BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JASON VAN HAAFTEN, Claimant, vs. LDJ MANUFACTURING, INC., Employer, and TRAVELERS INDEMNITY COMPANY OF CT, Insurance Carrier, Defendants.	File No. 20014770.02 ARBITRATION DECISION Head Notes: 1106; 1402.30; 2206

STATEMENT OF THE CASE

Jason Van Haaften, claimant, filed a petition in arbitration seeking workers' compensation benefits from LDJ Manufacturing, Inc., employer, and Travelers Indemnity Company of CT, as defendants. The hearing was held on April 21, 2023. Pursuant to an order from the Iowa Workers' Compensation Commissioner, this case was heard via videoconference using Zoom with all parties and the court reporter appearing remotely.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. 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.

Jason Van Haaften was the only witness to testify live at the trial. The evidentiary record also includes Joint Exhibits 1-7, Claimant's Exhibits 1-8, and Defendants' Exhibits A-K. The parties submitted post-hearing briefs on June 23, 2023, at which time the case was fully submitted to the undersigned.

ISSUES

The parties identified the following disputed issues on the hearing report:

1. Whether claimant sustained an injury that arose out of and in the course of his employment with LDJ Manufacturing, Inc., on April 27, 2020.

2. Whether the alleged injury resulted in any permanent disability; and if so,

3. The nature and extent of claimant's entitlement to permanent disability benefits.

4. Whether the claimant is entitled to temporary disability or healing periods benefits because of the alleged injury.

5. The commencement date for permanent partial disability benefits if any are awarded.

6. Whether claimant is entitled to penalty benefits.

7. Assessment of costs.

FINDINGS OF FACT

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

At the time of the hearing the claimant, Jason Van Haaften (hereinafter "Van Haaften") was 46 years old. (Hearing Transcript, page 13). He lives in Oskaloosa, Iowa. (Id.). Van Haaften graduated from high school in 1995. (Claimant's Exhibit 6, page 27). After high school he attended Indian Hills Community College, where he obtained a degree in automotive technology. (Id.). After completing school, Van Haaften worked as a production worker at Pella Corporation, a painter at Vermeer, an assistant store manager at Arby's, a welder/fabricator at John Deere, a forklift driver at Dohrn Transfer, and a welder at Johnson Machine Works. (Id. at 28).

In March 2019, LDJ Manufacturing (hereinafter "LDJ") hired Van Haaften as a welder. (Cl Ex. 5, p. 22). LDJ makes fuel tanks for farmers and contractors. (Tr., p. 14) Van Haaften's job consisted of welding small trailers, wheels, and fuel tanks. (Id.). He worked full time —40-50 hours per week. (Cl Ex. 5, p. 22). This is the job Van Haaften was performing on April 27, 2020, when he alleges he sustained a work-related injury. Van Haaften alleges that he was injured while trying to retrieve a tape measure out of a fuel tank. At the hearing, he testified,

> I was talking with one of the other employees about what we were going to do for the following day. I noticed that there was a tape measure in there – in the tank . . . the next thing we were going to do was put the top on. And we figured that we would probably forget the . . . tape in the tank. So I reached in – I hopped up, though my midsection was on the edge of the tank, reached in, got it, and then came back down so my feet were resting on the lift.

(Id. at 15-16). Van Haaften then fell off the lift onto the ground. (Id. at 17). Van Haaften testified he hit his head on the hoist/lift and then the floor when he fell. (Id.). A picture of a similar tank was introduced into evidence by defendants. (Defendants' Exhibit E, page

5). It shows the tank being held off the ground by a metal frame or lift. (Id.). From the picture, it is not clear how high the tank is off the ground. (Id.).

Defendants produced witness statements from three of Van Haaften's co-workers—Ashton Messer, Chad Wichhart, and Devin Pushor. (Exs. A-C). Two of the three saw a portion of the alleged incident. (Ex. A, p. 1; Ex. C, p. 3). One witness arrived afterwards. (Ex. B, p. 2). Ashton Messer was working with Van Haaften at the time of the alleged fall. His witness statement reads as follows:

> On April 27, 2020 I Ashton Messer was leaning on a tank talking with Devin Pushor. At that time, I witnessed out of the corner of my eye Jason Van Haaften start to move. I did not feel or notice any movement, or anything hitting the tank. Then Devin started to go around the tank, and I went around the opposite side of the tank.
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> When getting around the tank I saw Jason Van Haaften laying flat on his back. His right foot was laying on top of the tank lifting device, and the rest of his body was flat on the ground. Devin bent over, and asked if he was ok, and Jason did not respond. When Devin asked a second time Jason responded. At that time I went to go get Earl.
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> In past conversations Jason has mentioned to me he has blacked out before. One at John Deere, and once while driving.

(Ex. A, p. 1).[1] Devin Pushor was the second co-worker that witnessed part of Van Haaften's alleged incident. His witness statement reads,

> On April 27th, 2020 I Devin Pushor witnessed Jason Van Haaften slump over, and leaned on a tank we were working on. At that time, he started to fall over sliding along the side of the tank. I hurried around the tank, and Jason was on the ground flat on his back with his left side against the tank. Jason was laying flat on the floor with nothing under him.
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> His eyes were open when I got to him. When I asked if he was ok, he did not respond. When I asked a second time Jason said ya. I asked Aston [*sic*] to go get Earl. I helped Jason sit up, and we waited for Earl to arrive.

(Ex. C, p. 3). The third witness was Chad Wichhart. (Ex. B, p. 2). Mr. Wichhart arrived after the alleged fall. His statement reads,

> On April 27, 2020 I Chad Wichhart was called to the Weld department. When arriving I witnessed Jason sitting on the floor with his back against a tank. Jason stated he had blacked out and was unsure what all happened. I asked if he was able to stand and he said yes. After standing up for a few seconds he was able to walk. I assisted him over to a 3-wheel scooter, and we drove to the production meeting room. Once inside the room Jason sat for a little while. (My desk is just outside the room within talking distance). After checking on him a couple of times Jason stated he just did not feel

[1] Errors in originals retained.

> right. At that time, I assisted him to a truck, and we drove to Pella Regional Health Center.
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> We first tried to go see the Occ. Health Dr., but they said that we needed to go to the ER. When arriving at ER Jason told them he had blacked out and had done this before. The Nurse stated to me the fall would not be work related because he has a history of blacking out. At that time, I let Jason's wife walk with him inside the ER, and I went back to LDJ.

(Ex. B, p. 2).

Taking into consideration the three witness statements and Van Haaften's testimony,[2] I find Van Haaften blacked out leaning into or over a fuel tank while working at LDJ. This fuel tank was located on top of a raised lift. After blacking out, Van Haaften fell off the lift and onto the ground, possibly striking his head. This is where he was located when his co-workers arrived to help him.

Van Haaften did not receive medical treatment until the next day, April 28, 2020. (JE 3, p. 19). At around 9:00 a.m., on April 28th, Van Haaften presented to the emergency room at Pella Regional Health Center, complaining of a headache. (Id.). The treatment record states "He notes he had a syncopal episode yesterday while at work. He is leaving [sic] over tank passed out. He thinks he hit his head on a car lift." (Id.). He complained of an ongoing headache and nausea. (Id.). The attending physician, Ryan Thoreson, D.O., ordered a CT scan of Van Haaften's brain. (Id. at 21). It was normal—it did not show any acute intracranial process or skull fractures. (Id.). Van Haaften was diagnosed with a headache and syncope and collapse causing a closed head injury. (Id. at 20). He was given a liter of saline and phenergan and told to follow-up with his family provider. (Id.).

On April 30, 2020, Van Haaften followed-up with Daniel Rowley, M.D., his family provider, at Pella Regional Health Center. (JE 3, p. 22). Dr. Rowley's treatment note indicates Van Haaften was leaning over a tank at work, started to feel dizzy, then fell and hit his head on a car lift. (Id. at 23). Van Haaften complained of a headache, dizziness, and some ringing in his ears. (Id.). Dr. Rowley diagnosed him with vertigo, prescribed meclizine for his ongoing dizziness, and provided information about the Epley maneuver. (Id. at 24). Dr. Rowley also released Van Haaften to return to work at LDJ on May 4, 2020. (Id. at 25).

Van Haaften continued to experience symptoms. (JE 3, p. 28). He returned to Dr. Rowley on May 4, 2020, with complaints of ongoing vertigo, nausea, vomiting, and tinnitus. (Id. at 28-29). Van Haaften tried the meclizine, but it made him tired. (Id. at 29). He tried the Epley maneuver a few times and saw a 50 percent improvement in his symptoms, but still experienced vertigo with sitting up. (Id.). Dr. Rowley prescribed Zofran for his nausea and recommended Van Haaften perform the Epley maneuver more often. (Id. at 31). He also extended Van Haaften's work excuse for two more days. (Id.). Van Haaften returned to Pella Regional Health Center again on May 6, 2020. (Id. at 32). He was evaluated by Lucas Mihalovich, D.O. (Id.). Dr. Mihalovich noted Van

[2]This finding is also supported by the medical records. See below.

Haaften had improved, but was still seeing intermittent symptoms. (Id. at 35). Dr. Mihalovich extended his work release until May 11, 2020. (Id. at 35-36).

Van Haaften returned to Dr. Rowley on May 22, 2020. (JE 3, p. 37). He indicated he was still experiencing headaches, which were worsened by activity and bright lights. (Id. at 38). Van Haaften requested a work excuse for May 14th and May 20th because he missed both those days for headaches. (Id.). He reported that his vertigo had resolved, but indicated he was now having some breakthrough anxiety and wanted to adjust his medications. (Id.). Dr. Rowley diagnosed him with a tension headache, testosterone deficiency, and anxiety with depression. (Id. at 40). He gave Van Haaften a shot of Toradol and amitriptyline for his headaches, as well as increased his testosterone medication and the bupropion he was already taking for anxiety. (Id.).

Van Haaften's medical records show a history of treatment for anxiety and depression. (JE 1, pp. 1-2). In 2017, he was prescribed Effexor. (Id.). In 2019, he was prescribed Wellbutrin and Zoloft. (Id. at 3). Van Haaften also has a history of treatment for head injuries, headaches, dizziness, and nausea. (Id. at 2-18). In August 2018, he fell in his driveway and hit his head. (Id. at 2). He was diagnosed with a head injury with loss of consciousness. (Id.). In 2019 and 2020, Van Haaften received treatment for headaches on multiple occasions. (See id. at 4-5, 7-10, 12-13). In February 2019, he fell and briefly blacked out. (Id. at 7). Afterwards, he experienced headaches, dizziness, nausea, and vomiting. (Id. at 7-8). Van Haaften sought treatment for a migraine in February 2020, receiving a Toradol shot and Zofran, which caused further dizziness and vomiting. (Id. at 9-18). A CT scan was taken of his brain on February 17, 2020. (Id. at 12). It was unremarkable. (Id.). At that time Van Haaften was referred for treatment of his sleep apnea—which can cause headaches. (Id. at 11).

According to the medical records, Van Haaften did not go back to see Dr. Rowley until October 22, 2020. (JE 3, p. 41). He reported a three-week history of headaches. (Id.). He also reported that his depression had improved a little with the increased bupropion. (Id.). Dr. Rowley diagnosed him with a tension headache, depression, and obstructive airway disease. (Id. at 43-44). He gave Van Haaften a shot of Toradol and refilled his Zoloft and bupropion. (Id. at 44). Dr. Rowley also referred him to pulmonology for sleep apnea treatment. (Id.).

On December 9, 2020, Van Haaften suffered a panic attack. (JE 3, p. 45). He presented to the emergency room at Pella Regional Health Center. (Id.). The treatment note indicates Van Haaften did not know what caused his panic attack. (Id.). He was diagnosed with panic disorder and given Ativan. (Id. at 48). He was instructed to follow-up with Dr. Rowley for ongoing management of his anxiety. (Id.).

On December 14, 2020, Van Haaften had a follow-up appointment with Danielle Clark, D.O., a co-worker of Dr. Rowley's at Pella Regional Health Center. (JE 3, p. 49). He was still experiencing daily anxiety attacks with chest pressure and the urge to flee. (Id. at 50). The treatment note indicates Van Haaften could not pinpoint the source of his anxiety but felt it had come on suddenly. (Id.). He worried about a lot of different things. (Id.). Dr. Clark diagnosed him with panic disorder and anxiety. (Id. at 51). She increased his Zoloft dosage and continued his Ativan. (Id.).

Van Haaften returned to see Dr. Rowley on January 15, 2021. (JE 3, p. 53). He was still feeling very anxious and having daily panic attacks. (Id. at 54). His migraines/headaches had improved with amitriptyline. (Id.). Dr. Rowley diagnosed a tension headache, and anxiety with depression. (Id. at 56). He added Depakote to Van Haaften's medications. (Id.).

Van Haaften continued to treat with Dr. Rowley for headaches and anxiety with depression. (See JE 3). He saw Dr. Rowley on May 4, 2021; July 8, 2021, and July 15, 2021. (Id. at 61-72). Dr. Rowley's July 15, 2021 treatment note indicates Van Haaften was experiencing increased depression. (Id. at 70). He attributed Van Haaften's mood changes to decreased Zoloft use. (Id.). Dr. Rowley increased his Zoloft. (Id. at 72). Van Haaften returned to Dr. Rowley with headache complaints on July 22, 2021. (Id. at 73-74). He was given a shot of Toradol. (Id. at 76). Dr. Rowley's treatment note indicates Van Haaften's mood was stable at that time. (Id.).

On September 13, 2021, Van Haaften was evaluated by Barbara Arends, LISW, at Broadlawns Medical Center, for depression and panic attacks. (JE 4, p. 83). The treatment note indicates he was experiencing feelings of intense pressure, would shake, and had a hard time communicating during attacks. (Id.). Van Haaften told Ms. Arends that he had been dealing with anxiety for most of his life but reported his anxiety and panic attacks increased after a head injury in April 2020. (Id.). He also stated that he was hearing whispering voices approximately six months ago. (Id. at 85). Ms. Arends diagnosed Van Haaften with generalized anxiety disorder with panic attacks and major depressive disorder. (Id.). She referred him for a psychiatric evaluation and therapy. (Id.).

Ms. Arends' treatment note also indicates Van Haaften had recently moved from Pella to Des Moines, Iowa, with his wife, and was self-employed as a funeral escort and truck driver for a subcontractor. (Id.). According to the records, Van Haaften's employment at LDJ was terminated on May 21, 2020, for excessive absenteeism. (Ex. D, p. 4). His termination letter lists the dates of five separate unexcused absences from his job at LDJ—three of those dates occurred prior to his alleged injury on April 27, 2020. (Id.). The last two dates, May 14, 2020, and May 21, 2020, occurred after the alleged injury date. (Id.). At the hearing, Van Haaften testified that he started working for Robert Dean Transportation during the summer of 2021. (Tr., p. 36). He drove leased trucks to customer locations. (Id. at 35). He was paid $15.00 an hour and worked intermittently. (Id. at 35-36). He also applied for and received unemployment benefits in March 2021. (Ex. J, p. 41).

On September 27, 2021, Van Haaften went to the emergency room at Mercy Medical Center, seeking treatment for suicidal thoughts. (JE 5, p. 94). The admittance record indicates his depression had been worse for the past three weeks and lists a recent separation with his wife and unemployment as significant stressors. (Id. at 95). The note indicated he had applied for social security disability, but not yet received it. (Id.). It also lists Van Haaften as homeless. (Id.). Van Haaften was admitted to Eagle View Behavioral Health Center for observation and treatment. (JE 6, pp. 97-117). He remained there through October 6, 2021. (Id. at 113). Van Haaften's discharge papers

indicate he was diagnosed with major depressive disorder, recurrent severe with anxious distress, and suicidal ideation, resolved. (Id.).

Van Haaften returned to Dr. Rowley with chronic headache complaints and back pain on November 11, 2021. (JE 3, p. 78). At that appointment, Van Haaften indicated that he intended to apply for social security disability.[3] (Id. at 79). He requested help with the paperwork. (Id.). Dr. Rowley instructed Van Haaften to find a provider that specializes in disability and undergo a functional capacity exam. (Id.). On his social security disability application, Van Haaften listed anxiety, depression, migraines, and panic attacks as his disabling conditions. (Ex. F, p. 6). Van Haaften's request for disability benefits was denied. (Ex. I, p. 32). The denial letter states his "condition is not severe enough to keep [him] from working." (Id.).

Van Haaften received follow-up treatment for his mental health concerns from Nicole Topliff, ARNP, at Walnut Creek Psychiatry. (JE 7, pp. 118-158). His first appointment was on November 17, 2021. (Id.). Nurse Topliff diagnosed Van Haaften with posttraumatic stress disorder (PTSD), generalized anxiety disorder, and major depression. (Id. at 120). He started out seeing Nurse Topliff every two weeks, and then decreased to approximately one visit per month. (See id. at 118-158). His last treatment note is dated October 5, 2022. (Id. at 155). At that time, he was taking duloxetine, Abilify, lamotrigine, Wellbutrin, and trazodone for his mental health conditions. (Id. at 157).

At the behest of his attorney, Van Haaften attended an independent medical exam (IME) with Catalina Ressler, Ph.D., on November 28, 2022. (Cl Ex. 1, p. 1). Dr. Ressler reviewed Van Haaften's medical records, conducted a clinical interview and exam, and administered the *Minnesota Multiphasic Personality Inventory,* before issuing a report on January 27, 2023. (Id. at 1-2). In her report, Dr. Ressler diagnosed Van Haaften with major depressive disorder and anxiety disorder. (Id. at 7). Dr. Ressler opined that these mental health conditions pre-existed the work incident on April 27, 2020, but "the combination of both the work-related incident in question as well as the separation from his wife are factors that had a significant impact on Mr. Van Haaften's mental health conditions. . . ." (Id. at 8). She wrote, "I am confident that Mr. Van Haaften's mental health condition was clearly exacerbated by the work-related incident." (Id.). Citing to the AMA Guides to the Evaluation of Permanent Impairment, Dr. Ressler classified Van Haaften's current level of mental impairment as class 4 because he was having "significant difficulties in performing activities of daily living; in his social functioning; his ability to concentrate; and had little capacity to be flexible and tolerate adaption to changes or environments outside of the home." (Id.). She opined that Van Haaften was likely unemployable in his current state because of his low tolerance for frustration, low level of adaptive functioning, and difficulty learning new tasks or forming relationships. (Id. at 9). She recommended he continue to receive mental health treatment, as well as undergo a neuropsychological evaluation to address any remaining TBI symptoms. (Id.).

[3] Van Haaften's social security disability file indicates his application was initiated on September 1, 2021. (See Ex. F).

The hearing record does not contain an IME report from defendants.

At the time of the hearing, Van Haaften testified he was residing with a friend in exchange for household labor and was not working. (Tr., pp. 19, 21, 25). He indicated his last job with Robert Dean Transportation ended in February 2023, due to his employer's financial issues. (Id. at 21-22). Van Haaften testified he was still experiencing migraine headaches, memory loss, and anxiety that he relates back to the work injury on April 27, 2020. (Id. at 19-21). However, he stated he was physically capable of performing his job at Robert Dean Transportation, on a part-time basis, if they had work available. (Id. at 22-23). Van Haaften did not think he could work on a full-time basis due to his anxiety issues. (Id. at 23). Van Haaften, however, admitted that he had once worked up to 45 hours per week for Robert Dean Transportation. (Id.). Van Haaften plans to re-apply for social security disability benefits. (Id. at 24).

The only expert opinion in this record is that of Dr. Ressler. She opines Van Haaften's pre-existing mental health conditions were permanently exacerbated by his fall on April 27, 2020. Lacking any contradictory evidence, her opinion is accepted by the undersigned.

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).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" refer to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

Defendants argue Van Haaften's April 27, 2020 fall was idiopathic, and therefore, did not arise out of his employment with LDJ. An idiopathic fall is defined as "a fall due to the employee's personal condition." Bluml v. Dee Jay's Inc., 920 N.W.2d 82, 86 (Iowa 2018). Defendants introduced evidence that indicates Van Haaften was experiencing headaches, dizziness, nausea, and black out spells in the year leading up to the April 27th fall. (See JE 1, pp. 2-18). Given this, defendants argue Van Haaften blacked out that day due to a personal health condition. (Defendants' Post-Hearing Brief, page 9). Van Haaften does not contest this assertion. In fact, in the emergency room, Van

Haaften told the attending physician that he had a syncopal episode and passed out. (JE 3, p. 19). Instead, Van Haaften argues that finding the fall idiopathic is not the end of the agency's analysis. He contends that even if the fall was idiopathic, the elevated frame of the lift he was standing on placed him at an increased risk of injury, and therefore his fall did arise out of his employment at LDJ. The undersigned agrees that Van Haaften fell from a fuel tank that was elevated up on a lift. See above.

In July of 2019, the Iowa Legislature amended Iowa Code section 85.61(7)(c) to include the following paragraph, "Personal injuries due to idiopathic or unexplained falls from a level surface onto the same level surface do not arise out of and in the course of employment and are not compensable under this chapter." Iowa Code § 85.61(7)(c) (2019). Van Haaften did not fall from a level surface onto the same level surface. Therefore, the prohibition in Iowa Code section 85.61(7)(c) does not apply to this claim. In Bluml v. Dee Jay's, Inc., 920 N.W.2d 82, 91 (Iowa 2018), the Iowa Supreme Court stated, in idiopathic-fall cases, a claimant can still prove an injury is compensable if he or she can show that "a condition of employment 'increased the risk of injury.' " Id. at 91-92 (quoting Koehler Elec. v. Wills, 608 N.W.2d 1, 5 (Iowa 2000)). This is called the "increased-risk" test. See id. There is no indication from the language in Iowa Code section 85.61(7)(c) or subsequent decisions applying the revised code section that the increased-risk rule no longer applies to cases involving idiopathic falls from elevated surfaces.

Van Haaften suffered an idiopathic fall from an elevated surface. Given this, it appears the "increased-risk" test applies to this claim. Under the test, "it is not necessary for a claimant injured in an idiopathic fall to prove that his injuries were worse because he fell from a height. It is only required that he prove that a condition of his employment increased the risk of injury." Wills, 608 N.W.2d at 5. Expert testimony is not necessary to meet this burden, when the fact finder can reach a conclusion based on common sense or experience. In this instance, the height of the fuel tank combined with the lift underneath created an increased risk of injury for Van Haaften. Under these facts, Van Haaften has met his burden to prove he sustained an injury that arose out of his employment with LDJ on April 27, 2020.

This, however, is still not the end of the agency's analysis. Defendants claim that even if the April 27th fall is deemed a work-related incident, Van Haaften has not met his burden to prove he suffered any permanent injuries from the fall. In workers' compensation actions, it is claimant's burden to prove 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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to a natural process, and thereby impairs the health, interrupts, or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, however, does not constitute a new injury. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4)(b); Iowa Code section 85A.8; Iowa Code section 85A.14.

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).

Dr. Ressler's report is the only expert opinion in the hearing record. Defendants did not submit an expert report addressing causation for Van Haaften's alleged conditions or claimed permanent impairment. These questions also were not addressed by Van Haaften's treating physicians. The undersigned cannot summarily reject an unrebutted expert medical opinion. See Poula, 516 N.W.2d at 911-912; see also Leffler v. Wilson and Co., 320 N.W.2d 634, 635 (Iowa App. 1982) (stating the court is reluctant to allow the rejection of expert testimony when it is the only medical evidence presented on that issue). Given this precedent, the undersigned has accepted the opinion of Dr. Ressler; she opines Van Haaften's pre-existing mental health conditions were permanently exacerbated by his fall on April 27, 2020.

Defendants argue that even if Dr. Ressler's opinion is accepted by the agency, it

is insufficient to meet claimant's burden in this case. Specifically, defendants contend that Van Haaften's petition alleges a physical-mental injury; therefore, Van Haaften should have to prove permanent impairment to his head as a result of the April 27th fall before he can recover for any mental impairment caused by the fall. Essentially, defendants claim that proof of permanent impairment to his head is a condition precedent to recover for any permanent impairment caused by his mental conditions. Defendants argue Van Haaften's action for indemnity benefits must fail because he has not submitted proof of permanent impairment to his head, nor do they believe his case meets the standard articulated in Dunlavey v. Economy Fire & Casualty Co., 526 N.W.2d 845, 855 (Iowa 1995),[4] for mental-mental injuries sustained in Iowa.

In Iowa, when physical trauma causes or aggravates a mental condition (physical-mental) which increases or prolongs disability, all disability, including the effects of the nervous disorder, is compensable. Gosek v. Garmer and Stiles Co., 158 N.W.2d 731, 733 (Iowa 1968). No special legal causation test showing unusual stress exists in such cases. Only medical causation need be shown as would be the case in other workers' compensation claims. See generally, Lawyer and Higgs, Workers' Compensation, section 4-6 (2010-2011). Passing out and falling off an elevated fuel tank qualifies as a physical trauma under our past precedent. Further, the Iowa Court of Appeals addressed and rejected a similar argument in Heartland Specialty Foods v. Johnson, 731 N.W.2d 397, 401 (Iowa Ct. App. 2007). In that case, the Court stated as follows:

> Heartland argues the claim should be dismissed because a "compensable" physical injury is a necessary component of any physical/mental injury claim. In essence, because the underlying physical injury was deemed not compensable by the Iowa Supreme Court, Heartland argues the claim for mental injury should be dismissed. We reject Heartland's attempt to heighten the standard for recovery for a mental injury resulting from a work-related injury. Our review of prior case law finds sporadic and incidental use of the word "compensable" when referring to the work-related injury, but no indication that the underlying physical injury must be compensable in order to give rise to the compensable mental injury. Even though the physical/mental standard arose from cases where the claimant sought additional compensation for mental injuries stemming from a previously awarded compensable injury, see e.g., Coghlan v. Quinn Wire & Iron Works, 164 N.W.2d 848 (Iowa 1969); Gosek v. Garmer & Stiles *Co*., 158 N.W.2d 731 (Iowa 1968), we do not read these cases to require that the underlying work-related trauma must be a compensable injury in and of itself. This holding is consistent with the underlying purpose of the workers' compensation statute - "to benefit workers and their dependents insofar as the statute permits." Brown v. Star Seeds, Inc., 614 N.W.2d 577, 580 (Iowa

[4] The standard articulated in Dunlavey v. Economy Fire & Casualty Co., 526 N.W.2d 845, 855 (Iowa 1995), was recently modified by the Court in Tripp v. Scott Emergency Communication Center, 977 N.W.2d 459, 467 (Iowa 2022).

> 2000) (citation omitted); see also Mortimer, 502 N.W.2d at 14 (stating the workers' compensation statute "is for the benefit of the working person and should be, within reason, liberally construed.").

Id. at 401-402.

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). Clearly, Van Haaften's separation from his wife was a substantial, if not the primary driver, worsening his mental health conditions, but his head injury and resulting headaches and unemployment were also factors contributing to his deterioration. According to Dr. Ressler's report, the only expert opinion in the record, they were significant factors. Given this record, I find that while Van Haaften's head injury was temporary in nature and produced no permanent impairment, the fall on April 27th and its resulting symptoms were a substantial factor, along with other factors, in permanently aggravating his pre-existing mental condition.

On the hearing report, the parties stipulated that if Van Haaften's claim was compensable, he should be compensated industrially. (See Hearing Report). 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. Iowa Code § 85.34.

There are no weighting guidelines that indicate how each of the factors is to be considered. Neither does a rating of functional impairment directly correlate to a degree of industrial disability to the body as a whole. In other words, there is no formula which can be applied and then added up to determine the degree of industrial disability. It therefore becomes necessary for the deputy or commissioner to draw upon prior experience as well as general and specialized knowledge to make the finding with regard to degree of industrial disability. See Christensen v. Hagen, Inc., Vol. 1 No.

3 Industrial Commissioner Decisions, 529 (App. March 26, 1985); Peterson v. Truck Haven Cafe, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 654 (App. February 28, 1985).

Van Haaften is 46 years old. He has a degree in automotive technology. He has held a variety of different jobs, including being a production worker, a painter, a welder/fabricator, a forklift driver, an assistant manager at a restaurant, and a truck driver. He was not working at the time of the hearing but has worked intermittently as a truck driver since the injury. He made $15.00 an hour at that job. At the hearing, he admitted that he is physically capable of performing that job, at least on a part-time basis. He also represented that he was able to work when applying for unemployment benefits in March of 2021. It appears, however, that Van Haaften lacks motivation to find work. He has not made any effort to find new employment since his trucking job at Robert Dean Transportation ended, despite having his anxiety under control and being well medicated. Van Haaften is also actively appealing his social security disability denial, which found his mental conditions do not prevent him from working. Considering all of the relevant factors for determining the extent of lost earning capacity under the Iowa Workers' Compensation Act, Van Haaften has sustained an industrial disability of 20 percent. Five hundred weeks multiplied by 20 percent equals 125 weeks. Van Haaften is entitled to 125 weeks of permanent partial disability benefits. The hearing report indicates the parties have a dispute as to the commencement date of Van Haaften's permanent partial disability benefits, but defendants did not submit a proposed date, nor did they address the issue in their post-hearing brief. Given this, the undersigned accepts Van Haaften's proposed date of November 29, 2022, as the proper commencement date for Van Haaften's permanent partial disability benefits.

Van Haaften seeks temporary total or healing period benefits from April 27, 2020, through November 28, 2022. (See Hearing Report). The April 27, 2020 fall resulted in permanent impairment; thus the benefits he seeks are healing period benefits. See Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012). Iowa Code section 85.34(1) governs healing period benefits. It states as follows,

> [T]he employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, whichever occurs first.

Iowa Code § 85.34(1).

Dr. Milhalovich released Van Haaften to return to work on May 11, 2020. (JE 3, pp. 35-36). Based upon Van Haaften's hearing testimony, it appears that he did in fact return to work at LDJ on that date, and continued to work for LDJ until he was let go for excessive unexcused absenteeism on May 21, 2020. (Tr., p. 18; Ex. D, p. 4). According to the hearing record, no other doctor took Van Haaften off work for his head injury or

mental conditions, or ever provided him with work restrictions after Dr. Milhalovich's May 11, 2020 release. Given this, under the language of Iowa Code section 85.34, Van Haaften's entitlement to healing period benefits ended on May 11, 2020. Van Haaften is entitled to healing period benefits from April 28, 2020, through May 11, 2020.

On the hearing report, Van Haaften asserted a claim for penalty benefits. His brief, however, does not really address the issue, beyond stating the employer's denial was unreasonable.

Penalty benefits are created by Iowa Code section 86.13, which provides two clear prerequisites before penalty benefits can be imposed: (1) "a delay in commencement or termination of benefits" that occurs (2) "without reasonable or probable cause or excuse." Iowa Code § 86.13. When the prerequisites have been met, the Iowa Code instructs the commissioner "shall award" penalty benefits "up to fifty percent of the amount of benefits that were unreasonably delayed or denied." Id. "To receive a penalty benefit award under section 86.13, the claimant must first establish a delay in the payment of benefits." Schadendorf v. Snap–On Tools Corp., 757 N.W.2d 330, 334 (Iowa 2008). Defendants denied Van Haaften's claim and refused to volunteer benefits. Penalty benefits may be based on an employer's failure to engage in a reasonable investigation of an employee's claims. See McIlravy v. N. River Ins. Co., 653 N.W.2d 323, 333 (Iowa 2002). "The burden then shifts to the employer to prove a reasonable cause or excuse for the delay." Schadendorf, 757 N.W.2d at 334–35. The Iowa Supreme Court has explained this second statutory requirement:

> A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits. A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable."

Keystone Nursing Care Ctr. v. Craddock, 705 N.W.2d 299, 307 (Iowa 2005).

The reasonableness of the employer's actions "does not turn on whether the employer was right. The issue is whether there was a reasonable basis for the employer's position that no benefits were owing." Id. at 307–08. Stated another way, the "focus is on the existence of a debatable issue, not on which party was correct." Bellville v. Farm Bureau Mut. Ins. Co., 702 N.W.2d 468, 473–74 (Iowa 2005). In Rodda v. Vermeer Mfg., 734 N.W.2d 480, 483 (Iowa 2007), the court explained:

> A reasonable basis for denying insurance benefits exists if the claim is "fairly debatable" as to either a matter of fact or law. A claim is "fairly debatable" when it is open to dispute on any logical basis. Whether a claim is "fairly debatable" can generally be determined by the court as a matter of law. If the court determines that the defendant had no reasonable basis upon which to deny the employee's benefits, it must then determine if the defendant knew, or should have known, that the basis for denying the employee's claim was unreasonable.

Id. (Internal citations and quotations omitted.) In City of Madrid v. Blasnitz, 742 N.W.2d 77, 84 (Iowa 2007), the Iowa Supreme Court stated that when there are facts that create a genuine dispute between the parties, the claimant's case is fairly debatable as a matter of law. In this case, there were legitimate factual and legal disputes between the parties. The parties agreed that Van Haaften blacked out due to idiopathic causes but did not agree on where and/or how he fell at LDJ. They also had a legitimate dispute about what legal precedent applied to the case given its unique fact pattern. Given this, I find Van Haaften's claim was fairly debatable; he has not proven entitlement to penalty benefits.

Van Haaften seeks an award of the costs outlined in Claimant's Exhibit 8. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Rule 4.33; Iowa § Code 86.40. Administrative Rule 4.33(6) provides:

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

876 IAC 4.33(6).

Van Haaften incurred costs for the filing fee for his petition, a copy of his deposition transcript, and Dr. Ressler's IME report. (Cl Ex. 8, p. 38). Van Haaften's claim was found compensable. Therefore, I conclude it is reasonable to assess Van Haaften's filing fee pursuant to 876 IAC 4.33(7). Van Haaften's deposition testimony was largely redundant of his hearing testimony. I did not rely upon it in my decision. Additionally, Van Haaften did not even submit a copy of the deposition transcript as an exhibit at hearing—it was submitted by the defendants. Given this, I conclude it would not be appropriate to assess his deposition transcript as a cost.

Under the language of 876 IAC 4.33(6), claimants can be awarded the cost of obtaining two medical reports. However, the only taxable costs are the reports themselves, not the underlying examination needed to draft the reports. See Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 846-47 (Iowa 2015). Dr. Ressler provided an itemized bill. (Cl Ex. 8, p. 43). This indicates that she charged Van Haaften $1,375.00 for her report. Under 876 IAC 4.33(6), Van Haaften is due the cost of Dr. Ressler's report in the amount of $1,375.00.

I assess costs totaling $1,478.00.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay Van Haaften one hundred twenty-five (125) weeks of permanent partial disability benefits at the stipulated rate of six hundred sixty-three and 45/100 dollars ($663.45) per week commencing on November 29, 2022.

Defendants shall pay Van Haaften 2 weeks of healing period benefits at the stipulated rate of six hundred sixty-three and 45/100 dollars ($663.45) per week for the time period from April 28, 2020, through May 11, 2020.

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 pay costs of one thousand four hundred seventy-eight and 00/100 dollars ($1,478.00).

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 16th day of October, 2023.

Amanda Rutherford

AMANDA R. RUTHERFORD
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Jason David Neifert (via WCES)

Kevin Rutan (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.