district patrol person, claimant continued to be responsible for the same road maintenance duties, but he picked up some additional duties as well, such as clearing ditches and roadways of debris. (Def. Ex. A, p. 4 [Depo. Tr. p. 13]; Claimant's Ex. 6)

Claimant was working as a district patrol person when he sustained a stipulated back injury on June 10, 2013. (Hrg. Tr. p. 24) As claimant lifted a bag of trash out of his truck on the morning of June 10, 2013, he felt a twinge of pain in his back. (Def. Ex. A, p. 8 [Depo Tr. pp. 27-28]) Claimant did not immediately report the injury or seek treatment because he assumed the pain would subside. (Hrg. Tr. p. 32) When the pain began to worsen over the next several days, however, claimant called defendant-employer to report the incident. (Hrg. Tr. p. 33)

Defendants directed claimant to Mercy Occupational Health where he was seen by Ernest M. Perea, M.D., on June 12, 2013. (Joint Exhibit 2, p. 11) Dr. Perea noted claimant was experiencing pain in his low back with radiation into his left leg. (JE 2, p. 12) Importantly, he also noted claimant's history of a prior disc herniation. (JE 2, p. 12) At hearing, claimant acknowledged this history of back injuries and strains. (Hrg. Tr. pp.

65-66) Dr. Perea diagnosed claimant with a low-back strain and released him to return to light-duty work. (JE 2, pp. 12-13)

When claimant returned to Dr. Perea on June 19, 2013, he continued to complain of pain into his left leg and told Dr. Perea he was unable to perform light-duty work. (JE 2, p. 15) As a result, Dr. Perea removed claimant from work and ordered an MRI. (JE 2, p. 15)

After the MRI, claimant was evaluated by Benjamin D. MacLennan, M.D., at Steindler Orthopedic Clinic on July 19, 2013. Claimant continued to complain of pain in his low back that radiated into his leg. (JE 1, p. 2) Dr. MacLennan reviewed the MRI and determined claimant had some mild degenerative disc disease, a small left-sided disc protrusion at L2-3, and mild to moderate left lateral stenosis. (JE 1, p. 3) He referred claimant for physical therapy, instructed him to remain on light duty, and recommended an epidural steroid injection (ESI). (JE 1, p. 4)

Frederick J. Dery, M.D., performed claimant's first ESI on July 29, 2013. (JE 1, p. 5) The ESI improved claimant's radicular pain, but he continued to have pain in his low back. (JE 1, p. 6) Still, based on the MRI, Dr. MacLennan continued to recommend non-operative therapies. (JE 1, p. 7) He referred claimant back to occupational health for a progression to regular duties, but he maintained claimant's restrictions in the interim. (JE 1, p. 7)

Claimant returned to Dr. Perea on August 21, 2013. (JE 2, p. 18) Because claimant was continuing to experience ongoing dull pain in the low back with radiation into his left leg, Dr. Perea ordered four more weeks of physical therapy and a back brace. (JE 2, p. 18) Dr. Perea did release claimant to regular-duty work, however. (JE 2, p. 18)

When claimant returned to Dr. Perea on September 11, 2013, Dr. Perea noted claimant had been "navigating regular work okay." (JE 2, p. 23) Dr. Perea believed claimant's improvement had plateaued, but he wanted claimant to do physical therapy for three more weeks. (JE 2, p. 23)

After the three weeks of physical therapy, claimant returned to Dr. Perea on October 2, 2013. (JE 2, p. 25) Dr. Perea indicated claimant was "improved over his original injury condition but not back to preexisting condition," as he was still intermittently symptomatic in his low back and left thigh. (JE 2, p. 25) He further stated claimant's condition "qualifie[d] as an aggravation of his preexisting low back pain." (JE 2, p. 25) However, Dr. Perea believed claimant reached maximum medical improvement (MMI), so he released claimant from his care. (JE 2, p. 25)

A few months later, on January 10, 2014, claimant returned to Dr. Perea with continued complaints of numbness and tingling in the left thigh and an intermittent dull pain in his back. (JE 2, p. 28) Dr. Perea noted claimant had not "returned to non-exacerbative preexisting condition." (JE 2, p. 28) As a result, Dr. Perea believed a

second opinion was appropriate to determine if claimant "will never return to preexisting condition[,] in which case he should be permanently partially impaired." (JE 2, p. 28) According to claimant's testimony, that second opinion was never approved, and claimant did not pursue an appointment on his own. (Hrg. Tr. p. 46)

Claimant sought no additional treatment until August of 2016, roughly two and a half years later, after he reported a new onset of pain to defendant-employer. (JE 2, pp. 29, 33) Defendants authorized a return appointment to Dr. Perea, who noted that claimant had severe low back pain and numbness in his left leg on July 4, 2016 with "no discernible injury." (JE 2, p. 33) Claimant explained that he was walking in his yard at home when the pain occurred. (Hrg. Tr. p. 48) Claimant told Dr. Perea he had "not had any difficulties at work" from January of 2014 until the July 4, 2016 episode, at which time he was "almost debilitated" with numbness into his left leg and severe low back pain. (JE 2, p. 34)

Considering this history, Dr. Perea told claimant he did not believe the new onset of pain was a work-related incident; instead, he told claimant work or any other activity could result in him having intractable pain. (JE 2, p. 33) Dr. Perea believed the severe symptoms experienced by claimant on July 4, 2016 were attributable to and consistent with claimant's preexisting progressive degenerative condition. (JE 2, p. 33) Dr. Perea discharged claimant from his care and instructed him to return to his own provider if necessary. (JE 2, p. 33)

Based on Dr. Perea's August 2, 2016 treatment note, defendants wrote claimant a letter dated September 13, 2016 notifying claimant they denied liability for any ongoing or future medical care. (Def. Ex. F, p. 39)

Claimant then returned to Dr. MacLennan on October 14, 2016. (JE 1, p. 9) Dr. MacLennan continued to recommend non-operative treatment based on the absence of signs of neurological impingement, but he did tell claimant he could return to Dr. Dery for additional injections if he desired. (JE 1, p. 11)

Claimant was evaluated by Dr. Dery just a few days later, on October 19, 2016. (JE 1, p. 12) Dr. Dery ordered an updated MRI, which was completed the same day. (JE 1, p. 14; JE 4, p. 4) After the MRI, Dr. Dery performed an ESI. (JE 1, p. 15) Claimant had a subsequent ESI on November 8, 2015. (JE 1, p. 16)

After the ESIs, claimant returned to Dr. MacLennan on December 7, 2016. (JE 1, p. 17) Claimant reported to Dr. MacLennan that his pain felt "different" and that "something changed." (JE 1, p. 17) Dr. MacLennan reviewed claimant's most recent MRI and discussed with claimant the possibility of pursuing an L2-3 discectomy. (JE 1, p. 18) Claimant, however, decided against surgery, and there is no evidence in the record reflecting any additional treatment.

Claimant was seen by Sunil Bansal, M.D., for purposes of an independent medical examination (IME) at claimant's attorney's request on June 5, 2018. (Cl. Ex. 2)

Dr. Bansal diagnosed claimant with a disc protrusion at L2-L3, and he opined that claimant's work injury on June 10, 2013 "was a significant contributory factor towards his current lumbar spine condition." (Cl. Ex. 2, p. 9) He assigned a five percent whole person impairment for radicular complaints, loss of range of motion, and guarding. (Cl. Ex. 2, p. 10) Despite stating earlier in his report that claimant is able to do his job and does not want any work restrictions, Dr. Bansal assigned the following restrictions: no lifting more than 40 pounds occasionally and 20 pounds frequently, no frequent bending or twisting, and no prolonged standing/walking greater than 60 minutes at a time. (Cl. Ex. 2, pp. 8, 10)

Importantly, however, there does not appear to be any discussion in Dr. Bansal's report regarding claimant's new onset of pain in July of 2016 other than a summary of claimant's appointment with Dr. Perea in August of 2016. Likewise, it does not appear Dr. Bansal reviewed claimant's October 19, 2016 MRI or the treatment notes from any of claimant's appointments with Dr. MacLennan or Dr. Dery in 2016. (Cl. Ex. 2, pp. 5-6)

With this history in mind, the threshold inquiry is whether claimant sustained any permanent disability relating to his stipulated June 10, 2013 work injury. Defendants rely on Dr. Perea's opinion from August of 2016, when he stated claimant's ongoing symptoms are related to his preexisting degenerative condition and not the work injury. The problem with defendants' reliance on Dr. Perea's opinion, however, is that defendants failed to address Dr. Perea's earlier opinion from October of 2013 in which he stated claimant never returned to baseline.

Claimant relies on the opinion of Dr. Bansal. However, as mentioned above, Dr. Bansal's opinion is problematic because Dr. Bansal did not have a complete treatment history—absent from his records review are treatment dates from a very relevant (and disputed) period in 2016. Thus, both parties rely on flawed evidence to support their respective positions.

Dr. Perea stated in his October 2, 2013 dictation that claimant was "improved over his original injury condition but not back to preexisting condition." (JE 2, p. 25) This statement is consistent with claimant's symptoms at the time; his symptoms were "improved and less frequent' since the June 10, 2013 injury, but claimant had still not returned to his pre-injury state. (JE 2, p. 25) When claimant returned to Dr. Perea on January 10, 2014, his symptoms had still not resolved. (JE 2, p. 27) Dr. Perea again noted that claimant "never returned to non-exacerbative preexisting condition." (JE 2, p. 28) Dr. Perea recommended a second opinion to determine whether claimant "will never return to preexisting condition." (JE 2, p. 28) Dr. Perea acknowledged that if claimant never returned to his baseline, he would be permanently partially impaired. (JE 2, p. 28)

For reasons unknown, defendants did not authorize a second opinion, nor did they seek any opinions regarding permanency. As a result, Dr. Perea's opinion that claimant did not return to his baseline preexisting condition is essentially unrefuted. I

therefore find claimant sustained a permanent aggravation of his preexisting back condition as result of his June 10, 2013 work injury.

However, I also find the new onset of symptoms experienced by claimant from July through December of 2016 is not related to the June 10, 2013 work injury. Dr. Perea opined that claimant's symptoms in July of 2016 were not due to a work-related injury. (JE 2, p. 34) This opinion is consistent with the fact that it had been more than two and a half years since claimant had last received treatment for his back. Further, and of significance, is claimant's statement to Dr. MacLennan that his pain in December 2016 was "different" and he felt like "something changed." (JE 1, p. 17) This, combined with the fact that up to July of 2016, claimant "ha[d] not had any difficulties at work since January 2014" indicates the pain was of a different origin or nature than the symptoms related to claimant's work injury. (Hrg. Tr. p. 48; JE 2, p. 34)

Dr. Bansal's report does not specifically address the causal relationship between claimant's work injury and the new onset of symptoms in July of 2016; thus, Dr. Perea's opinion from August of 2016 that claimant's new onset of symptoms was attributable to and consistent with claimant's progressive degenerative condition and not his work injury is also essentially unrebutted. For these reasons, I find the onset of symptoms experienced by claimant from July through December of 2016 are not causally related to claimant's June 10, 2013 work injury.

Having determined claimant sustained a permanent aggravation of a preexisting condition, and therefore a permanent disability, the next issue to be decided is the extent of claimant's industrial disability.

Dr. Bansal is the only doctor who addressed claimant's functional impairment, and he assigned a five percent whole body impairment rating. (Cl. Ex. 2, p. 10) However, as explained above, Dr. Bansal did not acknowledge claimant's new onset of symptoms from July to December of 2016 in his analysis. Still, the basis for Dr. Bansal's rating was radicular complaints, loss of range of motion, and guarding, all of which claimant seemed to be experiencing before his new onset of symptoms in July of 2016. Thus, I find Dr. Bansal's impairment rating persuasive. I therefore find claimant sustained a five percent whole body impairment due to his June 10, 2013 work injury.

On the other hand, the restrictions assigned by Dr. Bansal are not convincing. Claimant's job requires him to lift 50 to 100 pounds. (Cl. Ex. 6) Consistent with his testimony at hearing, claimant told Dr. Bansal he was capable of performing his job duties, though he sometimes requires the help of a co-worker. (Cl. Ex. 2, p. 8) Still, however, Dr. Bansal assigned lifting restrictions of no more than 40 pounds occasionally and 20 pounds frequently. (Cl. Ex. 2, p. 10) Because claimant can and does exceed these restrictions, I do not find Dr. Bansal's restrictions to be persuasive.

While claimant may not require formal work restrictions, I find claimant's physical ability to perform his job was impacted by the June 10, 2013 incident in the sense that he now requires lifting assistance from co-workers—assistance he did not previously

require. (Hrg. Tr. pp. 27, 109-110) That being said, at the time of the hearing, claimant was continuing to work in his capacity as a district patrol person without significant difficulty, and he has never asked his supervisors for formal accommodations. (Hrg. Tr. pp. 84, 87, 118)

Claimant was earning roughly 29 dollars per hour at the time of the hearing, which is the highest hourly wage he has ever earned. (Hrg. Tr. p. 86) His yearly earnings have continued to increase since the date of injury as well, from $50,234.06 in 2013 to $57,124.81 in 2016. (Def. Ex. B, pp. 18, 21)

Claimant is certified in welding and also holds a Class A CDL, but claimant likes his job, and he plans to keep doing it indefinitely. (Hrg. Tr. p. 87)

With these factors in mind, I find claimant sustained a 10 percent industrial disability as a result of his June 10, 2013 work injury.

Having found claimant sustained a 10 percent industrial disability, the next issue to be decided is the commencement date for claimant's PPD benefits. Claimant asserts a commencement date of August 21, 2013, and defendants assert a commencement date of July 9, 2013. Claimant relies on Dr. Perea's August 21, 2013 release to regular duties. (JE 2, p. 18) Defendants rely on the parties' stipulation that the healing period ended on July 8, 2013 and claimant's testimony that he had been paid temporary benefits for all of his time off following the injury. (Hrg. Report, p. 1; Hrg. Tr. p. 65)

Defendants are correct that the parties stipulated claimant was entitled to healing period benefits from June 12, 2013 through July 8, 2013. (Hrg. Report, p. 1; Hrg. Tr. pp. 4-5, 63-64) Claimant's counsel did not assert at hearing or in claimant's brief that claimant is entitled to additional healing period benefits; in fact, claimant acknowledged he was paid benefits for all of his missed time. (Hrg. Report, p. 1; Hrg. Tr. pp. 4-5, 63-65) Further, although Dr. Perea took claimant off work at his June 19, 2013 appointment until an MRI could be completed (JE 2, p. 15), Dr. MacLennan in his July 21, 2013 dictation told claimant he should remain on light duty, suggesting claimant had returned to modified work by the July 21, 2013 appointment. (JE 1, p. 4) In light of this evidence, I find claimant returned to work before his asserted commencement date of August 21, 2013. In light of claimant's testimony that he was paid benefits for all of his time off work, and in light of the parties' stipulation that claimant's healing period benefits ended on July 8, 2013, I find the commencement date for PPD benefits to be July 9, 2013.

At hearing, claimant asserted healing period benefits were paid late. (Hrg. Report, p. 1; Hrg. Tr. pp. 4-5) Claimant's counsel did not brief this issue, however, and defendants' brief indicates claimant's counsel notified them that claimant was no longer pursuing this claim regarding untimely benefits. Because I did not receive such notification from claimant's counsel, I will briefly address the issue.

Claimant on the hearing report refers to claimant's Exhibit 5 regarding his claim that healing period benefits were untimely made, but claimant's counsel withdrew Exhibit 5 at the start of the hearing. (Hrg. Tr. p. 9) Claimant offered no other evidence regarding this issue. As such, I have insufficient evidence to make specific findings regarding the timeliness of healing period benefits or claimant's entitlement to interest.

Claimant also asserts entitlement to reimbursement for medical treatment. Claimant seeks reimbursement for treatment received from August 16, 2016 through December 7, 2016, and also for three x-rays on April 18, 2018. (Cl. Ex. 4) I find the treatment from August 16, 2016 through December 7, 2016 is all related to claimant's onset of new symptoms that started in July of 2016. Because I determined claimant's onset of symptoms from July through December of 2016 was not related to claimant's work injury, I similarly find that claimant's treatment from August 16, 2016 through December 7, 2016 was for conditions unrelated to claimant's work injury. I therefore find claimant is not entitled to reimbursement for these medical expenses.

Claimant provided no evidence regarding the x-rays performed on April 18, 2018. As a result, I have insufficient information to determine whether these x-rays were causally related to claimant's work injury. I therefore find claimant is not entitled to reimbursement for the medical expenses incurred on April 18, 2018. In sum, I find claimant is not entitled to reimbursement for any of the medical expenses submitted in claimant's Exhibit 4.

The final issue to be decided is claimant's entitlement to costs. I find claimant was generally successful in his claim. I tax claimant's $100.00 filing fee to defendants. With respect to claimant's IME, none of the physician's retained by defendants made an evaluation of permanent disability. Therefore, I find claimant cannot be reimbursed under Iowa Code section 85.39. I find claimant can only be reimbursed for the cost of Dr. Bansal's report, which amounts to $2,029.00. In total, defendants shall reimburse claimant in the amount of $2,129.00.

CONCLUSIONS OF LAW

The threshold issue is whether claimant sustained any permanent disability as a result of the stipulated June 10, 2013 work injury.

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).

Relying on Dr. Perea's statement that claimant did not return to his baseline preexisting condition, I found claimant sustained a permanent aggravation of a pre-existing back condition. I thus conclude claimant satisfied his burden to prove he sustained a permanent disability as a result of his June 10, 2013 work injury.

Having concluded claimant sustained a permanent disability from his work injury, and in light of the parties' stipulations that any permanent disability would be industrial in nature, the next question to be considered is the extent of claimant's industrial disability.

Because claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for industrial disability shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Iowa Code § 85.34.

Based on the fact findings above, and considering all factors appropriate in the determination of industrial disability, I conclude claimant satisfied his burden to prove he sustained a 10 percent industrial disability as a result of his June 10, 2013 work injury. Of great significance is the fact that claimant is capable of continuing to work for defendant in the same capacity he has since 2009 with some minor, informal modifications. A 10 percent industrial disability equates to 50 weeks of PPD benefits.

The next issue to be decided is the commencement date for claimant's 50 weeks of PPD benefits. Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34. Having found claimant's healing period ended on July 8, 2013, I conclude claimant's PPD benefits are to commence on July 9, 2013, at the stipulated rate of $743.01.

The next issue to consider is whether claimant is entitled to payment of medical expenses. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code § 85.27; Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner, 78 (Review-Reopening 1975). However, a claimant is still entitled to reimbursement for unauthorized care so long as he shows the care was reasonable and beneficial. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010). To be beneficial, the medical care must provide a more favorable medical outcome than would likely have been achieved by the care authorized by the employer. Id. The claimant has a significant burden to prove the care was reasonable and beneficial. Id.

Upon the employer's denial of liability, the employer loses the right to control the medical care sought by claimant during the period of denial, and the claimant is free to choose his care. Id. In other words, when liability is denied, defendants are precluded from asserting an authorization defense as to any future treatment during the period of denial. Id.

Claimant seeks reimbursement for treatment received from August 16, 2016 through December 7, 2016, and also for three x-rays on April 18, 2018. (Cl. Ex. 4) Having found claimant's treatment from August 16, 2016 through December 7, 2016 was for conditions unrelated to claimant's work injury, I conclude claimant is not entitled to reimbursement for these medical expenses.

Having found claimant provided insufficient information to determine the causal relationship between the April 18, 2018 x-rays and claimant's work injury, I conclude claimant is not entitled to reimbursement for the medical expenses incurred on April 18, 2018. Thus, I conclude claimant failed to satisfy his burden to prove he is entitled to reimbursement for any of the medical expenses submitted in claimant's Exhibit 4.

The last issue to be decided is whether defendants should be taxed with costs. Assessment of costs is a discretionary function of this agency. Iowa Code § 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33.

Because I found claimant was generally successful in his claim, I exercise my discretion and conclude an assessment of costs against the defendants is appropriate. I conclude it is appropriate to assess the cost of the $100.00 filing fee. 876 IAC 4.33(7).

With respect to claimant's IME, none of the physician's retained by defendants made an evaluation of permanent disability. Therefore, the reimbursement provision of Iowa Code section 85.39 was not triggered. See Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015). When Iowa Code section 85.39 is not triggered, only reports are taxable costs pursuant to rule 876 IAC 4.33. See id. Thus, I conclude claimant can only be reimbursed for the cost of Dr. Bansal's report, which amounts to $2,029.00. In total, defendants shall reimburse claimant in the amount of $2,129.00.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant permanent partial disability benefits of fifty (50) weeks, beginning on the commencement date of July 9, 2013, until all benefits are paid in full.

All weekly benefits shall be paid at the stipulated rate of seven hundred forty-three and 01/100 dollars ($743.01) per week.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants are entitled to a credit for all weekly benefits paid to date against this award.

Defendants shall reimburse claimant costs in the amount of two thousand, one hundred twenty-nine and 00/100 dollars ($2,129.00).

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 5th day of September, 2018.

STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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SJC/sam

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.