BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEMAL MANDZIC, Claimant, vs. DEE ZEE MANUFACTURING COMPANY, Employer, and ARGENT INSURANCE COMPANY, Insurance Carrier, Defendants.	File Nos. 5052853, 5057956 A R B I T R A T I O N D E C I S I O N Head Notes: 1402.30, 1402.40, 1802, 1803, 2501, 2701, 2907

STATEMENT OF THE CASE

Kemal Mandzic, claimant, filed two petitions in arbitration and seeks workers' compensation benefits from defendants, Dee Zee Manufacturing Company (hereinafter referred to as "Dee Zee"), as the employer and Argent Insurance Company, as the insurance carrier. The first petition (File No. 5052853) asserts an injury date of February 11, 2015. The second petition (File No. 5057956) asserts an injury date of September 14, 2016. Hearing occurred before the undersigned on September 14, 2017, in Des Moines.

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. 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.

In his post-hearing brief, claimant potentially advances and argues a claim for penalty benefits pursuant to Iowa Code section 86.13. (Claimant's Post-Hearing Brief, p. 36) ("Penalty and interest should be imposed on Defendants for failure to pay weekly benefits.") The hearing report does not contain any reference to, or make any claim for, penalty benefits. Review of the original notice and petition demonstrates that no penalty claim was asserted therein. Counsel did not identify or assert a penalty claim at the time of the arbitration hearing.

Instead, it appears that claimant is potentially attempting to raise and litigate a penalty benefit claim without proper notice of the claim and after the close of evidence. Defendants do not brief a penalty issue, nor does it appear they were aware a penalty claim was being asserted. Defendants certainly were not provided an opportunity to marshal and introduce evidence to respond to an undisclosed penalty benefit claim.

Iowa Code section 17A.12(2) requires that parties be given notice of disputed issues to be tried at a contested case proceeding. Obviously, this agency is bound by the provisions of the Iowa Administrative Procedure Act. Claimant has not complied with the provisions of Iowa Code section 17A.12(2) by providing notice of the intent to pursue a penalty benefit claim prior to the time of the trial.

Agency rule 876 IAC 4.2 specifically requires, "[e]ntitlement to denial or delay benefits provided in Iowa Code section 86.13 shall be pled." In this instance, claimant did not plead the claim for penalty benefits either in the original notice and petition or in the hearing report. Claimant has not complied with agency rule 876 IAC 4.2. Defendants were not given proper notice or opportunity to defend a penalty benefit claim until the close of evidence and submission of claimant's post-hearing brief. Any claim for penalty benefits is stricken.

The evidentiary record includes Joint Exhibits 1 through 23, Claimant's Exhibits 1 through 12, and Defendants' Exhibits A through S.

Claimant testified on her own behalf and called Irving Wolfe, D.O., to testify. Due to an evidentiary ruling at the commencement of the hearing, the evidentiary record was suspended at the end of the arbitration hearing. Defendants were permitted to depose Troy Schultzen after the conclusion of the arbitration hearing. The evidentiary record closed automatically upon the filing of Mr. Schultzen's deposition transcript on November 3, 2017.

However, counsel for the parties requested an opportunity to submit post-hearing briefs. Their request was granted. The parties filed post-hearing briefs on or before the established date of November 6, 2017. The case was considered fully submitted to the undersigned on that date.

ISSUES

The disputed issues submitted for resolution in File No. 5052853 (2/11/15 DOI) include:

1. Whether claimant sustained an injury that arose out of and in the course of his employment with Dee Zee on September 14, 2016.

2. Whether claimant has proven causal connection between the injury of September 14, 2016 and alleged injuries to his low back and/or right hip.

3. Whether the alleged injury caused temporary disability such that claimant is entitled to healing period benefits and, if so, the extent of such entitlement.

4. Whether the alleged injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits.

5. The proper commencement date for permanent disability benefits, if any.

6. Whether claimant is entitled to an order for payment of past medical expenses.

7. Whether claimant is entitled to an order for alternate medical care into the future.

8. Whether defendants are entitled to a credit for benefits paid and documented in Defendants' Exhibit Q.

9. Whether costs should be assessed against either party.

The disputed issues submitted for resolution in File No. 5057956 (9/14/16 DOI) include:

1. Whether claimant sustained an injury that arose out of and in the course of his employment with Dee Zee on September 14, 2016.

2. Whether claimant has proven causal connection between the injury of September 14, 2016 and alleged injuries to his low back and/or right hip.

3. Whether the alleged injury caused temporary disability such that claimant is entitled to healing period benefits and, if so, the extent of such entitlement.

4. Whether the alleged injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits.

5. The proper commencement date for permanent disability benefits, if any.

6. Whether claimant is entitled to an order for payment of past medical expenses.

7. Whether claimant is entitled to an order for alternate medical care into the future.

8. Whether defendants are entitled to a credit for benefits paid and documented in Defendants' Exhibit Q.

9. Whether costs should be assessed against either party.

FINDINGS OF FACT

Having considered all of the evidence and testimony in the record, recognizing that there may be competing or contradictory facts within this evidentiary record, I find the following facts:

Kemal Mandzic is a 54-year-old man. He is a native of Bosnia, having come to the United States as a refugee in 2002. Mr. Mandzic has a limited employment history. He worked as a carpenter and furniture worker in Bosnia. He worked at Dee Zee as a machine operator after arriving in Iowa, and he worked a part-time job (one hour per week) refilling bathroom hand soap dispensers for a janitorial service. He has no other work history or skills. (Claimant's testimony)

Although Mr. Mandzic relayed to his vocational expert that he completed only the eighth grade, he testified via deposition that he completed high school and that his diploma was burned in a house fire in Bosnia. (Compare Claimant's Ex. 5, p. 46 with Defendants' Ex. A, p. 15) I find that claimant completed high school in Bosnia and have no good reason for his contrary statement to his own vocational expert. (Defendants' Ex. A, p. 15) He speaks very limited English and communicates mainly in his native language. (Claimant's Ex. 5, p. 41) He has not obtained any additional education or English as a second language classes since arriving in the United States. (Claimant's testimony; Claimant's Ex. 5, p. 41) Realistically, he cannot compete for jobs that require him to speak English.

The parties stipulated that Mr. Mandzic sustained an injury that arose out of and in the course of his employment on February 11, 2015. (Hearing Report) However, defendants only stipulated that claimant sustained a groin injury. Defendants dispute whether the alleged right hip or low back conditions are causally related to claimant's February 11, 2015 work injury.

The parties present competing evidence on the issue of whether the right hip and/or low back conditions are causally related to claimant's February 11, 2015 work injury. Claimant presents the medical opinions of his independent medical evaluator, Dr. Wolfe, in support of his claim. Dr. Wolfe is a neurologist, who specializes in treating headaches, dementia, Alzheimer's, head injuries, concussions, peripheral nerve pain, multiple sclerosis, Parkinson's disease, as well as neck and back pain. (Dr. Wolfe's Testimony)

Dr. Wolfe's independent medical report is contained at Claimant's Exhibit 1. Dr. Wolfe opines that claimant had degenerative arthritis in his low back prior to February 11, 2015. However, Dr. Wolfe opines that claimant was not symptomatic before February 11, 2015 and that he sustained a lumbar spine injury and/or a substantial and material aggravation of his underlying low back condition as a result of the work events of February 11, 2015. (Dr. Wolfe Testimony; Claimant's Ex. 1, p. 12)

Review of Dr. Wolfe's report demonstrates that he took a detailed history of claimant. As part of that history, claimant reported to Dr. Wolfe that he sustained a sudden onset of low back pain on February 11, 2015. Claimant also reported that he experienced left and right groin pain, as well as radiation of his pain symptoms down his right leg and tingling into his left foot on February 11, 2015. (Claimant's Ex. 1, p. 8) None of the symptoms reported to Dr. Wolfe in his history are consistent with other medical records contemporaneous with the February 11, 2015 work injury.

For instance, claimant first obtained medical treatment on February 12, 2015, one day after the injury. In the February 12, 2015 office note, it is recorded by Terrance O. Kurtz, M.D., that Mr. Mandzic reported "a sharp pain in his right lower quadrant." (Joint Ex. 3, p. 1) Dr. Kurtz's assessment on that date was a groin strain and a trunk strain, inguinal. (Joint Ex. 3, p. 2)

Mr. Mandzic reported for physical therapy after Dr. Kurtz's initial evaluation. On February 17, 2015, the physical therapy record notes only right lower quadrant symptoms. (Joint Ex. 4, p. 1) The physical therapy record also notes that claimant's lumbar range of motion was "normal." (Joint Ex. 4, p. 2)

At his next evaluation on February 24, 2015, Dr. Kurtz notes that claimant reports that it is a follow up to the "injury of 2-11-15 to his right groin." (Joint Ex. 3, p. 3) Again, the reported assessment was a groin strain. (Joint Ex. 3, p. 3) In neither of these initial medical examinations was it reported that claimant sustained immediate low back, right hip, right leg, or left foot symptoms.

On March 2, 2015, claimant's physical therapist noted that claimant's right lower quadrant pain was getting better and that "the pain is very small now." (Joint Ex. 4, p. 6) Again, there was no mention of back, hip, leg or foot symptoms in this physical therapy record. (Joint Ex. 4, p. 6)

Then, on March 6, 2015, claimant reported to an unnamed medical provider at Concentra Medical Center that he experienced acute focal pain in his right groin as well as pain in his low back and radiating down to his right foot. (Joint Ex. 5, p. 1) Then, on March 23, 2015, claimant was evaluated by a general surgeon, Mark Smolik, M.D., who evaluated claimant for a potential hernia. (Joint Ex. 6) Dr. Smolik recorded a history from claimant that he "had some physical therapy for 3 weeks of virtually no improvement in the pain." (Joint Ex. 6, p. 1)

It is difficult to understand or explain how two medical providers over four appointments reported significantly different symptoms than were suddenly reported by claimant on March 6, 2015. It is similarly difficult to understand and explain how claimant could report significant improvement of symptoms and that the pain was "very small" as of March 2, 2015 and subsequently reported three weeks later that the physical therapy provided virtually no improvement of his symptoms.

As noted, claimant has very limited ability to speak English. It is possible that the lack of communication between medical providers and claimant could explain some differences. However, it is noted that at the February 17, 2015 and March 2, 2015 physical therapy appointments, claimant's son acted as an interpreter. Similarly, at the initial evaluation with Dr. Kurtz on February 12, 2015, it was specifically noted that claimant brought a friend or family member with him to interpret. Claimant testified that he took his daughter to this evaluation. Presumably, claimant's family members were relaying all symptoms stated by claimant during these treatments.

Claimant also presents the opinions of a treating pain specialist, Christian Ledet, M.D., in support of his assertion he sustained a low back injury on February 11, 2015. Dr. Ledet evaluated claimant on September 21, 2015 and records a history in which claimant reported "pain onset associated with a lift-twist event at work." (Joint Ex. 9, p. 1) Dr. Ledet then opines that the "lift twist event at work ... is a reasonable explanation for his radicular symptoms." (Joint Ex. 9, p. 4) It does not appear that Dr. Ledet knew that the low back and radicular symptoms were not initially reported. Certainly, Dr. Ledet does not discuss this discrepancy or explain the inconsistency.

Interestingly, although he records having reviewed medical records from Concentra Medical Centers, Dr. Wolfe also makes no reference to the discrepancies in the Concentra medical records and the history he obtained from claimant.

Defendants produce the opinions of their independent medical evaluator, John D. Kuhnlein, D.O., to challenge causal connection between the February 11, 2015 date of injury and claimant's right hip and low back symptoms. Dr. Kuhnlein evaluated Mr. Mandzic on February 22, 2016. Again, Mr. Mandzic gave a history that he developed groin pain, as well as right side back pain down his right leg to the knee, later in the day after the February 11, 2015 work injury. (Defendants' Ex. C, p. 2)

Considering the other medical records, this appears to be a third version of claimant's events. In the initial medical and physical therapy records, claimant did not report onset of low back or right leg symptoms until weeks after the date of injury. To Dr. Wolfe and Dr. Ledet, claimant reported immediate onset of low back and leg symptoms. Then, Mr. Mandzic reported to Dr. Kuhnlein that he did not experience immediate onset of symptoms but experienced onset of symptoms later in the day on February 11, 2015.

At trial, Mr. Mandzic testified that he specifically pointed at his right hip and low back when reporting his symptoms on February 12, 2015. Claimant also testified that he experienced immediate pain in his right leg and back. (Claimant's testimony) Yet, in his deposition taken on June 2, 2016, claimant testified that he did not experience low back pain immediately after the incident on February 11, 2015. Instead, he estimated that perhaps a week passed before he developed low back pain. (Defendants' Ex. A, p. 36)

When confronted with his deposition testimony on cross-examination, I noted that claimant became agitated, sat up and forward, and his demeanor changed. He appeared annoyed or angry by the line of questioning. Clearly, the history he provided in his deposition on June 2, 2016 contradicted the history recorded by Dr. Wolfe. (Claimant's testimony) It also appears to represent perhaps a fourth version of the events and when his low back pain developed.

Another treating physician, Kurt Smith, D.O., recorded a history from claimant in which his low back pain started two days after the February 11, 2015 incident. (Joint Ex. 14, p. 1) Dr. Smith specifically recorded that he had an interpreter present for his evaluation of claimant. (Joint Ex. 14, p. 1) This could be viewed as a similar history to that provided in claimant's June 2, 2016 deposition or as a potential fifth version of the events. Interestingly, Dr. Smith's evaluation occurred May 2, 2016, one month before claimant's deposition at issue. (Joint Ex. 14, p. 1)

Reviewing claimant's medical records also discloses significant reports of symptom magnification and unreliable histories from claimant. Dr. Kuhnlein evaluated claimant twice and reported that claimant's reported symptoms were not objectively verifiable. Dr. Kuhnlein noted potential cultural effects and at least partially explained some of these differences. However, it is noted that numerous other physicians noted non-physiologic findings, symptom magnification, or other concerns about the validity of claimant's reporting of symptoms. (Joint Ex. 9, p. 4; Joint Ex. 14, pp, 1, 4, 8, 12; Joint Ex. 18; Defendants' Ex. F; Defendants' Ex. G, p. 1)

Coupled with my observations of claimant's demeanor on cross-examination, as well as the four or five different versions of the date of injury events, the issues related to claimant's varying reports of symptoms and abilities, I find it difficult to accept claimant's current version of the events of his injury. Instead, Dr. Kuhnlein's explanation of the discrepancies in the history as well as his personal, on-site observations of claimant's job duties, are much more convincing and consistent with the facts as I perceive them. Therefore, I find that claimant has not proven that his right hip or low back conditions are causally related to the February 11, 2015 work injury. Instead, I find Dr. Kuhnlein's opinion to be accurate. Specifically, I accept the following opinions expressed by Dr. Kuhnlein:

> Mr. Mandzic describes a sudden event with the onset of back pain that was simply not mentioned early on in the record in a consistent fashion to different providers. There is no incident that would produce multilevel damage to the vertebral bodies given the mechanism of injury that Mr. Mandzic described. The physical loading in the work that I observed would simply not account for these changes....
>
> I believe that Mr. Mandzic suffers more from claudication and not from injuries sustained while working for DeeZee on either February 11, 2015, or September 14, 2016.

In summary, I am still not able to attribute a lumbar injury to the February 11, 2015, injury within a reasonable degree of medical certainty.

(Defendants' Ex. D, pp. 16-17) I specifically find that claimant has proven a groin injury on February 11, 2015 as a result of his work activities. However, he has not proven that he sustained either a hip or low back injury as a result of the February 11, 2015 work activities.

With respect to claimant's groin injury on February 11, 2015, I accept the opinions of Dr. Kuhnlein as applicable and accurate as to the ongoing symptoms and permanent impairment. Specifically, Dr. Kuhnlein opines that Mr. Mandzic has chronic pain related to the groin injury and that he sustained a two percent permanent impairment of the whole person as a result of his groin strain. (Defendants' Ex. C, p. 9)

Dr. Kuhnlein notes that he cannot objectively place permanent work restrictions directly related to the groin strain. However, Dr. Kuhnlein recommends that claimant be permitted to work an eight-hour day, but not stand or sit greater than four hours per day. He also recommends using the restrictions offered by Dr. Nelson.

Christopher D. Nelson, D.O. recommended work restrictions that included standing or walking not to exceed four hours. He also recommended claimant's lifting not exceed 10 pounds. (Joint Ex. 7, p. 4) I do not accept Dr. Nelson's restrictions as applicable. Dr. Nelson issued these restrictions in August 2015. (Joint Ex. 7, p. 4) Since then, claimant has provided a failed functional capacity evaluation (FCE) in which he demonstrated the ability to lift zero pounds. The FCE was declared invalid for lack of effort, which seems reasonable to the undersigned given demonstration of a zero pound lifting ability. The invalid FCE occurred on September 12, 2016. (Defendants' Ex. F)

Since Dr. Nelson's restrictions were offered, claimant has also obtained his own FCE, performed on October 3, 2016. That FCE was deemed valid and the therapist opined that claimant gave maximum effort. Claimant's FCE opined that claimant would lift 16.5 pounds. Given that claimant's own FCE demonstrates more than the weights offered by Dr. Kuhnlein and Dr. Nelson, I reject the restrictions offered by Dr. Nelson and accepted by Dr. Kuhnlein in lieu of any objective means of imposing restrictions.

I also reject the "valid" FCE claimant introduced at Claimant's Exhibit 2. In that FCE, the therapist documents that Mr. Mandzic demonstrated the ability to forward bend 10 degrees (normal being 60 degrees), back bend 5 degrees (normal being 25 degrees), right side bend 18 degrees (normal being 25 degrees) and left side bend at 0 degrees (normal being 5 degrees). Yet, in records occurring shortly after the February 11, 2015 work accident, claimant demonstrated normal range of motion in his lumbar spine.

At his initial physical therapy appointment on February 17, 2015, claimant demonstrated normal ranges of motion in his lumbar spine, including specific notations about forward, backward, and side bending. (Joint Ex. 4, p. 2) Again on March 2, 2015,

the physical therapist noted normal ranges of motion in claimant's forward, backward, and side bending. (Joint Ex. 4, p. 5) On March 23, 2015, the general surgeon evaluating claimant documented that he had normal spine alignment and range of motion. (Joint Ex. 6, p. 3)

A pain specialist, Dr. Ledet, noted normal range of motion of the lumbar spine without pain at his evaluation on September 21, 2015. (Joint Ex. 9, p. 3) Claimant's personal physician documented that his spine had normal alignment and range of motion at an evaluation occurring on December 10, 2015. (Joint Ex. 10, p. 3) The normal range of motion findings were reiterated in an office note from claimant's personal physician on December 30, 2015. (Joint Ex. 10, p. 7)

During an emergency room visit on May 3, 2016, the emergency room physician documented that claimant had normal range of motion in his back and that he was non-tender. (Joint Ex. 12, p. 21)

In a medical record dated May 5, 2016, it was noted that claimant injured his left hand using a power washer the night before. (Joint Ex. 13, p. 1) This seems inconsistent with a finding that claimant cannot lift more than 10 pounds. The physician at the May 5, 2016 evaluation documented that claimant had normal alignment and range of motion in his spine. (Joint Ex. 13, p. 3) On May 24, 2016, claimant was documented as demonstrating limited lumbar extension but still 20 degrees of forward flexion. (Joint Ex. 15, p. 4)

On September 1, 2016, Dr. Smith documents that "[e]xamination [of] subjective symptoms are not supported by objective findings on examination." (Joint Ex. 14, p. 8) Normal spine range of motion was again documented by claimant's personal physician on September 7, 2016. (Joint Ex. 13, p. 7) This evaluation by claimant's personal physician occurred five days before claimant provided an invalid FCE. It is extremely unlikely that claimant was demonstrating 10 percent forward flexion, as well as negative five-degree extension during the September 7, 2016 evaluation by his personal physician without his personal physician documenting something other than normal range of motion in the spine.

Not until August 25, 2016 does any physician document that claimant has lumbar forward flexion limited to 10 degrees. (Joint Ex. 18, p. 1) The physical therapist conducting the October 2016 FCE clearly did not have this history available when conducting the evaluation and testing. Nevertheless, in spite of the significant change and apparent deterioration, claimant demonstrated the ability to lift more at the October 2016 FCE than was imposed as restrictions by Dr. Kuhnlein or Dr. Nelson. I am not able to accept that claimant would be able to lift zero pounds at an FCE in September 2016 and remarkably improve without treatment within a month and demonstrate 16.5 pounds of lifting capacity.

Realistically, I do not believe the 16.5 pounds documented in claimant's FCE represents claimant's residual abilities. I find the analysis offered by Dr. Kurt Smith, a

physician selected by claimant, to be more appropriate on the issue of restrictions. Like Dr. Kuhnlein, Dr. Smith concluded, "As the result of numerous inconsistencies, I am unable to place restrictions on the individual." (Joint Ex. 14, p. 12) Having reached this conclusion, Dr. Smith returned claimant to work without restrictions. (Joint Ex. 134, pp. 12, 14) I find that due to inconsistencies in his evaluations, invalid FCE efforts, deterioration of the lumbar spine ranges of motion for unknown or undocumented reasons, claimant has failed to prove that he requires specific work restrictions as a result of the February 11, 2015 groin strain.

Having accepted Dr. Kuhnlein's opinions that claimant sustained two percent permanent impairment and has chronic pain, I am realistic that there are probably some undocumented limitations on claimant's abilities due to pain. However, I find that those limitations are minimal and that claimant remains capable of performing at a much higher physical level than is documented in either of the FCEs or by Dr. Kuhnlein.

I also note that Mr. Mandzic has extended little to no effort to attempt to return to work since leaving Dee Zee. He testified that he applied for and received unemployment benefits. He had others complete his on-line reporting for unemployment but believed he was telling unemployment officials that he was not capable of working. This is inconsistent with receipt of unemployment benefits.

Claimant has made no legitimate efforts to apply for any types of work since the work injury. He offered a vocational expert opinion. However, that opinion is rejected. Claimant's vocational expert relied upon and applied the work restrictions imposed by the October 3, 2016 FCE, as adopted by Dr. Wolfe and Dr. Pederson. (Claimant's Exhibit 5, p. 49) Obviously, I did not find the FCE to be credible or applicable. Claimant's vocational expert opinions are based upon facts that I find not credible.

The claimant's vocational expert specifically noted that she did not consider a scenario utilizing Dr. Smith's full duty work release, which I adopted. (Claimant's Ex. 5, p. 49) Having relied upon limitations that I found not convincing for her analysis, claimant's vocational expert opinion is not convincing or credible.

Therefore, considering claimant's injury, his permanent impairment, lack of verifiable restrictions, work history, educational level, language barriers, age, lack of motivation, and all other factors of industrial disability outlined by the Iowa Supreme Court, I find that Mr. Mandzic has proven he sustained a 15 percent loss of future earning capacity as a result of the February 11, 2015 groin strain.

Mr. Mandzic also asserts that he sustained a second injury on September 14, 2016. Specifically, he asserts that his supervisor came up behind him, pulled on his belt loop and caused an additional low back injury. Dr. Kuhnlein specifically opines that there is no new work injury on September 14, 2016. (Defendants' Ex. D, p. 17) Dr. Wolfe authored a report dated November 16, 2016 and offered no analysis or opinion pertaining to an alleged September 14, 2016 low back injury. No other physician opines that the events of September 14, 2016 caused a new or specific injury

to claimant's low back. Claimant has failed to prove that he sustained a new low back injury on September 14, 2016 or that any of his symptoms after September 14, 2016 in his low back or right leg are causally related to an injury occurring on that date.

Mr. Mandzic also seeks an award of past medical expenses contained at Claimant's Exhibit 7. The billing statements included provide no specifics as to the treatment or body part treated, or indicate that the treatment rendered was for the low back. The billing statements also include treatment occurring in 2016. However, I find that claimant achieved maximum medical improvement as a result of his February 11, 2015 groin injury on August 18, 2015. None of the treatment after August 18, 2015 is causally related to the February 11, 2015 injury. Similarly, the mileage sought for treatment that occurs after August 18, 2015 is found not to be causally related to the February 11, 2015 or September 14, 2016 alleged work injuries.

However, Mr. Mandzic does itemize medical mileage for treatment occurring before August 18, 2015. (Claimant's Ex. 7, p. 75) Specifically, claimant includes mileage claims for treatment on February 12, 2015, February 17, 2015, February 24, 2015, March 6, 2015, March 23, 2015, April 16, 2015, July 7, 2015, July 21, 2015, and August 5, 2015. (Claimant's Ex. 7, p. 75) I find that each of these mileage itemizations are for causally related medical treatment.

Claimant requested an award of future alternate medical care for his low back. Obviously, I found that the low back was not causally related and I find that any future treatment of the low back is not causally related to the February 11, 2015 work injury.

Mr. Mandzic also asserts that he should receive an award of healing period for lost time from work. I find that claimant returned to work after the February 11, 2015 date of injury and continued to work light duty until May 23, 2016. (Defendants' Ex. A, pp. 6-7) At that time, claimant relied upon his personal physician's restrictions and declined further light duty work offered by Dee Zee. (Defendants' Ex. A, pp. 10-14)

The restrictions imposed by claimant's personal physician were not related to the February 11, 2015 work injury. Instead, they were imposed due to a low back injury or condition. I find that Dee Zee offered claimant suitable work on and after May 24, 2016. Claimant refused the offered light duty work.

Finally, the parties submit a disputed issue pertaining to defendants' request for credit for weekly benefits paid to date. Defendants introduce their payment log at Defendants' Exhibit Q. I find that is the only evidence of benefits paid to claimant and accept it as accurate. I find that defendants paid claimant 10 weeks of permanent partial disability, as asserted on the hearing report.

CONCLUSIONS OF LAW

The parties stipulate that claimant sustained an injury that arose out of and in the course of his employment on February 11, 2015. However, there is a dispute about

whether claimant sustained an injury arising out of and in the course of his employment on September 14, 2016.

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually 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" referred 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.

Having found that claimant did not prove by a preponderance of the evidence that he sustained an injury that arose out of and in the course of his employment on September 14, 2016, I conclude that claimant failed to prove a compensable work injury in File No. 5057956. Claimant will take nothing in File No. 5057956.

In File No. 5052853, the parties stipulated to an injury arising out of and in the course of employment. Specifically, defendants stipulated that claimant sustained a groin injury on February 11, 2015. However, defendants disputed whether claimant sustained either a right hip or low back injury.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v.

Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Having found that Mr. Mandzic failed to prove causal connection between his work activities on February 11, 2015 and his alleged low back and right hip conditions, I conclude that the February 11, 2015 work injury is confined to a groin injury. Nevertheless, I found that the groin injury caused permanent impairment and permanent disability to claimant. Therefore, I must consider both claimant's request for healing period and permanent disability.

The alleged groin strain is an injury not itemized as a "scheduled" injury pursuant to Iowa Code section 85.34(2)(a)-(t). Therefore, the injury is compensated as an "unscheduled" injury with industrial disability benefits pursuant to Iowa Code section 85.34(2)(u).

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 R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

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

Compensation for 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.

Having considered claimant's age, education, employment history, the situs and severity of his injury, his permanent work restrictions, permanent impairment, language barriers, as well as all other factors of industrial disability identified by the Iowa Supreme Court, I found that claimant proved a 15 percent loss of future earning capacity. I conclude this entitles claimant to a 15 percent industrial disability award. A 15 percent industrial disability award entitles claimant to an award of 75 weeks of permanent partial disability benefits at the stipulated weekly rate of $420.85. Iowa Code section 85.34(2)(u).

Permanent disability benefits commence upon the termination of the initial healing period. Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 373-374 (Iowa 2016). Therefore, claimant's request for healing period benefits must be considered before a determination of the commencement of permanent partial disability benefits can be established.

Mr. Mandzic seeks the award of healing period benefits but does not specify the claim either in the hearing report or in his post-hearing brief. Defendants dispute claimant's entitlement to healing period benefits and assert that claimant forfeited any claim to healing period benefits because he refused an offer of suitable work.

Iowa Code section 85.33(3) provides:

> If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employee refuses to accept the suitable work with the same employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal.

I found that claimant returned to work after the alleged injury of February 11, 2015. He continued working in a light duty capacity until May 23, 2016. (Defendants' Ex. A, pp. 6-7) At that time, claimant relied upon his personal physician's restrictions and declined further light duty work offered by Dee Zee. (Defendants' Ex. A, pp. 10-14) Ultimately, I found that the restrictions imposed by claimant's personal physician were not related to or necessary due to a groin injury. Given that these restrictions are not found to be causally related to the February 11, 2015 work injury, I found that Dee Zee offered claimant suitable work on and after May 24, 2016. Claimant refused the offered light duty work. Accordingly, I conclude that claimant's request for healing period benefits fails. Neal v. Annett Holdings, Inc., 814 N.W.2d 512 (Iowa 2012); Iowa Code section 85.33(3).

Having concluded that claimant did not prove entitlement to any healing period benefits, I conclude that permanent partial disability benefits should commence on February 12, 2015. Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 373-374 (Iowa 2016).

Mr. Mandzic also seeks award of past medical expenses and alternate medical care moving into the future. 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).

Having found that the requested medical expenses are not proven to be causally related to the February 11, 2015 work injury, I conclude that claimant failed to prove entitlement to the claimed past medical expenses or the alternate medical care she seeks. Iowa Code section 85.27.

Mr. Mandzic also seeks some medical mileage itemized in Claimant's Exhibit 7, page 75. Having found that claimant established causally related treatment and mileage to attend the treatment on February 12, 2015, February 17, 2015, February 24, 2015, March 6, 2015, March 23, 2015, April 16, 2015, July 7, 2015, July 21, 2015, and August 5, 2015, I conclude that claimant is entitled to medical mileage for these treatment dates. Iowa Code section 85.27; 876 IAC 8.1.

Claimant is entitled to 101.4 miles of medical mileage between February 12, 2015 and April 16, 2015 at the rate of $0.56 per mile, or a total of $56.78. Claimant is also entitled to 24 miles of medical mileage for July 7, 2015 and July 21, 2015 at the rate of $0.575 per mile, or $13.80. Claimant is, therefore, entitled to medical mileage totaling $70.58.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

Claimant also bears the burden to establish that the requested medical care is causally related to the work injury. In this case, I found that the requested alternate medical care is related to claimant's low back condition and not related to the February 11, 2015 work injury. Therefore, I conclude that claimant failed to prove entitlement to the alternate medical care he requests. Iowa Code section 85.27.

Finally, claimant also seeks assessment of his costs. Assessment of costs is a discretionary function of the agency. Iowa Code section 86.40. Although claimant receives a minor industrial disability award, defendants prevailed on the majority of the disputed issues in both files. I conclude that all parties should be ordered to bear their own costs.

ORDER

THEREFORE, IT IS ORDERED:

In File No. 5052853:

Defendants shall pay claimant seventy-five (75.0) weeks of permanent partial disability benefits commencing on February 12, 2015 at the rate of four hundred twenty and 85/100 dollars ($420.85) per week.

Defendants shall pay all accrued benefits in lump sum with interest pursuant to Iowa Code section 85.30.

Defendants shall be entitled to credit for all benefits paid to date, including the ten (10) weeks of permanent partial disability benefits detailed in Defendants' Exhibit Q.

Defendants shall reimburse claimant's medical mileage, as noted in the body of this decision, totaling seventy and 58/100 dollars ($70.58).

Claimant shall remain entitled to any future medical treatment that is reasonable, necessary and causally related to the February 11, 2015 groin strain.

All parties shall bear their own costs.

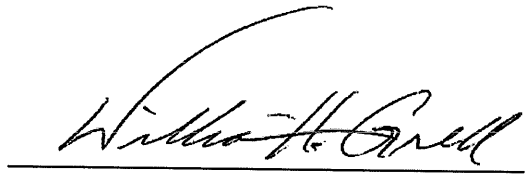
Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

In File No. 5057956:

Claimant shall take nothing.

All parties shall bear their own costs.

Signed and filed this 12th day of February, 2018.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Christopher Coppola
Attorney at Law
2100 Westown Pkwy, Ste. 210
West Des Moines, IA 50265
chriscoppola@csmclaw.com

Charles A. Blades
Attorney at Law
PO Box 36
Cedar Rapids, IA 52406
cblades@scheldruplaw.com

WHG/sam

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.