

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JARED LEE BURDEN,

Claimant,

VS.

UNITED PARCEL SERVICE,

Employer,

and

LIBERTY MUTUAL,

Insurance Carrier,
Defendants.

File No. 21013153.01

ARBITRATION

DECISION

Head Note No: 1108

STATEMENT OF THE CASE

The claimant, Jared Lee Burden, filed a petition for arbitration on April 21, 2022, against United Parcel Service, employer, and Liberty Mutual, insurance carrier. The claimant was represented by Niko Pothitakis. The defendants were represented by Lara Plaisance.

The matter came on for hearing on June 15, 2023, before Deputy Workers' Compensation Commissioner Joe Walsh originating in Des Moines, Iowa, via Zoom videoconference. The record in the case consists of Joint Exhibits 1 through 29. The claimant testified at hearing, and was the only witness. Kimmmberly Alen served as the court reporter for the proceedings. The matter was fully submitted on July 25, 2023 after helpful briefing by the parties.

ISSUES

The parties submitted the following issues for determination:

1. While the parties have stipulated that claimant sustained an injury which arose out of and in the course of his employment on September 9, 2021, the key dispute in the case is what disability or disabilities this injury caused.
2. The defendants dispute that the work injury is a cause of any temporary or permanent disability. If the injury did result in disability, the nature and extent of disability is disputed.

3. The claimant is seeking temporary disability benefits from October 10, 2021 through April 12, 2022. The parties do stipulate that claimant was off work during this period of time.
4. The claimant is also seeking permanency commencing on April 12, 2022, and the commencement date is disputed.
5. Claimant is seeking medical expenses as set forth in Joint Exhibit 10. These expenses are disputed.
6. Claimant further seeks independent medical examination expenses, which are also disputed.
7. Defendants assert a credit for medical and disability payments.
8. Claimant seeks costs.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship.
2. Claimant sustained an injury which arose out of and in the course of employment on September 9, 2021.
3. The weekly rate of compensation is \$1,109.37, based upon the parties' stipulations regarding wages, marital status and dependents.
4. Affirmative defenses have been waived.

FINDINGS OF FACT

Claimant Jared Lee Burden was 45 years old as of the date of hearing. He resides in New London, Iowa, where he has lived all his life. Mr. Burden testified live and under oath on his own behalf at hearing. I find him to be a credible witness. He was a good historian for the most part and his testimony generally matches other key portions of the record. There was nothing about his demeanor which causes me any concern for his truthfulness.

Mr. Burden graduated high school in 1999 and attained a two-year degree from Southeastern Community College. His primary relevant work history is his employment with the defendant employer in this case, United Parcel Service (hereafter, UPS). He has worked for UPS since he was 18 years old. His only other work experience is fast food and retail work while in high school.

Mr. Burden testified at hearing that he began working at UPS as a part-time local sorter. His job initially consisted of loading packages into a semi-trailer for delivery. After

about six months, he moved to a position loading outgoing cars. In approximately 2002, he took a position as a full-time driver for UPS. He has continued to do this type of work since then. This job involves driving and delivering packages. He testified that he drives primarily on bumpy, gravel roads and averages 130 stops per day. (Hearing Transcript, page 19) He testified the work is fairly physical.

Mr. Burden testified that he has been generally healthy, other than he had a neck surgery in 2015. Mr. Burden testified that he believed this condition was work-connected but admits he never turned it in as a work injury. He testified that his boss at the time was unpleasant, and he deemed his condition at the time to be "minor," so he chose to just handle it on his own. (Tr., p. 14) He testified that he was off work for three weeks following the surgery and then returned to full duty without any concerns. (Tr. p. 14) He characterized his symptoms prior to the surgery as numbness or tingling in his right index finger. (Tr., p. 13) Medical records in evidence confirm his prior neck condition. (Joint Exhibit 1; Jt. Ex. 2, pp. 1-6) An MRI at the time demonstrated a disc herniation in his neck. (Jt. Ex. 4, p. 91) He underwent an anterior cervical discectomy and decompression at C6-C7, on March 30, 2015. (Jt. Ex. 2, p. 9) He testified his condition was fully resolved following the surgery and that he had no further problems following the surgery. (Tr. p. 22)

On September 9, 2021, Mr. Burden was performing his regular work activities. He testified he stepped out of his UPS truck at approximately 1 or 1:30 in the afternoon and felt an immediate pain. (Tr., p. 24) "I stepped out of a truck – out of the package car and felt something go literally down the outside of my leg and back up." (Tr., p. 24) He testified the pain was fairly intense and he immediately started limping. He called his supervisor, and a co-worker joined him to deliver the packages. (Tr., p. 25) He drove to the emergency room when his shift was over. (Tr., p. 26)

His visit to the emergency room documented no symptoms other than "a sudden onset of pain in his left lower leg on the lateral aspect." (Jt. Ex. 2, p. 11) X-rays were negative and he was provided with a knee immobilizer. The following day, September 10, 2021, he was examined by James Milani, D.O. His primary symptoms at that time were tightness with spasm. Dr. Milani recorded the same history and diagnosed an unspecified knee strain. He recommended conservative treatment. (Jt. Ex. 2, pp. 13-16) On September 14, 2021, he returned to Dr. Milani who documented a slight limp with "weak" dorsiflexion. (Jt. Ex. 2, p. 15) Dr. Milani continued to recommend conservative treatment, including knee support, medications, heat and ice, as well as therapy. (Jt. Ex. 2, p. 15) While the diagnosis was still an unspecified strain, Dr. Milani stated "he potentially has some peroneal nerve entrapment type findings ..." (Jt. Ex. 2, p. 16) On October 18, 2021, following an MRI, Dr. Milani referred Mr. Burden to an orthopedist.

The record reflects that Mr. Burden was taken off work on October 21, 2021, and remained off work during his treatment. (Tr., p. 39)

On October 26, 2021, Andrew Friessen, D.O., examined Mr. Burden. Dr. Friessen documented left knee pain and weakness of the left leg. He recommended a cortisone injection. (Jt. Ex. 2, p. 25) Mr. Burden returned to Dr. Friessen in November.

The cortisone shot did not help. Dr. Friessen continued to document numbness and weakness in the left leg along with difficulty dorsiflexing. Dr. Friessen ordered an EMG and referred Mr. Burden back to Dr. Milani. (Jt. Ex. 2, p. 28) Mr. Burden returned to Dr. Milani two days later, November 11, 2021. At that time, Dr. Milani diagnosed left lower extremity clonus, which I understand to describe an abnormal reflex response. (Jt. Ex. 2, p. 30) “There is left lower extremity clonus – this needs further investigation – need to get the left lower extremity EMG/NC/’nerve test’.” (Jt. Ex. 2, p. 30) Mr. Burden underwent an EMG on November 30, 2021. At the time of the EMG, Mr. Burden reported no neck issues or injury to the left arm. (Jt. Ex. 5, p. 96) The EMG was negative for any issue with the peroneal nerve. (Jt. Ex. 5, p. 96) Anil Dhuna, M.D., however, stated Mr. Burden’s “exam is very concerning he has left spastic hemiparesis with left foot drop with hyperreflexia spastic gait. I am most concerned about a cord compression with myelopathy and unrelated to work-related incident involving his left knee.” (Jt. Ex. 5, p. 98) Dr. Dhuna suggested that this was all related to his 2015 neck surgery.

On December 2, 2021, he returned to Dr. Milani who documented the following:

This week, he had the lower extremity EMG/nerve conduction with Dr. Dhuna. Dr. Dhuna called me to discuss this: The nerve testing was normal so there is no peroneal/femoral nerve entrapment around the fibular head. Dr. Dhuna also found the clonus on the left lower extremity is concerned [sic] for upper cord compression which would be most consistent with his past history of having cervical surgery 9 years ago.

(Jt. Ex. 2, p. 34)

Dr. Milani then provided the following opinion. “The left knee/lower leg has had a full work up and treatment from work injury/comp aspect. The remaining work up and treatments will not be related to a work injury ...” (Jt. Ex. 2, p. 34)

The primary question in this case is whether the admitted work injury on September 9, 2021, caused or materially aggravated his neck condition which initially manifested symptoms in his left leg. Neither Dr. Dhuna nor Dr. Milani ever really provided a medical opinion on this topic. Once they concluded that the pain was coming from his cervical spine condition, they simply stated that the injury was not to the knee and was from a preexisting condition. Dr. Milani attempted to clarify all of this in his December 2, 2021, office note:

And stepping back in looking at this whole situation: When he first reported symptoms, he most likely had a sprain/strain of the left lower extremity due to the weakening/developing clonus/lower extremity neurological symptoms. These lower extremity neurological symptoms would not have been a work-related injury. Due to the mechanism and reporting, the mechanical aspect of the left lower extremity was worked up with the assumption that there was a structural ‘injury’. Now with time and testing, the structures of the lower extremity have shown to be normal but

there is the underlying upper motor abnormality. This upper motor abnormality most likely is coming from the cervical region due to his past history. There is a potential it could be lumbar but less likely. Either way, what is remaining is not work-related.

(Jt. Ex. 2, p. 35)

Having read all of the medical reports and opinions of both Dr. Dhuna and Dr. Milani, neither of them addressed the question of whether the injury which occurred on September 9, 2021, materially aggravated or lit up the condition in the cervical spine. All of the actual facts suggest that it did. The facts in this regard are quite simple. Mr. Burden was asymptomatic on September 9, 2021, until he stepped out of a UPS truck while delivering packages. He had a sudden onset of pain to his left leg which remained consistent but progressively worsened between September 9, 2021, through December 2021, when it was discovered that these symptoms were coming from a cervical spine condition, rather than the knee or leg itself.

Mr. Burden underwent a cervical MRI on December 9, 2021. (Jt. Ex. 4) He then reported to Dalip Pelinkovic, M.D., on December 17, 2021. Dr. Pelinkovic documented the following history:

Initially he stepped out of a truck and developed spinal discomfort and pain shooting down his left lower extremity with weakness in the clonus. He had a complicated history coming to me. Previous work-up with MRI and orthopedic consult revealed tenderness shooting down the left leg clonus and dorsiflexion weakness on the left. Injury to the left lower extremity was ruled out. He has persistent spinal pain and progressive upper motor neuron signs. He has been seen by a neurologist who ordered an MRI [which] confirmed cervical spinal stenosis. The neurologist [ordered] and [sic] EMG as well.

Dr. Dhuna referred him urgently to us. He is here today for an evaluation. He is very concerned about his progressive loss of function and upper motor neuron signs.

(Jt. Ex. 2, p. 36)

Dr. Pelinkovic opined that this was all related to the September 9, 2021, work injury. "With reasonable degree of medical and surgical certainty his trauma from September 9, 2021 has aggravated his cervical spine condition beyond the progression of natural history." (Jt. Ex. 2, p. 38) He diagnosed disc herniation with spinal cord compression and myelopathy at C4-5 and recommended an emergency discectomy fusion. (Jt. Ex. 2, p. 38) The surgery was performed on December 18, 2021. (Jt. Ex. 2, pp. 42-43)

The defendants argue that Dr. Pelinkovic had an inaccurate history. Dr. Pelinkovic did document that Mr. Burden had progressive symptoms and loss of

function in his upper motor neurons, and these symptoms are not documented in any of the other physician notes prior to the December 17, 2021, evaluation. (Jt. Ex. 2, pp. 36-37) Mr. Burden, in fact, testified that he did not feel any immediate pain or discomfort in his spine on the date of the injury itself. (Tr., p. 42) He actually testified that he first felt upper extremity symptoms following his MRI, which was not until December 2021. It is clear, however, that Mr. Burden did not notice significant symptoms in his upper extremities following the injury. They were primarily noted by the physicians when they performed various clinical testing on him. (Tr., pp. 42-43) These symptoms did, in fact, develop after his work injury, even though they were primarily unnoticed by Mr. Burden. It is also possible that Mr. Burden intentionally falsely described his symptoms to the physicians between September 9, 2021, and December 2021, however, I find this unlikely. Viewing the totality of the record, I find that Mr. Burden had minimal actual symptoms in his cervical region or upper extremities. The “loss of function in his upper motor neurons” described by Dr. Pelinkovic appears to have been discerned primarily through clinical testing.

Following surgery, Mr. Burden continued to follow up with Dr. Pelinkovic and had a relatively good recovery. (Jt. Ex. 2, pp. 48-49, 52) Dr. Milani wrote a letter to the insurance carrier in January 2022, confirming his earlier opinions and assigning no impairment for Mr. Burden’s left knee injury. (Jt. Ex. 2, p. 50) At some point, Dr. Pelinkovic left his practice in southeast Iowa. Mr. Burden’s care was then taken over by Steven Tekell, ARNP and John Gipple, M.D. The records document that he developed neck and upper extremity symptoms following his surgery.

For his part, Dr. Pelinkovic signed an opinion in February 2022, clarifying and confirming the opinions set forth in his office notes. In this opinion, Dr. Pelinkovic clarified that Mr. Burden’s repetitive work activities contributed to this condition as well. (Jt. Ex. 7, p. 107)

Chad Abernathey, M.D., examined Mr. Burden on April 6, 2022. Dr. Abernathey released Mr. Burden back to full-duty work around that time and Mr. Burden actually returned to work without restrictions on April 13, 2022. (Jt. Ex. 8, p. 108) In response to a question from defense counsel on the same date, he opined that the stenosis in the cervical spine was degenerative, not as a result of the work injury. (Jt. Ex. 8, p. 109) A few days later on April 13, 2022, in response to a question from claimant’s counsel, he opined that Mr. Burden’s work activities were a substantial contributing factor to his spine aggravation. (Jt. Ex. 8, p. 110) Dr. Abernathey allowed Mr. Burden to return to work without restrictions. The parties have stipulated that Mr. Burden actually returned to work on April 13, 2022.

On February 22, 2023, Mr. Burden was examined and evaluated by Mark Taylor, M.D., for purposes of an independent medical examination under Iowa Code section 85.39. Dr. Taylor prepared a report dated March 22, 2023. Dr. Taylor reviewed and summarized the relevant medical file, interviewed Mr. Burden, and thoroughly examined him. (Jt. Ex. 9, pp. 113-121) Dr. Taylor thoroughly documented Mr. Burden’s ongoing symptoms as of February 2023. (Jt. Ex. 9, p. 119) I find that Dr. Taylor had an accurate history of the injury and development of symptoms.

Dr. Taylor primarily diagnosed “Cervical myeloradiculopathy due to C4-C5 disc with mass effect on spinal cord.” (Jt. Ex. 9, p. 121) Dr. Taylor wrote a lengthy causation opinion, concluding the following:

Mr. Burden’s heavy work activities as a UPS delivery driver would more than likely place him at an increased risk for these types of conditions associated with the cervical or even the lumbar spine. There was then the incident when he stepped out of his truck. Based on the acute onset of his symptoms, I agree that he may have landed flatfooted, and the forces associated with his awkwardly stepping down to the ground translated to the spine and there was enough of a change that it resulted in a progression of his condition. He stated that he was asymptomatic prior to this incident and was acutely symptomatic after it occurred. The other consideration would be that his heavy work activities resulted in progression of the herniation/compression, and that he noticed the symptoms as he stepped down. Regardless, there was a substantial change in his condition that day. In summary, I agree with Dr. Pelinkovic regarding causation (also, Dr. Abernathey agreed that Mr. Burden’s work activities would represent a substantial factor in aggravating his cervical spine condition).

(Jt. Ex. 9, p. 122)

Dr. Taylor specifically opined that the surgery performed by Dr. Pelinkovic was related to the work injury. (Jt. Ex. 9, p. 123) He assigned a 27 percent whole body impairment rating for this condition. (Jt. Ex. 9, p. 123) He was not asked to comment on permanent restrictions.

In May 2023, Dr. Abernathey signed several boxes on a “check box” report on defense counsel letterhead, seemingly disavowing his April 13, 2022, opinion that Mr. Burden’s work activities were a substantial contributing factor to his spine condition. (Jt. Ex. 8, pp. 111-112) It appears that he was provided more information for his opinion at this time, but other than signing off on the four opinions, he provides no context or explanation for the apparent change of his opinion.

CONCLUSIONS OF LAW

The first question submitted is one of medical causation.

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).

It has long been the law of Iowa that Iowa employers take an employee subject to any active or dormant health problems and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). A material aggravation, worsening, lighting up or acceleration of any prior condition has been viewed as a compensable event ever since initial enactment of our workers' compensation statutes. Ziegler v. United States Gypsum Co., 252 Iowa 613; 106 N.W.2d 591 (1960). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established in Iowa that a cause is "proximate" when it is a substantial factor in bringing about that condition. It need not be the only causative factor, or even the primary or the most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

There are multiple competing medical causation opinions in the record. Dr. Taylor has provided the most comprehensive opinion, which relied upon the most accurate understanding of the actual facts of the case. I find his opinion to be the most persuasive. By a greater weight of evidence, I find that the incident on September 9, 2021, was a substantial contributing factor in the aggravation of Mr. Burden's cervical spine condition which caused his need for surgery on December 18, 2021. It is likely that Mr. Burden's repetitive work also contributed to this, as well as some non-work-related activities. Dr. Taylor's opinion is bolstered by Mr. Burden's credible testimony, the contemporaneous medical notes and the expert opinion of the treating surgeon, Dr. Pelinkovic.

I specifically reject the opinions of Dr. Milani and Dr. Dhuna. Neither of these experts ever articulated the appropriate legal standard for medical causation; namely whether the incident substantially aggravated or "lit up" Mr. Burden's underlying condition. Rather, both of these physicians, upon learning that the symptoms were coming from the claimant's cervical region rather than the leg, simply dismissed the claimant's condition as being "due to his past history." (Jt. Ex. 2, p. 35) Neither physician apparently considered the possibility that his cervical condition, which had

been asymptomatic for several years, had been aggravated or lit up by this incident, or his repetitive work activities. I reject the opinions of Dr. Abernathey as being contradictory without appropriate context or explanation. (*Compare* Jt. Ex. 8, p. 109, *with* Jt. Ex. 8, p. 110, *and* Jt. Ex. 8, p. 111)

Having found that the claimant's cervical condition was substantially aggravated and otherwise lit up by the work injury on September 9, 2021, the next questions involve what benefits he is entitled to. I find he is entitled to his medical expenses, his time off work (healing period) and permanency benefits for his impairment under the AMA Guides. I further find he is entitled to an independent medical evaluation (IME) and costs.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See, Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP, Inc., File No. 1020226 (App., February 27, 1995).

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

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

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure

to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

While Mr. Burden's disability is undoubtedly "unscheduled" and appropriately evaluated under Iowa Code section 85.34(2)(v), I find the following provision in subsection (v) is also applicable:

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) (2021).

Mr. Burden has suffered no loss of wages since returning to work full duty in April 2022.

Iowa Code 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. Iowa Code section 85.39(2) (2021). The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination. Id.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Iowa Code section 85.39(2) (2021). Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991).

I find that claimant is entitled to the medical expenses set forth in Joint Exhibit 10. The employer is entitled to a credit for all medical expenses paid under the group plan as set forth in paragraph 9 of the Hearing Report.

I find that claimant is entitled to healing period benefits from October 21, 2021, through April 12, 2022. Again, the employer is entitled to a credit for all payments made under the employer's group disability plan, as set forth in paragraph 9 of the Hearing Report.

Finally, I find that claimant is entitled to permanent partial disability benefits for a

27 percent whole person impairment as opined by Dr. Taylor. I conclude this entitles claimant to one hundred thirty-five weeks of compensation commencing on April 13, 2022. He is also entitled to Dr. Taylor's IME fees set forth in Joint Exhibit 24.

ORDER

THEREFORE IT IS ORDERED:

All benefits shall be paid at the stipulated rate of one thousand one hundred nine and 37/100 dollars (\$1,109.37) per week.

Defendants shall pay the claimant healing period benefits commencing on October 21, 2021, through April 12, 2022.

Defendants shall pay one hundred thirty-five (135) weeks of permanent partial disability benefits commencing April 13, 2022.

Defendants are responsible for the medical expenses set forth in Joint Exhibit 10.

Defendants shall reimburse the IME expenses set forth in Joint Exhibit 24.

Defendants shall pay accrued weekly benefits in a lump sum.


Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants are entitled to a credit as set forth in paragraph 9 of the Hearing Report on all medical expenses and disability benefits paid through the employer's group plans.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs set forth in Joint Exhibit 25 are taxed to defendants.

Signed and filed this 16th day of November, 2023.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Pothitakis (via WCES)

Lara Plaisance (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, 10A) 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.