

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KODY WOHLERS,

Claimant,

vs.

POTTAWATTAMIE COUNTY, IOWA,

Employer,

and

IMWCA,

Insurance Carrier,
Defendants.

File Nos. 20701202.01, 20701189.01

ARBITRATION DECISION

Head Notes: 1108, 1108.40, 1402.40,
1803, 2203, 2502, 2907

STATEMENT OF THE CASE

Kody Wohlers, claimant, filed two petitions in arbitration seeking workers' compensation benefits from Pottawattamie County, employer and IMWCA, insurance carrier as defendants. Hearing was held via Zoom on August 2, 2022.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision. The parties are now bound by their stipulations.

Claimant, Kody Wohlers, was the only witness to testify live at trial. The evidentiary record also includes Joint Exhibits 1-5, Claimant's Exhibits 1-6 and Defendants' Exhibits A-E. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on September 19, 2022, at which time the case was fully submitted to the undersigned.

ISSUES

File No: 20701202.01 (DOI: 07/13/2020)

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury or an occupational disease that arose out of and in the course of his employment on July 13, 2020.

2. If so, whether the injury or occupational disease was the cause of any permanent disability and the extent of industrial disability claimant sustained.
3. The appropriate commencement date for any permanency benefits.
4. Whether defendants are responsible for past medical expenses.
5. Whether claimant is entitled to reimbursement of his independent medical examination.
6. Whether assessment of costs against the defendants is appropriate.

File NO: 20701189.01 (DOI: 08/04/2020)

1. Whether claimant sustained any permanent disability as the result of the stipulated August 4, 2020 work injury. If so, the extent of permanency benefits claimant is entitled to receive.
2. The appropriate commencement date for any permanency benefits.
3. Whether claimant is entitled to reimbursement of his independent medical examination.
4. Whether assessment of costs against the defendants is appropriate.

FINDINGS OF FACT

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

Claimant, Kody Wohlers, was 39 years old at the time of the hearing. He resides in Council Bluffs, Iowa. Mr. Wohlers has alleged that he sustained two work-related injuries while working for Pottawattamie County, Iowa. In July 2020, Mr. Wohlers was diagnosed with West Nile Virus ("WNV"). In his first petition he has alleged that the WNV infection is the result of his employment with the County with an alleged injury date of July 13, 2020; in the alternative, Mr. Wohlers alleges this is an occupational disease. The defendants dispute that the WNV is work-related as an injury or an occupational disease. In his second petition Mr. Wohlers alleges injury to his neck and body as a whole as the result of a motor vehicle accident (MVA) on August 4, 2020. The defendants have stipulated that the MVA arose out of and in the course of employment, but dispute that he sustained any permanent disability.

Mr. Wohlers was hired by Pottawattamie County ("the County") in September 2007, as a conservation technician. Mr. Wohlers was a full-time employee. His work was performed at conservation board parks which included five different parks and 13 different total areas. This included natural areas and public areas where fishing and

hunting is conducted. In 2011 or 2012 Mr. Wohlers' job title changed to natural resource technician, but his job duties remained the same. His daily job duties included invasive species control, which entailed mowing, brush cutting by hand, chain saw work, backpack spraying, ATV operations, skid loader operations, and prescribed fire operations. His duties also included all the maintenance for the equipment. Mr. Wohlers estimated that 90-95 percent of his job duties were performed outdoors. The remaining portion of his job duties were administrative work such as GIS mapping, budget, and finance work. (Hearing Transcript, pp. 13-16)

Toward the beginning of July 2020, Mr. Wohlers began to experience high fatigue, nausea, and a crushing headache to the point where he could not keep his eyes open. He had to leave work early. He tried to seek medical attention, but the medical facility required a negative COVID test prior to treatment. Mr. Wohlers made an appointment for a drive thru COVID test. He was eventually told his COVID test results were negative. Mr. Wohlers was then able to make an appointment to see Takashi Kawamitsu, M.D. (Tr. pp. 23-24)

Dr. Kawamitsu saw Mr. Wohlers on July 20, 2020 at Methodist Health System. Mr. Wohlers reported mild fatigue, body aches, and mild headache over the last 6 days. Mr. Wohlers had recently tested negative for COVID, but he had remaining symptoms and wondered if he had some type of infection. He worked outside often and had noticed multiple tick bites. The doctor ordered lab work which revealed he had antibodies for WNV. Dr. Kawamitsu noted there was no specific treatment for WNV. Mr. Wohlers was instructed that if he felt tired, he should rest. (Joint Exhibit 1, pp. 1-3)

On August 24, 2020, Mr. Wohlers returned to Methodist Health and saw Rachel F. Stearnes, D.O. for a wellness examination. She noted his blood work was excellent. She noted that approximately one month ago he saw her partner and tested positive for WNV antibodies; timing uncertain. She also noted that he had since had whiplash. He also had elevated TSH levels. Mr. Wohlers continued to have difficulty with fatigue headaches and was easily worn out. She recommended he continue with his physical therapy, repeat a TSH in one month, and rest as needed. (JE1, pp. 4-5)

Mr. Wohlers returned to Dr. Stearnes on September 14, 2020. He tested positive for WNV antibodies approximately 9 weeks before. Then he was involved in a MVA. He was having neck, back, and leg pain. At this appointment Mr. Wohlers reported he continued to have nausea, was not sleeping well, and was tired all the time. Her assessment was WNV infection, unspecified; nausea; fatigue; and dehydration. Dr. Stearnes was unsure if the residual symptoms were related to the WNV given that back in July his IgM was negative, but his IgG was positive. She recommended a referral for an infectious disease consultation. (JE1, pp. 6-7)

On September 23, 2020, Dr. Stearnes saw Mr. Wohlers. He reported that he saw Dr. Southard who prescribed a short, low-dose steroid taper which he started the day before. Dr. Stearnes had also started Mr. Wohlers on thyroid replacement secondary to a mildly elevated TSH because some symptoms could be related to the thyroid. He continued to experience symptoms related to WNV including fatigue, dizziness, headache, trouble reading, irritability, and restless legs. For the past 2 weeks

he also felt a sensation on his skin where he may get shingles again. Dr. Southard recommended 1 to 2 months off work. Dr. Stearnes continued his thyroid replacement, and recommended he finish the steroid taper. She also recommended cream for a rash which was unrelated to the virus. Dr. Stearnes completed FMLA paperwork stating he could return to work in mid-November. She recommended a consultation with Dr. Chen for further evaluation regarding post-viral syndrome. (JE1, pp. 12-13)

On August 4, 2020, Mr. Wohlers was involved in a MVA while working for the County. Mr. Wohlers was driving a Ford F-450 truck pulling a gooseneck trailer. He pulled over to the side of the road when another county vehicle, a Ford F-250, struck his stopped vehicle. The F-250 was also pulling a trailer. It was estimated that the F-250 was traveling around 35 to 40 miles per hour when he struck Mr. Wohlers' vehicle. The MVA caused substantial property damage to the vehicles involved. Mr. Wohlers immediately felt neck and back pain. He was able to complete his workday. (Tr. pp. 26-30)

On August 10, 2020, Mr. Wohlers saw James G. Kalar, M.D. at CHI Health Company Care. He presented for initial evaluation of injuries he sustained in a MVA six days previously. The date of injury was August 4, 2020. He was the restrained driver of a large pickup pulling a large piece of machinery. He was stationary and rear-ended by another vehicle. He had some discomfort in the neck and right shoulder area. He had difficulty finding a comfortable position at night. He had been working his regular job. Cervical x-rays were negative. Dr. Kalar's impression was cervical strain. He recommended continuing his regular job without restrictions, and to continue ibuprofen and heat. He prescribed six visits of physical therapy. (JE2, pp. 36-39) Mr. Wohlers did attend physical therapy sessions and also received chiropractic care. (JE3)

Mr. Wohlers returned to Dr. Kalar on August 19, 2020, for follow-up of the MVA. Mr. Wohlers reported that symptomatically he was feeling much better. He rated his discomfort as a 2 out of 10 at rest and at worst 4-5 out of 10 with certain movements. He had completed three sessions of physical therapy. His headaches were improved. The impression was cervical strain, improved. He was allowed to continue to work at his regular job without restrictions. He was instructed to complete his last three physical therapy visits, be compliant with home exercises, and continue heat and ibuprofen. (JE2, pp. 40-41)

On August 28, 2020, Mr. Wohlers saw Dr. Kalar. Symptomatically Mr. Wohlers was feeling much better. His neck discomfort was 1 out of 10 and he described muscle fatigue with prolonged standing. He had some burning over the right lateral thigh when sitting. Acupuncture had improved the burning. On examination the range of motion of the cervical spine was normal and pain-free. There were no radicular findings. Dr. Kalar's impression was improved cervical and lumbar strain. Dr. Kalar stated he could continue with no restrictions. He could continue with physical therapy, heat, and ibuprofen as needed. (JE2, pp. 42-43)

Mr. Wohlers returned to Dr. Kalar on September 11, 2020. He continued to slowly improve. He described the neck and shoulder discomfort as a stiffness. He no longer had any burning sensation in the right thigh following treatment with acupuncture.

He was also dealing with a subacute diagnosis of WNV. He was to continue with physical therapy and return in one week. Mr. Wohlers returned in one week. Dr. Kalar agreed with the physical therapist's recommendation for additional sessions. (JE2, pp. 44-47)

On October 2, 2020, Mr. Wohlers saw Dr. Stearnes. He reported his whiplash from a car accident seemed better. He was attending physical therapy and seeing a chiropractor. He was currently on prednisone recommended by the infectious disease doctor. This had helped with his chest pressure, but it was interfering with his sleep. He was seeking long-term disability and help with payment for medical bills. Dr. Stearnes noted that his work was potentially denying his claim for compensation stating that he was unable to identify the exact date or spot of the mosquito bite. She felt this was ridiculous. Consideration was given to restarting an antidepressant to help him cope. (JE1, pp. 14-15)

Mr. Wohlers also had an appointment with Dr. Kalar on October 2, 2022. He rated his discomfort as a 1/10 at rest. With certain jarring activities his pain got as high as 4-5 out of 10 discomfort that was very brief. He was to continue with his physical therapy. (JE2, pp. 48-49)

On October 6, 2020, Mr. Wohlers presented to neurologist, Michael W. Chen, D.O. He reported problems with short-term memory difficulty and headaches since WNV infection in July. He reported daily, dull, achy headaches. He also reported photophobia and nausea with headaches. He had a lack of energy, felt tired all the time, and had difficulty concentrating. He was also involved in a MVA where he was rear-ended. Dr. Chen started Mr. Wohlers on amitriptyline for daily headaches and insomnia. He recommended blood work and an MRI of the brain due to the headaches. Dr. Chen was not concerned about cognitive impairment/dementia. He felt the memory issues were likely related to concentration and focus difficulty. He noted the post viral syndrome may last several months or years. (JE1, pp. 16-20)

Mr. Wohlers returned to Dr. Stearnes on November 9, 2020. He reported that he still had good days and bad days. His chiropractor performed acupuncture which helped with his headaches. He was still experiencing quite a bit of fatigue. He had been off work for more than three months. Dr. Stearnes' assessments included WNV infection, post viral syndrome, and elevated TSH. Dr. Stearnes prescribed amitriptyline. She stated she would put a call out to Dr. Southard regarding following IgG levels although she did not think it would be fruitful. Dr. Stearnes kept Mr. Wohlers off work until December 15. She recommended increasing his exercise tolerance. (JE1, pp. 21-22)

Mr. Wohlers went to urgent care on November 27, 2020, with a sore throat, postnasal drainage, and chest tightness that began the prior day. He reported he had some mild body aches, but he had these occasionally with his history of WNV. He denied any fatigue or headaches. Mr. Wohlers tested positive for COVID and was instructed to quarantine. (JE1, pp. 23-24)

On December 10, 2020, Mr. Wohlers saw Dr. Stearnes for follow-up. Approximately two weeks prior Mr. Wohlers was diagnosed with COVID. He felt

lightheaded and dizzy and like his balance was off. He believed he was sweaty and his hands were a bit shaky. Mr. Wohlers had gained 13 pounds over the past 5 weeks. He was also involved in a MVA. His neck and back seemed to be quite a bit better. He felt his stamina was still poor. Mr. Wohlers wanted to return to work. Dr. Stearnes felt the return to work should probably be for 4-hour shifts and no rigorous activity. She felt this was reasonable to start after the holidays. Dr. Stearnes recommended rechecking his TSH due to his sweatiness. He also reported leg pain and she recommended a D-dimer due to his recent COVID and some thromboembolic events. He was given a note that he may return to work on January 1, 2021, with a limit of 4-hour shifts and no rigorous activity. (JE1, pp. 25-26)

Mr. Wohlers continued to follow-up with Dr. Kalar. On December 11, 2020, Dr. Kalar noted that Mr. Wohlers continued to be off work. His overall case had been complicated by the MVA, concurrent WNV and significant symptom overlap. He was also recovering from COVID. He was feeling much better. He finished physical therapy the day prior which included dry needling and acupuncture. Mr. Wohlers was minimally symptomatic with discomfort of 2 out of 10. Occasionally he noticed a slight twinge of the cervical paraspinal muscles. He no longer had any thoracic or lumbar discomfort. Dr. Kalar noted that the cervical strain was improved. He agreed with returning to work for half days with gradual resumption of normal work duties. (JE2, pp. 53-54)

Mr. Wohlers returned to Dr. Stearnes on January 21, 2021. She noted Mr. Wohlers experienced a series of events last year including WNV, post viral syndrome, an MVA, and that he had contracted COVID. He still felt a bit short of breath with stairs and related that to COVID. He returned to work on January 4, 2021, working half days, performing mostly office work. The office work tended to bother his neck related to the MVA. Mr. Wohlers was to perform home exercises and see a chiropractor. The doctor's assessment included WNV infection, post viral syndrome, COVID-19 virus infection, and tinea corporis. He was instructed to continue to work half days for the next month. (JE1, pp. 27-28)

Mr. Wohlers returned to Dr. Stearnes on January 26, 2021. He requested a letter addressed to his employer regarding his restrictions. Dr. Stearnes authored the requested letter. She noted that Mr. Wohlers had a series of illnesses over the past year including WNV and WNV post viral syndrome, MVA, and COVID. She was not actively involved in his MVA care. She did not recall an October 23, 2020 note stating there were no restrictions. She wondered if perhaps the note was from Dr. Kalar of occupational health. Dr. Stearnes stated with regard to his WNV and post viral syndrome, Mr. Wohlers was unable to work at his prior level of activity. She felt at this point he was able to work in the office and in the shop doing some equipment maintenance. She felt he should not lift more than 50-pounds and should not do so more than 5 times per hour. He should work 4-hour shifts. She expected that he could go back to full-time work on February 15, 2021, without restrictions. (JE1, pp. 29-31)

On February 19, 2021, Mr. Wohlers returned to Dr. Kalar. He reported that he would be taking a new job with a different employer on March 1. The new job would be less physically demanding and involve more administrative work. He had shown some improvement and no longer had any headache. He had occasional back pain but for

the most part was minimally bothered by that. He had tightness and weakness of the neck muscles by the end of the workday. Dr. Kalar felt the fatigue by the end of the day may be indicative of an ergonomic issue. Since he would be going to a new employer the doctor did not feel that an ergonomic assessment would be beneficial. No restrictions were given. (JE2, pp. 58-60)

Dr. Kalar saw Mr. Wohlers again on April 19, 2021. He reported he was happy with his new job that involved more administrative work and less physical work out in the field. He continued to show slow improvement. His discomfort was as high as 5-6 with prolonged sitting or driving. He had headaches about twice per week. (JE2, pp. 61-63)

On July 19, 2021, Mr. Wohlers returned to Dr. Stearnes. He reported he felt like he never fully recovered from WNV and COVID. He reported that working outside in the summer in temperatures above 90 degrees tended to flare his symptoms. He sweated a lot, had fatigue, and had to sit to rest. He felt thirsty and dehydrated. He had headaches and restless sleep. The week prior he woke up during the night with a warm sensation and felt his heart was beating hard. He noticed some deep shoulder pain on the left since that time. He felt like something was not quite right for the past month. He just wanted to sleep. He had pulled 12-14 ticks off his body this season but had not had a rash. The assessment was WNV, post viral syndrome, left shoulder pain, elevated TSH, sweating increase, and tick bites. She ordered some blood work and reassured him that the left shoulder pain seemed to be musculoskeletal. She stated that he did not need any restrictions for work documented at that time. (JE1, pp. 32-33)

On July 19, 2021, Mr. Wohlers also saw Dr. Kalar. Overall, he was doing well. He reported some mild stiffness in the morning. Dr. Kalar noted Mr. Wohlers was one year post MVA and placed him at MMI. He did not assign any restrictions and he discharged Mr. Wohlers from his care. (JE2, pp. 64-66)

On August 20, 2021, Dr. Kalar authored a missive to counsel for Mr. Wohlers. Dr. Kalar summarized his appointment with Mr. Wohlers. He noted that on the final visit on July 19 Mr. Wohlers' examination was unremarkable. Dr. Wohlers stated, "with respect to the need for future medical care, I am unable to state beyond a reasonable degree of medical certainty how much of his current symptomatology is related to the motor vehicle accident versus prolonged effects from the two viral infections." (JE2, p. 68) Dr. Kalar also stated that he does not perform disability examinations or impairment ratings. (JE2, pp. 67-68)

On September 21, 2020, Mr. Wohlers saw John G. Southard, M.D. for an infectious disease evaluation. Dr. Southard noted that sometime in late June or early July, Mr. Wohlers began to feel progressively fatigued. He started having trouble with short-term memory, feeling some muscular aches, easy fatigability, and began to get regular headaches. Blood work showed that the WNV infection had occurred approximately 3 months previously. On August 4, 2020, Mr. Wohlers was involved in a MVA and suffered significant neck, back, and leg discomfort. Dr. Southard noted that the discomforts associated with the accident were sometimes difficult to separate from the discomfort he had generalized in the musculoskeletal system from the WNV. Mr.

Wohlers continued to experience discomfort in the substernal region. He continued to have fatigue and short-term memory loss. He had also become depressed due to fatigue and respiratory difficulty. Dr. Southard's impression was WNV probably occurring at least 3 months ago with his WNV laboratory test negative for IgM, which usually lasts 2-3 months. IgG was already elevated consistent with lasting immunity. There was no specific treatment for WNV although anecdotally some patients recovered faster with a short course of corticosteroids to decrease generalized inflammation. Patient requested a short course of prednisone just to see if it would help as he was having significant difficulty with his progressive fatigability generally. Dr. Southard stated that those who get WNV do not get neurologic symptomatology that is significant, although headaches are common. Based on testing, the doctor felt that neurologic sequelae were probably not going to progress from this point, but he felt Mr. Wohlers may continue to have intermittent symptoms for several years. He stated most patients have significant resolution of symptoms by 12 months. (JE5, pp. 159-61)

Mr. Wohlers saw Ann M. Wordekemper, PA-C on October 2, 2021. He reported cough, sore throat, sinus drainage, headache, no appetite, fatigue, vomiting, and chest tightness for the past two days. (JE1, pp. 34-35)

Mr. Wohlers returned to see Dr. Southard on October 16, 2020. The notes state he contracted WNV most likely at work as he spent a great deal of his time in the woods frequently getting bit by mosquitoes and rarely spent any time outside when he was not at work¹. He had been having headaches recently that can occur with WNV, but he was also in a MVA where he sustained whiplash. Dr. Southard instructed Mr. Wohlers to take Tylenol to try to prevent the headaches. Unfortunately, there was no other significant treatment for WNV. (JE5, pp. 162-63)

On August 30, 2021, Dr. Southard saw Mr. Wohlers and authored a missive to Dr. Stearnes. Dr. Southard noted that Mr. Wohlers contracted WNV in July 2020. He began to feel a little better as the weather cooled in the fall, but then in November he developed a COVID infection with significant recurrence of his initial symptoms of WNV. Since that time, he continued to have significant symptoms including headaches, profuse sweating, fatigue, joint aches, neck stiffness, memory loss, forgetfulness, hand tremors intermittently especially in hot, humid weather, and a resurgence of psoriasis. He was now at a different job but was still dealing with similar symptoms that he had initially with West Nile. Mr. Wohlers told Dr. Southard he was denied workers' compensation because he could not tell him exactly when and where the infection secondary to the mosquito bite occurred. Mr. Wohlers said he had multiple mosquito bites around the same time and did not have symptoms for a week or two afterward. He was now having similar symptoms. He was working at his job, but it was quite difficult due to all of his symptoms. There is no specific treatment for WNV and approximately 60 percent of patients continue to have symptoms at one year post infection and 40 percent of patients continue to have symptoms even after 8 years. When he had COVID he was treated with corticosteroids for approximately 2 weeks. It was impossible to know whether the corticosteroids eased his WNV symptoms as he

¹ The statement that Mr. Wohlers rarely spent anytime outside when he was not at work directly conflicts with the sworn testimony given by Mr. Wohlers. (Tr. pp. 17-18, 58-63)

was having COVID at the same time with similar symptoms from that virus. He had days where he felt pretty good but had more days when he did not. Dr. Southard prescribed Kenalog to see if it would decrease some of the hyper immune response that he had with two different viral infections over the past year. (JE5, pp. 164-65)

On September 8, 2021, Dr. Southard signed a letter authored by defense counsel. (Defendants' Exhibit A, pp. 1-2) By signing the letter, Dr. Southard agreed that the letter accurately reflected his opinions within a reasonable degree of medical certainty. The letter stated in pertinent part:

While much of Mr. Wohlers' work was done outdoors, he also shared with you at his initial visit that he is an extraordinarily active individual outside of work as well. Further, I advised that he was unable to tell his employer when or where he may have been bitten by a mosquito. Given this history, you agreed it would be difficult, if not impossible, to say whether Mr. Wohlers contracted the Virus while working or somewhere else outside of work.

(Def. Ex. A, p. 1)

Dr. Southard also stated that it was impossible to know if Mr. Wohlers' current complaints and symptoms were related to COVID versus any lingering effects of WNV. He confirmed he would not place any permanent restrictions on Mr. Wohlers. (Def. Ex. A, pp. 1-2)

At the request of his attorney, Mr. Wohlers saw Sunil Bansal, M.D. on December 21, 2022, for an IME. As the result of the examination and review of the records provided to Dr. Bansal, he issued a report dated February 21, 2022. Mr. Wohlers reported that he continued to have neck pain that did not radiate down his arms, but it did radiate down into his upper back and shoulder blades. Looking down for a long period of time increased his neck pain. He continued to have headaches that started at the base of his neck and radiated up into his head, toward his ears. He still had occasional ache in his right shoulder, down into his lower elbow. He also had intermittent pain in his right leg. His chiropractor and physical therapist thought that he might have shoved his foot into the floorboard at the time of the MVA and a nerve in his back was pinched. He continued to experience lethargy as a residual from WNV. There were days when he had a severe headache with nausea. He was easily overheated and also got cold very easily. If he was sweating particularly bad, his hands would occasionally start shaking similar to a Parkinson's-type tremor. He had restless legs at night. He felt he had trouble with word-finding and cognitively he was much slower with his thinking process. He had short-term memory problems. He also had irritability, depression, and confusion at times. Prior to the WNV infection he was very active. Since the infection, if he worked particularly hard, it took him two to three days to recover. He was easily winded.

Dr. Bansal offered his opinions in response to a series of questions. He provided a definition of WNV from the CDC. He stated that WNV is the leading cause of mosquito-borne disease in the USA. WNV is most commonly spread to humans by the bite of an infected mosquito. Dr. Bansal stated Mr. Wohlers contracted the WNV by

being bitten by a mosquito that was carrying the virus. Dr. Bansal opined that given Mr. Wohlers' job spanned full-time workweek hours which were mostly spent in an environment that had frequent exposure to mosquitoes that Mr. Wohler's occupational exposure would be much more prevalent than in everyday life or other occupations. He placed him at MMI as of the date of the IME, December 21, 2021. With regard to the WNV, Dr. Bansal assigned 4 percent whole person impairment. He based this on The Guides due to neurological impairments on the clinical dementia rating scale (CDR). He utilized Tables 13-5 and 13-6, and found that Mr. Wohlers had mostly elements of Class I (CDR of 0.5). He permanently restricted him from job duties that require prolonged concentration or focus. Secondary to being easily fatigued, he should be restricted to job tasks that allowed him to work at his own pace.

Dr. Bansal also offered his opinions regarding the MVA. He opined that as a result of the MVA, Mr. Wohlers developed cervical myofascial pain syndrome, characterized by trigger points. He placed him at MMI as of July 19, 2021. Dr. Bansal opined that he did not sustain any ratable impairment to his back as the result of the MVA. For the neck, Dr. Bansal assigned 5 percent whole person impairment. He utilized table 15-5 of The Guides. Dr. Bansal felt he met the criteria for a DRE Category II impairment. He noted Mr. Wohlers had spasms and loss of range of motion. He assigned permanent restrictions of no lifting greater than 50 pounds. He also needed to avoid work or activities that required repeated neck motion, or that placed his neck in a posturally flexed position for any appreciable duration of time (greater than 15 minutes). (Cl. Ex. 1)

The first issue to address is whether Mr. Wohlers has demonstrated that his WNV is causally connected to his work for the County. Dr. Southard, an infectious disease specialist, concluded Mr. Wohlers likely contracted WNV 2 to 3 months prior to the July 2020 positive test. (JE5, p. 159; Def. Ex. A, p. 1; Tr. p. 60) Mr. Wohlers does not know when he may have been bitten by the mosquito that carried WNV. (Def. Ex. E, p. 26; Tr. pp. 63-64) Mr. Wohlers testified that during the spring and early summer months of 2020, he was exposed to mosquitoes during the course of his employment. He would routinely have mosquito bites on his back, arms, neck, basically everywhere. He was exposed throughout all the different areas and parks where he worked. He spent most of the time at the Hitchcock Nature Center which included woodland, prairie, and wetland; Mr. Wohlers described it as an all-encompassing natural system. He dealt with mosquitoes on a consistent basis. He applied mosquito repellant daily and typically wore long-sleeved shirts and long pants at work. Mr. Wohlers believes he was exposed to mosquitoes more at work than he was in his everyday life. Starting in approximately mid-May the County employed several interns to assist them with outdoor duties. From mid-May through mid-August, he would be outdoors nearly 100 percent of the time working and supervising the interns. (Tr. pp. 16-22, 58-63; Cl. Ex. 3)

On cross-examination Mr. Wohlers admitted that he took Fridays off of work in May and June 2020. So, he was off work Fridays, Saturdays, and Sundays in May and June. He also took vacation on Thursday, May 14 and he took additional time off work over the Fourth of July holiday. He admitted that he spent much of his time away from work in the outdoors. He enjoyed playing outdoors with his kids and attending their

sporting activities. He also helped family, friends, and neighbors with prescribed burns. Any given year he would perform five to seven burns outside of work. These were typically completed before May 15. (Tr. pp. 16-22, 58-63; Cl. Ex. 3) He hunts on occasion, including in the spring. (Tr. pp. 17-18) I find that when Mr. Wohlers was not at work, he spent time outdoors. I further find that Mr. Wohlers took time off of work during the months of May, June, and July 2020.

Dr. Bansal, claimant's IME physician, is the only physician in this case to causally relate Mr. Wohlers' WNV infection to his employment with the County. Dr. Bansal opined that given Mr. Wohlers' job spanned full-time workweek hours which were mostly spent in an environment that had frequent exposure to mosquitoes, he felt that Mr. Wohlers' occupational exposure would be much more prevalent than in everyday life or other occupations. (Cl. Ex. 1, p. 19) Dr. Bansal does not offer any explanation or rationale to support this statement. It is noteworthy that Dr. Bansal's report is void of any mention of what Mr. Wohlers does in his everyday life when he is not at work. Dr. Bansal's report does not demonstrate that he had any understanding of Mr. Wohlers' active, outdoor lifestyle. Additionally, Dr. Bansal makes no mention of the amount of days Mr. Wohlers took off of work during the spring and early summer of 2020. Dr. Bansal's statement that given his "full-time work week hours" implies that Dr. Bansal understood Mr. Wohlers was working at least 40 hours per week. However, Claimant's Exhibit 3 demonstrates that he took off at least one day per week during the pertinent timeframe. I find that Dr. Bansal's causation opinion regarding WNV infection is based on an incomplete or incorrect history. Thus, I find said opinion cannot be relied upon. Furthermore, Dr. Bansal is Board Certified in Occupational Medicine. Defendants correctly point out that there is no evidence in the record that he is an expert in infectious disease.

Dr. Southard was aware of Mr. Wohlers' activities outside of work. He opined that it is difficult, if not impossible, to say whether Mr. Wohlers contracted WNV while working or while he was somewhere else. (Def. Ex. A, p. 1) Dr. Southard is Board Certified in Internal Medicine and Pulmonary Diseases. He practices at Pulmonary/Infectious Disease Associates, P.C. With regard to causation on WNV, I find the opinion of Dr. Southard carries greater weight than that of Dr. Bansal. Thus, I find Mr. Wohlers has failed to demonstrate by a preponderance of the evidence that his WNV infection is related to his work with the County. I further find that he failed to demonstrate that his WNV has a direct causal connection with his employment. I also find Mr. Wohlers failed to show that the harmful conditions that may have led to his WNV infection were more prevalent in his employment with the County than in everyday life or in other occupations. I find Mr. Wohlers was not successful in his July 13, 2020 claim.

Because Mr. Wohlers has failed to demonstrate that the WNV is causally connected to his work for the County, all other issues related to his July 13, 2020 claim are rendered moot.

We now turn to Mr. Wohlers' August 4, 2020, MVA claim. Defendants accepted the MVA as a compensable injury. As seen above, Mr. Wohlers primarily treated with Dr. Kalar, the authorized treating physician. Dr. Kalar diagnosed Mr. Wohlers with

cervical and lumbar strains. Dr. Kalar summarized his treatment of Mr. Wohlers in an August 20, 2021 letter to claimant's counsel. (JE2, pp. 67-68) Dr. Kalar noted that his final visit with Mr. Wohlers was July 19, 2021. At that time, Mr. Wohlers described some mild stiffness in the morning, but nothing significant. Dr. Kalar noted that the examination at that time was unremarkable. The treating doctor noted that Mr. Wohlers sustained a cervical strain from the August 4, 2020, MVA and by early in the fall he essentially seemed to be back to normal with respect to those injuries. Dr. Kalar stated that he does not perform disability examinations as part of his practice. (JE2, pp. 67-68)

I find the only physician to provide an impairment rating based on the AMA Guides is Dr. Bansal, claimant's IME physician. Dr. Bansal diagnosed cervical myofascial pain syndrome, characterized by trigger points, from the MVA. He agreed with Dr. Kalar that Mr. Wohlers reached MMI from the MVA as of July 19, 2021. Dr. Bansal felt Mr. Wohlers met the criteria for a DRE Category II impairment according to Table 15-5 of The Guides. Dr. Bansal assigned 5 percent whole person impairment. He felt he did not sustain any ratable impairment to his back as the result of the MVA. (Cl. Ex. 1, pp. 21-22) Thus, I find that as the result of the August 4, 2020 MVA, Mr. Wohlers sustained 5 percent whole person functional impairment.

Mr. Wohlers testified that he continues to have symptoms from the MVA. He has daily neck pain that is worse at night. He has difficulty sleeping. He feels he has a decrease in his strength and ongoing pain in the middle of his back. He has decreased mobility in his neck, especially turning to the left. He uses an inversion table for his spine. He also does daily physical therapy exercises. Mr. Wohlers testified that due to the injuries he sustained in the MVA, combined with the effects of WNV and COVID, he was unable to perform the very physical employment that he had performed for over ten years. He voluntarily resigned his position with the County and took a less physically demanding job with the Iowa Natural Heritage Foundation ("INHF"). (Tr. pp. 40-41, 50-52; Cl. Ex. 5, p. 51)

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e).

First, we will address the WNV claim.

85A.8 Occupational disease defined.

Occupational diseases shall be only those diseases which arise out of and in the course of the employee's employment. Such diseases shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature of the employment. Such disease must be incidental to the character of the business, occupation or process in which the employee was employed and not independent of the employment. Such disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and

to have resulted from that source as an incident and rational consequence. A disease which follows from a hazard to which an employee has or would have been equally exposed outside of said occupation is not compensable as an occupational disease.

In McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980), the court determined that to qualify for benefits under chapter 85A, a claimant must prove two things; first, that the disease is causally related to the exposure to harmful conditions of employment; and second, that those harmful conditions are more prevalent in the employment concerned than in everyday life. McSpadden, 288 N.W.2d at 190.

In IBP, Inc. v. Burress, 779 N.W.2d 210, 214 (Iowa 2010) the supreme court held;

The legislature has set forth two workers' compensation schemes: one for injuries under Iowa Code chapter 85 and one for occupational diseases under chapter 85A. In order to qualify for workers' compensation benefits under chapter 85, the employee must demonstrate "(1) the claimant suffered a 'personal injury,' (2) the claimant and the respondent had an employer-employee relationship, (3) the injury arose out of the employment, and (4) the injury arose in the course of the employment." Meyer v. IBP, Inc., 710 N.W.2d 213, 220 (Iowa 2006). Comparatively, to recover under chapter 85A, "the disease must be causally related to the exposure to harmful conditions of the field of employment," and "those harmful conditions must be more prevalent in the employment concerned than in everyday life or in other occupations." McSpadden v. Big Ben Coal Co., 288 N.W.2d 181, 190 (Iowa 1980).

The court, in explaining the scope of occupational disease and workers' compensation, stated;

What types of diseases are strictly occupational diseases and not injuries is debatable. Prior to 1973, chapter 85A restricted recovery for occupational diseases to seventeen diseases specifically listed in Iowa Code section 85A.9 (1971). See McSpadden, 288 N.W.2d at 190. In 1973, the legislature repealed that section and broadened the definition of occupational disease in section 85A.8. Id.; see also 1973 Iowa Acts ch. 144, § 24. Currently, chapter 85A makes reference to only two diseases, brucellosis in section 85A.11 and pneumoconiosis ("the characteristic fibrotic condition of the lungs caused by the inhalation of dust particles") in section 85A.13. Our case law has permitted recovery for allergic contact dermatitis and lead intoxication under chapter 85A. See Doerfer Div. of CCA v. Nicol, 359 N.W.2d 428, 432 (Iowa 1984); Frit Indus. v. Langenwalter, 443 N.W.2d 88, 91 (Iowa Ct. App. 1989). But see St. Luke's Hosp. v. Gray, 604 N.W.2d 646, 652 (Iowa 2000) (allergic reactions may be considered injuries under chapter 85). In McSpadden, we noted other states considered the following to be occupational diseases: chronic bronchitis, kidney disorder and asthma caused by inhalation of paint

fumes, and pulmonary disease caused by inhalation of smoke and fumes. McSpadden, 288 N.W.2d at 190-91 n. 5. Although chapter 85A no longer limits recovery for occupational diseases to a specific schedule, section 85A.8 and our case law indicate an occupational disease is generally acquired from repeated exposure to a toxin in the workplace. See Doerfer, 359 N.W.2d at 432-33.

IBP, Inc. v. Burress, 779 N.W.2d 210, 215-16 (Iowa 2010).

Compensation for occupational disease also requires proof of disability. Iowa Code § 85A.5. “Disablement” is defined in the act as “the event or condition where an employee becomes actually incapacitated from performing the employee's work or from earning equal wages in other suitable employment because of an occupational disease....” Iowa Code § 85A.4; See Doerfer Div. of CCA v. Nicol, 359 N.W.2d 428, 438 (Iowa 1984).

Noble v. Lamoni Prod., 512 N.W.2d 290, 293 (Iowa 1994).

Disability under Iowa Code chapter 85A is determined by a consideration of age, education, qualification, experience and inability, due to injury, to engage in the employment for which the claimant is fitted. McSpadden, 288 N.W.2d at 192. These factors also apply in determining a claimant's capacity to perform his work or earn equal wages in other suitable employment, the standards for determining disability under Iowa Code section 85A.4. Id.

Doerfer Div. of CCA v. Nicol, 359 N.W.2d 428, 438 (Iowa 1984).

In McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980), the court determined that to qualify for benefits under chapter 85A, a claimant must prove two things; first, that the disease is causally related to the exposure to harmful conditions of employment; and second, that those harmful conditions are more prevalent in the employment concerned than in everyday life. McSpadden, 288 N.W.2d at 190.

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). The well-established law is clear, however, that an expert's opinion is not necessarily binding when it is based on an incomplete or

inaccurate history. Dunlavey v. Economy Fire & Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995) (citing Bodish v. Fischer. Inc., 133 N.W.2d 867, 870 (1965)).

For the reasons set forth above, I conclude Dr. Bansal's opinion could not be relied upon. I further conclude claimant failed to prove by a preponderance of the evidence that his WNV infection is causally connected to his employment with the County. Furthermore, claimant failed to demonstrate that the harmful conditions that led to claimant's WNV infection were more prevalent in his employment with the County than in everyday life or in other occupations. Claimant has failed to prove that his WNV is causally related to his work. Claimant has also failed to prove that the harmful conditions were more prevalent in his employment than in everyday life. Thus, under an occupational disease analysis, claimant has failed to prove entitlement to any benefits under Chapter 85A.

In the alternative, claimant has pled his WNV infection as an 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).

For the reasons set forth above, I concluded Dr. Bansal's opinion could not be relied upon. I further conclude claimant failed to prove by a preponderance of the evidence that his WNV infection is causally connected to his employment with the County. Thus, I conclude claimant failed to prove by a preponderance of the evidence that he sustained an injury that arose out of and in the course of his employment on July 13, 2020.

Claimant is seeking an assessment of costs in connection with his July 13, 2020, claim. Costs are to be assessed at the discretion of the Iowa Workers' Compensation Commissioner or the discretion of the deputy hearing the case. I conclude claimant was not successful in this claim. Because he was not successful, I exercise my discretion and do not assess costs against the defendants. Each party shall bear their own costs.

Because claimant failed to carry his burden of proof with regard to his WNV claim, all other issues related to the July 13, 2020, claim are moot.

We now turn to the August 4, 2020 motor vehicle accident claim. Based on the above findings of fact, I conclude claimant did sustain permanent disability to his whole person as the result of the MVA. Because claimant established by the preponderance of the evidence that he sustained an injury to his body as a whole, he should be compensated pursuant to Iowa Code section 85.34(2)(v).

Iowa Code section 85.34(2)(v) provides:

In all cases of permanent partial disability other than those described or referred to in paragraphs 'a' through 'u,' the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred. A determination of the reduction in the employee's earning capacity caused by the disability shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury. If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity.

Iowa Code section 85.34(2)(v).

In this case, Mr. Wohlers admits that he voluntarily resigned his employment from the County, so he is not entitled to an award of industrial loss. (CI. Post-hearing brief, p. 8) Thus, compensation should be based on claimant's functional impairment resulting from his injury. As such, I conclude that his current recovery is limited to his permanent functional impairment rating resulting from the injury. Iowa Code section 85.34(2)(v).

Iowa Code section 85.34(x) permanent disabilities states:

In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment *shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association*, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or *agency expertise shall not be utilized in determining loss or percentage of permanent impairment* pursuant to paragraphs "a" through "u," or paragraph "v" when determining functional disability and not loss of earning capacity.

Iowa Code section 85.34 (x) (emphasis added).

This agency has adopted The Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association for determining the extent of loss or percentage of impairment for permanent partial disabilities. See 876 IAC 2.4.

Based on the above findings of fact, I conclude Dr. Bansal's impairment rating is un rebutted and based solely on The Guides. I accepted the impairment rating offered by Dr. Bansal and found that claimant proved a 5 percent permanent functional impairment of the whole person as a result of the August 4, 2020 work injury. This finding entitles claimant to an award equivalent to 5 percent of the whole person.

Pursuant to Iowa Code section 85.34(2)(v), unscheduled injuries are compensated based upon a 500-week schedule. Five percent of 500 weeks is 25 weeks. Therefore, I conclude that claimant is currently entitled to an award of 25 weeks of permanent partial disability benefits as a result of the August 4, 2020 work injury. The commencement date for the permanent partial disability benefits is July 19, 2021.

As part of his August 4, 2020 claim, claimant seeks reimbursement for one-half the expense of the IME performed by Dr. Bansal. Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low.

In their post-hearing brief, defendants concede that the relevant portion of Dr. Kalar's August 20, 2021 opinion letter is tantamount to a finding that claimant sustained no permanent disability. (Defendants' post-hearing brief, p. 17) Thus, I conclude that the prerequisites of Iowa Code section 85.39 were met. I conclude defendants shall reimburse claimant for one-half of the expense of the IME. (Cl. Ex. 1, p. 23) Defendants shall reimburse claimant in the amount of one thousand seven hundred seventy-nine and 50/100 dollars (\$1,779.50).

Claimant is seeking an assessment of costs as set forth in Claimant's Exhibit 6. I conclude that with regard to the August 4, 2020 claim, claimant was successful. Thus, I exercise my discretion and conclude that an assessment of costs against the defendants is appropriate. I find that the filing fee for the August 4, 2020 petition is an appropriate cost under 876 IAC 4.33(7). Claimant is also seeking the cost of a medical report from Dr. Kalar in the amount of \$150.00. The August 20, 2021 report from Dr. Kalar to claimant's counsel addresses both the WNV claim and the MVA claim. I find that it is appropriate to assess one-half the cost of this report under 876 IAC 4.33(6). Thus, defendants are assessed costs in the amount of \$75.00. Therefore, defendants are assessed costs totaling one hundred seventy-five and 00/100 dollars (\$175.00).

ORDER

THEREFORE, IT IS ORDERED:

File No. 20701202.01 (DOI: 07/13/2020)

Claimant shall take nothing from these proceedings.

Each party shall bear their own costs.

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.

File No. 20701189.01 (DOI: 08/04/2020)

All weekly benefits shall be paid at the stipulated rate of seven hundred sixty-five and 46/100 dollars (\$765.46).

Defendants shall pay twenty-five (25) weeks of permanent partial disability benefits commencing on the stipulated commencement date of July 19, 2021.

Defendants shall be entitled to credit for all weekly benefits paid to date.

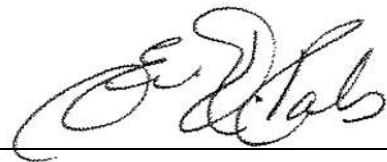
Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendants shall reimburse claimant for the IME in the amount of one thousand seven hundred seventy-nine and 50/100 dollars (\$1,779.50).

Defendants are assessed costs in the amount of one hundred seventy-five and 00/100 dollars (\$175.00).

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 26th day of January, 2023.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jacob Peters (via WCES)

Ryan Clark (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.