

**IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY**

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| <b>MATTHEW LAWSON,</b><br><br><b>Petitioner,</b><br><br><b>v.</b><br><br><b>BENTON SAND &amp; GRAVEL, INC.,</b><br><b>and</b><br><b>UNITED FIRE &amp; CASUALTY COMPANY</b><br><br><b>Respondents.</b> | <b>CVCV061001</b><br><br><b>ORDER ON JUDICIAL REVIEW</b> |
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This is a petition for judicial review from a final decision of the Iowa Workers' Compensation Commission. A hearing was held in this matter on May 10, 2021 by videoconference. Petitioner/Cross-Respondent Matthew Lawson ("Lawson") appeared through counsel Valerie Foote. Respondents/Cross-Petitioners Benton Sand and Gravel, Inc. and United Fire and Casualty Company (collectively Benton) appeared through attorney Cory Abbas.

**I. Background Facts and Procedural Posture.**

On November 21, 2014, Matthew Lawson was working for Benton Sand and Gravel when a dump truck ran over Lawson's right leg and the front tire turned while on his leg, going onto his right foot and toes, and causing numerous fractures. Lawson was employed at the time of the accident as a heavy equipment operator. His duties included demolitions, pipe work, grading, and hauling materials like sand, rock, and debris. Although Lawson spends most of his work days sitting, he also performs duties that requires him to crawl and bend often. Lawson has returned to his normal work duties, but has help from co-workers when he needs it.

The Parties stipulate Lawson sustained an injury to his right lower extremity arising out of and in the course and scope of his employment. The Parties dispute whether the injury extends to the lower back and hip, thus making it a whole body injury instead of a scheduled member injury.

The Parties also dispute whether the Agency correctly determined functional impairment, the number of exemptions, and assignment of costs.

After the accident, Lawson was transported by ambulance to Allen Memorial Hospital where he was diagnosed with acute, non-displaced fractures throughout the base of his 2<sup>nd</sup> and 3<sup>rd</sup> metatarsals, a possible navicular fracture, fractures on the fibular head, fractures at the bases of his 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> metatarsals, and a fracture of his tarsal navicular bone. Due to the severity of the injury, Lawson was transferred to University of Iowa Hospitals and Clinics (UIHC). Lawson complained of ankle pain and underwent more imaging, which showed that he had a comminuted, impacted fracture of his proximal right fibula and fractures of the medial cuneiform and the base of his 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> metatarsals. UIHC placed Lawson's right leg in a splint, which was replaced with a cast a few days later.

On November 26, 2014, Lawson treated with his family doctor, Dr. Kelly Schmidt, and received a Vicodin prescription. This visit includes a notation of an active issue with lumbosacral back pain. Lawson continued to receive treatment at UIHC with Dr. Phisitkul, where he received a lighter fiberglass cast. Over time, his cast was removed, he was prescribed a boot, moved to partial weight-bearing, and instructed to elevate his leg and move around. During these visits Lawson complained of swelling in his right foot, numbness in his right knee, soreness and achiness in his right mid-foot, clicking and popping in his right knee, and pain at the bottom of his right foot. During one visit while still in crutches, Lawson noted left sided hip and low back pain because he was putting all of his weight on his left side while on crutches.

Lawson also continued to receive treatment from family doctor, Dr. Schmidt, complaining of a burning pain in the sole of his right foot. Dr. Schmidt diagnosed neuralgia and prescribed Gabapentin.

On February 19, 2015, Lawson attended an appointment at UIHC. He was at 50 percent weight bearing on his right side and reported pain globally. Dr. Phisitkul believed Lawson was progressing well and recommended he increase weight bearing. At this appointment, Dr. Phisitkul decided it would be better for Lawson to continue treatment with someone else. Some discord had developed between Dr. Phisitkul and Lawson and his wife, relating to a lack of trust due to Dr. Schmidt's role as the diagnosing physician of the neuralgia.

Thereafter, beginning on March 31, 2015, Lawson continued treatment with Dr. Gibbons at the Mason City Clinic in Mason City, Iowa. Over time, Dr. Gibbons reduced Lawson's work restrictions, encouraged greater weight bearing, referred him to Clark and Associates in Waterloo, Iowa to get orthotic shoes, and approved of Lawson continuing the Gabapentin prescription through Dr. Schmidt due to the nerve pain in his foot. When Lawson attended the orthotics fitting, he complained of low back pain (JE 6-1) and later noted to Dr. Gibbons that his back pain had improved with the orthotics. (JE 7-1). Dr. Gibbons found Lawson to be at Maximum Medical Improvement on November 10, 2015 and released with no restrictions. (JE 5-18). He found continued use of Gabapentin and care through his family physician reasonable. (Id).

Lawson later returned to Dr. Gibbons a few more times for occasional knee pain. On February 25, 2016, an MRI revealed small joint effusion (excess fluid) but no other abnormalities. In the follow up visit on March 24, 2016, Dr. Gibbons found nothing structurally wrong and indicated the symptoms would abate with time. (JE 5-25). He noted Lawson had an initial antalgic gait but it dissipated the more he walked. (Id). There were no complaints of back pain noted in these visits with Dr. Gibbons. Lawson received right knee corticosteroid injections from Dr. Gibbons on October 11, 2016; October 3, 2017; and February 27, 2018. During the October 3, 2017 visit, Dr. Gibbons noted "He does not walk with an antalgic gait." (JE 5-29).

Lawson continued to obtain new orthotics each year on August 30, 2016; July 14, 2017; and August 6, 2018. During the August 30, 2016 orthotics appointment, he complained of lower back pain.

In September of 2016 Lawson was rear-ended in a motor vehicle accident and sustained injury to his right arm/shoulder and was diagnosed with a herniated disc at C6-7. He underwent surgery on May 11, 2017 and identifies the only ongoing issue from this injury as numbness in one of his fingers. During a March 21, 2017 visit relating to the arm, progress notes state: "He has a normal gait." (JE 9-3).

From October 25, 2016 until January 17, 2017, Lawson treated with the Vanderloo Chiropractic Clinic in Waterloo, Iowa. (JE 8-1). Lawson was diagnosed with degenerative disc disease in the L3-L4 region. Most of the chiropractic records identify the right arm, shoulder, or neck as the area of concern. (JE 8).

Lawson testified that as of the date of the hearing, he continues to have pain in his right knee, clicking or popping and weakness in his right knee, numbness inside his right leg from his knee down about 4-6 inches, pain where his right toes meet the foot, and burning nerve pain in the bottom of his foot. (Arbitration Transcript (Tr.) at 42, 50, 62). Lawson continues to take Gabapentin to treat the nerve pain in his right foot and continues to obtain a pair of orthotics shoes each year. He also testified he has right hip and right low back pain, which he described as pinching, tightness, and throbbing. (Tr. at 42, 46-47, 55). Lawson takes Advil to treat the back and hip pain. (60).

Causation opinions relating to Lawson's low back and hip were provided from three doctors who conducted IMEs and two treating providers:

- Dr. Gibbons, a treating provider, in an October 3, 2019 letter, opined that the "2014 work injury is not a substantial factor in either directly causing or materially

aggravating a pre-existing condition to bring about [Lawson's] current back and hip complaints." (JE 5-33).

- Dr. Manshadi, in January 2016, provided an IME at Lawson's request. He opined that Lawson had an abnormal gait and, in the future, the possibility of right hip and low back involvement "also cannot be entirely ruled out." (Cl. Ex. 1-4). Dr. Manshadi's IME did not identify any complaints of back or hip pain.
- Dr. Taylor, on April 8, 2019, provided an IME at Lawson's request. Dr. Taylor identified complaints of pinching pain in the right hip and right low back pain. Dr. Taylor opined:

As far as the right hip and low back, it appears more likely than not that his lower extremity injuries have contributed to these issues. His gait pattern revealed at least a moderate limp and he tends to walk on his heel. Prior to the injury, he was not experiencing hip or back pain. This would be consistent with a sequela-type issue. As of the date of his IME, he had not undergone evaluation or treatment of the hip and back pain and therefore I cannot offer more specific diagnosis or prognosis. (Cl. Ex. 3-16).

- Dr. Westpheling, on October 8, 2019, provided an IME at the request of Benton. He opined that Lawson's "complaints of pain in the right hip and low back are not causally related to the original work injury or treatment thereof." (Def. Ex. A-7). He noted a "significant lack of a temporal relationship between the work injuries and the complaints of right hip and back pain" and that there were complaints of left hip and low back pain in December 2014 but with no further treatment. (Id).
- Chiropractor Dr. Vanderloo, on January 18, 2017, provided a letter stating Lawson was experiencing gait derangement from the November 21, 2014 injury, which caused right hip issues and would cause back issues without continued adjustments. (Cl. Ex. 2-8).

In addition, each IME doctor and Dr. Gibbons provided impairment ratings:

- On November 22, 2015, Dr. Gibbons gave Lawson a 9% permanent impairment for the lower extremity rating, and 15% permanent impairment for the right foot, which he reaffirmed on October 3, 2019. (JE 5-19; JE 5-34).
- On January 6, 2016, with regard to Lawson's right foot and ankle, Dr. Manshadi assigned Lawson a 5% right lower extremity impairment and a 24% right foot impairment. (Cl. Ex. 1-4). He did not provide a rating relating to the right knee, as he found it was not at MMI due to continued pain and Lawson had not received treatment for that issue. (Id). Dr. Manshadi was later provided with Dr. Gibbon's records relating to the right knee MRI that took place later in 2016 and the finding of no structural damage. Dr. Manshadi then issued a letter agreeing with Dr. Gibbon's opinion regarding Lawson's knee. (Cl. Ex. 1-6).

- On April 8, 2019, Dr. Taylor assigned a 21% right lower extremity impairment. (Cl. Ex. 3-18).
- On October 8, 2019, Dr. Westpheling assigned a 13% right foot impairment. (Def. Ex. A-7).

## **II. Standard of Review.**

This Court's review of a workers' compensation action is governed by Iowa Code chapter 17A. Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 748 (Iowa 2002); see Iowa Code § 86.26. The commissioner's factual determinations are "clearly vested by a provision of the law in the discretion of the agency" and this Court will defer to those factual determinations if they are based on "substantial evidence in the record before the court when that record is viewed as a whole." Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 557 (Iowa 2010) (quoting Iowa Code § 17A.19(10)(f)). This Court may grant relief from an agency action if it determines the substantial rights of the claimant have been prejudiced because the agency action is unsupported by substantial evidence. Iowa Code § 17A.19(10)(f). "Evidence is substantial if a reasonable person would find the evidence adequate to reach the same conclusion." Grundmeyer, 649 N.W.2d at 748. "[The] question is not whether there is sufficient evidence to warrant a decision the commissioner did not make, but rather whether there is sufficient evidence to warrant the decision he did make." Musselman v. Cent. Tel. Co., 154 N.W.2d 128, 130 (Iowa 1967).

If the commissioner's ultimate conclusion reached is the claimed error, "then the challenge is to the agency's application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence." Meyer v. IBP, 710 N.W.2d 213, 219 (Iowa 2006); Iowa Code § 17A.19(10)(i), (j).

## **III. Conclusions of Law.**

**A. The Agency Determination that Lawson Sustained a Scheduled Member Injury and Not a Whole Body Injury is Supported by Substantial Evidence.**

The Deputy Commissioner, in the Arbitration Decision, determined Lawson had not proven he sustained an injury to his lower back and hip as a result of the work injury. This decision was affirmed in an Appeal Decision by the Workers' Compensation Commission. Therefore, the Agency Decision found Lawson should be compensated for a functional impairment of a scheduled member (lower right extremity) instead of as an industrial disability for injury to the body as a whole. Lawson appeals, arguing the Agency's decision lacked substantial evidence and that, instead, the record supports that Lawson has an altered gait as a result of the injury, which caused lower back and hip pain.

At the commission level, "[a] claimant must prove by a preponderance of the evidence that the injury is a proximate cause of the claimed disability." Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010) (quoting Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002)). "Ordinarily, expert testimony is necessary to establish the causal connection between the injury and the disability for which benefits are claimed." Id. However, "[t]he commissioner, as the fact finder, determines the weight to be given to any expert testimony." Id. "Because the commissioner is charged with weighing the evidence, we liberally and broadly construe the findings to uphold his decision." Finch v. Schneider Specialized Carriers, Inc., 700 N.W.2d 328, 331 (Iowa 2005).

"Evidence may be substantial even though [the court] may have drawn a different conclusion as fact finder." Cedar Rapids Cmty. Sch. Dist. V. Pease, 807 N.W.2d 839, 845 (Iowa 2011). Weighing of competing expert opinions is within the province of the commission. Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011) ("the determination of whether to accept or reject an expert opinion is within the peculiar province of the

commissioner.”). The commissioner considers expert testimony with all other evidence and determines the weight to be given any expert testimony. Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002); see also Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010); Martinez Const. v. Ceballos, 836 N.W.2d 152, 2013 WL 2646833, at \*4 (Iowa Ct. App. June 12, 2013) (“Lay witness testimony is also relevant and material to the causation determination, and the agency must consider all evidence—both medical and nonmedical—in arriving at a disability determination.”). To reverse the Agency Decision, this Court would be required to find the experts relied upon as so flawed as to not constitute substantial evidence. See Bahic v. Mercy Medical Center, 919 N.W.2d 768 (Iowa 2018) (citing Pease, 807 N.W.2d at 845).

Here, the Agency Decision is supported by substantial evidence. The Agency Decision relied upon some expert physicians over others. Lawson’s complaints of back or hip pain were sporadic. Although, in this appeal, Lawson highlights references to back or hip pain or an antalgic gait in the medical records, many other medical records lack any reference to back or hip pain or note a normal gait. Lawson’s initial back complaint was on the left side, due to placing all his weight on the left side when first in a cast. (JE 2-17). Although a 11/26/2014 visit with his family practice provider identifies “Back pain, lumbosacral” as an “Active Problem,” the next record dated 1/26/2015 lists it as “Resolved 26Jan2015.” (JE3-1, 2). The medical records relating to Dr. Gibbons, the primary treating physician, are largely devoid of any reference to back-related issues. Lawson noted that his orthotic shoes improved back pain on 6/16/2015. (JE 7-1). Dr. Gibbons noted on 3/29/2016 that “He initially has an antalgic gait. The more he walks it goes away.” (JE5-25). During a March 21, 2017, medical visit to address his right arm and shoulder following the car accident, the physician noted in the physical exam that “He has a normal gait.” (JE 9-3).



During an October 3, 2017 visit, Dr. Gibbons noted: “He does not walk with an antalgic gait.” (JE 5-29).

Lawson provided the testimony of two IME experts and a chiropractor. Each of the IME doctors was cautious in their opinion. Dr. Manshadi opined in January, 2016 that Lawson “could” “possibly” suffer from right hip and low back involvement in the future. (Cl. Ex. 1-4). Dr. Taylor opined in April, 2019 that Lawson’s lower extremity issues contributed to his right hip and lower back pain due to a gradual onset of pain. (Cl. Ex. 3-16). However, Dr. Taylor could not offer any more specific diagnosis or prognosis because Lawson had not undergone evaluation or treatment for his hip and low back complaints. (Cl. Ex. 3-16). Finally, Dr. Vanderloo, a chiropractor, opined that Lawson was experiencing gait derangement from the work injury, and that he had hip issues and would have back issues without continued chiropractic adjustments. (Cl. Ex. 2-8).

On the contrary side, Dr. Gibbons opined in an October 3, 2019 letter that the 2014 work injury was not a substantial factor in directly causing or materially aggravating a pre-existing condition resulting in Lawson’s hip and back complaints. (JE 5-33). IME doctor, Dr. Westphal also opined the low back and right hip pain was not causally related to the 2014 work injury. The Arbitration Decision explained the Deputy found Dr. Gibbons’ opinion more credible given his role in treating Lawson. Lawson is critical of that determination and argues Dr. Gibbons’ treatment was limited to the right knee and foot. However, Dr. Gibbons treated the work injury and Lawson had the opportunity to raise any back or hip complaints during those appointments. For example, Lawson did not at first raise complaints of knee pain, but did later. (See JE 5-17). Lawson set up appointments with Dr. Gibbons when he had continuing knee pain later and received steroid injections. In addition, Dr. Gibbons made notations regarding his gait at times, as noted above.

Given the evidence outlined above, the Court finds there is substantial evidence to support the Agency Decision that Lawson's right hip and low back pain were not caused by the 2014 work injury and also, that such finding was not an abuse of discretion, illogical, or irrational.

**B. The Agency Determination of Functional Impairment is Supported by Substantial Evidence.**

The Agency Decision assigned a 15% functional impairment of the lower right extremity. In the initial Arbitration Decision, the Deputy Commissioner identified Lawson's ongoing physical pain and limitations, found Dr. Gibbon's opinion to be the most reliable and assigned a 15% impairment rating. The Arbitration Decision incorrectly stated Dr. Gibbons assigned a 15% impairment rating. The original ruling read as follows (after discussion of Lawson's pain/limitations):

Dr. Gibbons assigned a 15 percent impairment rating to the right lower extremity. Claimant argues that Dr. Gibbons' opinion is less reliable because Dr. Gibbons did not fully appreciate claimant's ankle instability and loss of range of motion. However, since August 2015, the claimant's primary complaints have been with his right knee and foot neuralgia. Even during his appointments with Dr. Vanderloo, whom claimant urges the undersigned to rely upon due to the extensive treatment in 2016 and 2017, there was no mention of right ankle pain. In the January 17, 2017, pain drawing, there were no markings at the ankle. Again, relying primarily on Dr. Gibbons, it is deemed that claimant has sustained a 15% functional loss.

(Arbitration Decision at 16). In an Order Nunc Pro Tunc, the Deputy Commissioner corrected this statement and indicated that Dr. Gibbons assigned a 9% rating, but maintained the finding of 15% impairment. Therefore, the amended Arbitration Decision now reads:

Dr. Gibbons assigned a 9 percent impairment rating to the right lower extremity. Claimant argues that Dr. Gibbons' opinion is less reliable because Dr. Gibbons did not fully appreciate claimant's ankle instability and loss of range of motion. However, since August 2015, the claimant's primary complaints have been with his right knee and foot neuralgia. Even during his appointments with Dr. Vanderloo, whom claimant urges the undersigned to rely upon due to the extensive treatment in 2016 and 2017, there was no mention of right ankle pain. In the January 17, 2017, pain drawing, there were no markings at the ankle. Again, relying primarily on Dr. Gibbons, it is deemed that claimant has sustained a 15% functional loss.

(2/28/2020 Order Nunc Pro Tunc). The Appeal Decision adopted the Arbitration Decision, along with the Order Nunc Pro Tunc and, therefore, part of the Agency Decision was a 15% functional impairment of the lower right extremity.

Benton argues the Agency Decision erred in assigning a 15% impairment instead of a 9% impairment. Benton challenges the finding of a 15% functional impairment due to a lack of substantial evidence<sup>1</sup>. (See Brief at 28).

Here, substantial evidence supports the Agency Decision. “The law limits disability resulting from a scheduled injury to the physiological or functional loss of the body part. The commissioner arrives at functional disability by determining the impairment of the employee’s bodily function and limits the function and limits the functional disability to the loss of the physiological capacity of the injured body or body part.” Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The Agency Decision assigns 15% impairment, a number in between the percentages assigned by the two medical professionals to address the right lower extremity: Dr. Taylor provided a 21% impairment and Dr. Gibbons a 9% impairment.

The Order Nunc Pro Tunc explains that the Deputy Commissioner also relied upon lay testimony regarding loss of the physiological capacity to Lawson. “The commissioner may use either medical or nonmedical evidence to determine the extent of disability of a scheduled member.” Sherman v. Pella Corp. 576 N.W.2d 312, 322 (Iowa 1998); see also Horn v. Cummins Filtration-Lake Mills, 841 N.W.2d 356 (Iowa Ct. App. 2013). Dr. Gibbons first provided the

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<sup>1</sup> Benton’s Legal Brief on Judicial Review asserts that interpretation of law must be reviewed for correction of errors at law. (Brief at 25). Benton also asserts there was an incorrect application of law to the facts of the case, which Benton claims is reviewed for correction of errors at law, but is actually reviewed for abuse of discretion. (Brief at 25); See Meyer v. IBP, 710 N.W.2d 213, 219 (Iowa 2006). Regardless, despite these assertions, Benton does not identify a claimed error in either an interpretation of law or application of law to facts and expressly makes a substantial evidence argument. (Brief at 28).

impairment rating in 2015 and, since that time, Lawson returned for treatment of his right knee and testified as to weakness, pain and numbness in and around his right knee. The Arbitration Decision walks through the ongoing issues Lawson testified he has with his right foot and knee at the November 12, 2019 Arbitration Hearing. Lawson continues to have burning pain on the bottom of his right foot due to neuralgia and continues to have right knee pain, weakness, and numbness. Medical records indicate these issues will likely continue. (JE 3-5, (Dr. Schmidt advised Gabapentin to control nerve pain will likely be needed for lifetime), JE 5-31, (Dr. Gibbons noted there was little treatment for the condition)). Although Lawson does not have work restrictions imposed by a treating physician, he receives help at work for certain activities and is limited in his recreational activities due to limited use of his right lower extremity. The Agency Decision articulated that it found Dr. Gibbons more credible, working off the 9% instead of the 21% rating, and that once Lawson's testimony about the extent of his physiological or functional loss of the body part was factored in, the Agency Decision found 15% to be the appropriate impairment rating. Therefore, substantial evidence supports the decision and it is not an abuse of discretion, illogical, or irrational.

**C. Whether the Agency Erred in Assigning Tax Exemptions.**

To determine the appropriate weekly rate, the Iowa Workers' Compensation Commission must determine the number of tax exemptions to apply. Compensation in workers' compensation is based on an employee's "spendable weekly earnings." Section 85.61(6)(a) defines payroll tax, which is deducted from gross earnings to calculate "spendable weekly earnings." Iowa Code § 85.61(9), (6)(a). The language of section 85.61(6)(a) determines payroll taxes based on assigning any exemptions the employee was "entitled" to "on the date on which the employee was injured." A greater number of exemptions will reduce the amount of taxes deducted from gross earnings. Iowa Code provides that for purposes of such calculations, the Commission is to determine tax

withholding “as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness, and old age to which the employee is entitled on the date on which the employee was injured.” Iowa Code § 85.61(6)(a),(b).

Lawson has four stepchildren and two biological children. (See Arbitration Transcript at 14-15). At the time of injury, two stepchildren and one biological child (M.L.) were minors. Lawson testified that, in 2014, the year of the injury, he claimed only the two minor stepchildren as dependents on this tax returns. He did not claim his minor biological child M.L. because his ex-wife, the child’s mother, was entitled to claim her pursuant to their divorce decree. Lawson testified that this child, his youngest biological child, lives with him more than 50% of the time, his ex-wife has visitation every Wednesday and every-other-weekend, he receives child support, and he provides food, shelter, and clothing. (See, generally, Arbitration Transcript at 14)

The Agency Decision found Lawson was entitled to five exemptions, one of which was based on his youngest biological child. This finding was an error of law in the interpretation of section 85.61(6)(a),(b). The Agency Decision held that because Lawson provided greater than 50% of the support to this child, he was entitled to the exemption. However, Lawson does not meet the statutory definition for the exemption. On the date Lawson was injured, he was not “entitled” to claim his youngest biological child. Pursuant to the divorce decree, his ex-wife was entitled to claim this child.

“Although not always determinative, tax records are good evidence of marital status and entitlement to exemptions.” Janes v. Express Employment Professionals, 2014 WL 7284377 (Iowa Workers’ Comp. Com’n 2104). “Claimant is allowed an exemption for a child whom he supported where the evidence failed to expressly address the issue of whether or not he was entitled to claim the child as a dependent for income tax purposes.” See Walker v. IBP, Inc., 2002 WL

32125376 (Iowa Workers' Comp. Com'n 2002). Although tax returns may not always be determinative, here, a court order establishes whether Lawson is entitled to the exemption. Lawson does provide support to his minor child M.L., but Lawson could not have claimed M.L. as a dependent on the date of the injury pursuant to his divorce decree. See e.g. Deraad v. Fred's Plumbing, 2002 WL 32125759 (finding claimant could claim two of his four children, since he and the children's mother had an agreement to each claim two of the children). This is not a situation where Lawson could have claimed his youngest biological child but did not do so through inadvertence or choice. Instead, Lawson testified the divorce decree entitled his ex-wife to claim his youngest child. (Transcript at 15). Therefore, he was not "entitled" to claim the child as required by Iowa Code section 85.61(6)(a). The Agency Decision is reversed in part based on an error at law in the interpretation of Iowa Code section 85.61(6)(a) and the matter is remanded for calculation of weekly benefits based on this holding.

**D. Whether the Agency Abused its Discretion in Not Awarding the Costs of Dr. Taylor's IME.**

Iowa Code section 86.40 provides that "All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Iowa Code §86.40. Lawson had asked for the IME of Dr. Taylor to be taxed as a cost. The Arbitration Decision ordered the parties to be responsible for their own costs and, therefore, denied the request. The Arbitration Decision ordered the costs of the transcript to be shared equally. The Arbitration Decision notes that Lawson's arguments did not prevail. The Appeal Decision affirmed the Arbitration Decision and became the final agency action.

Iowa statute grants the Agency discretion to tax costs. This Court finds the Agency Decision is not an abuse of discretion. The fact that Lawson was awarded workers' compensation benefits does not entitle him automatically to costs. Here, the main issue in dispute was whether

Lawson sustained injury to the body as a whole and, therefore, industrial disability, based on injury or aggravation to the right hip and low back. On that issue Lawson was not successful. Consideration of the Parties' positions in the case and the success of each Party in assessing costs is not an abuse of discretion. In addition, the Agency did not rely on Dr. Taylor's opinion for either the causation analysis or the functional impairment rating. Therefore, the Court finds the assessment of costs was not an abuse of discretion.

**IT IS HEREBY ORDERED** that the Agency Decision is AFFIRMED in Part and REVERSED in Part. The Agency Decision is REVERSED in the assignment of five exemptions and remanded with instructions to adjust the exemptions based on this order. The Agency Decision is AFFIRMED in all other issues raised. Costs of this matter shall be split by the Parties.

**IT IS SO ORDERED.**



State of Iowa Courts

**Case Number**  
CVCV061001

**Case Title**  
MATTHEW LAWSON V BENTON SAND ANDB GRAVEL  
INC ET AL  
**Type:** OTHER ORDER

So Ordered

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Sarah Crane, District Court Judge  
Fifth Judicial District of Iowa

Electronically signed on 2021-07-09 15:58:02