BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RAY OPPMAN, Claimant, vs. EATON CORPORATION, Employer, and OLD REPUBLIC INSURANCE COMPANY, Insurance Carrier, SECOND INJURY FUND OF IOWA, Defendants.	File No. 1649999.01 ARBITRATION DECISION Head Note Nos.: 1108, 1803

STATEMENT OF THE CASE

The claimant, Ray Oppman, filed a petition for arbitration and seeks workers' compensation benefits from Eaton Corporation, employer, and Old Republic Insurance Company, insurance carrier. In addition, claimant filed against the Second Injury Fund of Iowa. The claimant was represented by James Fitzsimmons. The defendants were represented by Kent Smith. The Fund was represented by Jonathan Bergman.

The matter came on for hearing on March 24, 2022, before Deputy Workers' Compensation Commissioner Joe Walsh in Des Moines, Iowa via Zoom videoconferencing system. The record in the case is voluminous and consists of Joint Exhibits 1 through 26; and Defense Exhibit A. The claimant testified at hearing. Jane Weingart served as court reporter. The matter was fully submitted on May 20, 2022, after helpful briefing by the parties.

ISSUES

The parties submitted the following issues for determination:

1. The primary question in this case is the nature of the claimant's permanent disability. Claimant alleges a right knee injury, which arose out of and in the course of his employment on January 23, 2018. All parties stipulate to this injury. Claimant alleges a sequela low back condition which is disputed by defendant employer.

2. If the sequela condition is found to be causally connected to the work injury, then the extent of industrial disability is the primary fighting issue. Claimant is also seeking medical expenses for the low back condition and future medical care.
3. If the sequela condition is not causally connected, then the issue is whether the Second Injury Fund Act is applicable.

STIPULATIONS

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

1. The parties had an employer-employee relationship.

2. Claimant sustained an injury to his right leg which arose out of and in the course of employment on January 23, 2018.

3. Temporary disability/healing period and medical benefits are no longer in dispute.

4. The commencement date for any permanent disability benefits is September 18, 2018.

5. The weekly rate of compensation is $609.83.

6. Defendants have paid and are entitled to a credit of 4.4 weeks of compensation (permanent partial disability).

7. Affirmative defenses have been waived.

FINDINGS OF FACT

Claimant, Ray Oppman, was 48 years old as of the date of hearing. He is unmarried and resides in Belmond, Iowa. He testified live and under oath at hearing. I find his testimony to be credible. He was a decent historian. He was verbose, often providing long answers to questions. His testimony was generally consistent with other portions of the record. There was nothing about his demeanor which caused me any concern about his truthfulness.

Mr. Oppman graduated from high school in 1992. He attained a liberal arts associate degree from North Iowa Area Community College in addition to a law enforcement certificate and a firefighter's certificate. He began working for Eaton Corporation in Belmond in 1994. Eaton manufactures engine valves. Mr. Oppman worked a number of jobs for Eaton throughout the manufacturing process during the time he worked there. He estimated that he had run 90 percent of the machines in the plant. For this reason, he testified that he often worked as a floater, filling in on positions when others were unavailable. He often worked 10 or 12 hour days.

Prior to his 2018 work injury, Mr. Oppman had other serious health conditions. He has been asthmatic since he was a child often resulting in significant symptoms. He has been on prednisone and inhalers for this, since he was in his 20's. He was

eventually approved for intermittent FMLA due to his asthma. (Transcript, page 42) When his asthma would flare up he would usually miss 3 or 4 days of work. (Tr., p. 60)

In 1993, Mr. Oppman was in a motorcycle accident which resulted in a fracture to his left tibia and fibula near his ankle. He had surgery which required a metal plate. (Joint Exhibit 15, page 367) In 1997, he reinjured his left ankle in a workplace accident at Eaton. The steel plate had to be removed. This left ankle condition has been disabling over the years. From time to time, Mr. Oppman has received treatment for this condition.

On August 20, 2014, Mr. Oppman sustained another work injury, this time to his right wrist and arm. He broke a bone and tore a ligament. He was treated and recovered, however, he sustained a permanent impairment of 9 percent of his right arm. He was given restrictions of no lifting more than 20 pounds with his right arm or 40 pounds with both. (Jt. Ex. 2, p. 4) Because of these restrictions, he transferred to a different position in the plant which required less lifting. (Tr., pp. 16-18)

Mr. Oppman has also struggled with his weight throughout his adult life. At one time he was up to 416 pounds. He was treated for weight loss starting in 2014 and by 2016, managed to reduce his weight significantly (down to 364). (Jt. Ex. 6, p. 430) He was eventually approved for gastric sleeve surgery, however, he never ended up having the surgery. Mr. Oppman is also a smoker. He has developed COPD and the smoking undoubtedly aggravates his asthma. While he had been approved for the surgery in 2016, he failed a nicotine test, which the physician apparently required for the surgery. (Jt. Ex. 22, p. 431) In any event, Mr. Oppman testified he chose not to have the surgery.

In spite of all of his preexisting health conditions, Mr. Oppman was a valued employee for Eaton who often worked 10 or 12 hour days and was skilled in numerous areas of the plant. His work evaluations were generally good. He did have attendance issues, mostly resulting from these aforementioned preexisting conditions.

The medical records in evidence also reflect that Mr. Oppman did have low back pain, as well as hip and buttock pain on occasion prior to his January 2018 work injury. This is documented in particular in Mr. Oppman's medical notes for his weight loss treatment. (Jt. Ex. 22, pp. 417, 422) There is no indication of any actual diagnosis or treatment for any specific low back condition, but it is evident that he at least had some intermittent symptoms at that time.

On January 23, 2018, Mr. Oppman sustained a slip and fall injury due to a slippery floor. He testified about the incident at hearing and it is otherwise well-documented. (Tr., p. 20; Jt. Ex. 1, p. 1) He felt "pops" in his right knee. He was immediately transported to the Belmond Clinic where he saw Joshua Baker, D.O. Dr. Baker immediately ordered an MRI. He was provided crutches, and a hinged knee brace. (Jt. Ex. 4, p. 16) Dr. Baker noted that Mr. Oppman had an antalgic gait at this visit and recommended work restrictions. (Jt. Ex. 4, pp. 16-17) It is noted that Mr. Oppman weighed 382 pounds at this time. Mr. Oppman underwent an MRI of the right knee on February 1, 2018. The MRI showed several tears. (Jt. Ex. 4, p. 22) The following day he was referred to an orthopedic specialist for evaluation. For reasons not entirely clear in this record, he did not see a knee specialist until April 5, 2018. Dr.

Baker noted that the consultation was being delayed because of a "causality study" that will be performed. (Jt. Ex. 4, p. 33, 34)

In the meantime, Mr. Oppman's other conditions flared up. On February 2, 2018, he saw his family physician for a flare up of his asthma. (Jt. Ex. 4, p. 24) On February 13, 2018, his wrist and left ankle flared up due to the use of his crutches. (Jt. Ex. 4, p. 33) Mr. Oppman fell on the ice at work on February 16, 2018, and was seen on an emergency basis for this. (Jt. Ex. 4, p. 37) He then saw Mark Palit, M.D., who recommended evaluation at the University of Iowa for treatment. (Jt. Ex. 4, p. 43) He was finally evaluated by Matthew Bollier, M.D., at the University of Iowa Hospitals and Clinics on April 5, 2018. Dr. Bollier diagnosed an ACL/MCL tear, as well as medial meniscus tear. He recommended surgery. (Jt. Ex. 5, p. 208) He performed the surgery to repair these conditions on May 2, 2018. (Jt. Ex. 5, p. 217)

On May 25, 2018, he began physical therapy. At his first therapy visit, the notes reflected that he walked with an antalgic gait. (Jt. Ex. 4, p. 55) On June 5, 2018, he reported his "back has been bothering him and his L leg has been more sore and swollen due to favoring his R leg since surgery." (Jt. Ex. 4, p. 65) He reported low back symptoms to Dr. Bollier a few weeks later.

> Mr. Oppman reports stabbing posterior right knee pain on occasion when his knee straightens too far as well as numbness at the anterior knee, rated 4/10 per symptoms drawing. He also reports aching and burning low back pain with standing and walking, which resolves when sitting or lying down.

(Jt. Ex. 5, p. 225) In his follow up visits, Mr. Oppman continued to report low back pain, and breathing problems. This is well-documented in Dr. Bollier's notes, as well as the physical therapy notes. During this time, Mr. Oppman testified that his weight began to increase due to his inactivity. He was provided medications for the back spasms and physical therapy included "gait training." (Jt. Ex. 4, p. 97)

On August 31, 2018, the physical therapy documented the following:

> Patient has put forth good effort while in therapy and has made gradual improvements in right lower extremity strength, stability, and balance. However, his back pain has been worsening over time and standing activity has become increasingly painful and difficult. His shortness of breath with activity has also limited his activity tolerance with therapy.

(Jt. Ex. 4, p. 125) Mr. Oppman returned to Dr. Baker on September 4, 2018. His chief complaint was low back pain. Dr. Baker documented the following:

> Approximately 3 months, right sided. Moderate to severe. Much better when he sits down. Much worse when he stands up. The back pain is making him feel short of breath, cyclobenzaprine 5 mg once daily may have helped but he is not sure. Ibuprofen is not helping. Physical therapy for his knee and rehabilitation is not helping.

> He has had over 50 pound weight gain recently due to some prednisone use and inactivity.
>
> He has been walking with a funny gait because of his knee problem.
>
> Some radiation of the pain with some numbness to his buttocks.

(Jt. Ex. 4, p. 128) Dr. Baker then provided the following opinions:

> This appears to be an uncomplicated lumbar muscle strain which is suspect [sic] is related to his abnormal walking, given his recent right knee surgery, weight gain, morbid obesity.
>
> I recommend the patient stay up and active as much as tolerated and I advocated against a sedentary lifestyle for this type of clinical scenario.
>
> Due to the duration of symptoms, I will recommend imaging. We will start with x-rays and may need MRI of indicated. [sic]

(Jt. Ex. 4, p. 129)

Two weeks later, on September 17, 2018, Dr. Bollier examined Mr. Oppman for the final time. He released Mr. Oppman without medical restrictions, other than he recommended he not work on oily surfaces. (Jt. Ex. 5, p. 235) He assigned a 2 percent permanent impairment rating per the AMA Guides, Fifth Edition. Regarding his back pain, Dr. Bollier stated the following. "We explained that per work comp rules, the back pain is not considered a work injury. Do think he needs treatment and evaluation for that with his PCP." (Jt. Ex. 5, p. 235) Following this appointment, Mr. Oppman had a conversation with his employer. He testified that he was told he could return to his original position, "centerless grinder." (Tr., p. 34) Mr. Oppman testified that this position worked on and around slippery surfaces. He testified he remained on his light-duty job in the lab until he was terminated approximately a month later. (Tr., p. 34) He had a low back MRI on September 25, 2018. It revealed multilevel degenerative disc disease, "with diffuse disc bulge and severe central canal narrowing. (Jt. Ex. 4, p. 135) Dr. Baker referred Mr. Oppman to a pain specialist. (Jt. Ex. 4, p. 137)

Mr. Oppman's termination papers are in evidence. (Jt. Ex. 6, pp. 289-290) This documentation suggests he was terminated on October 25, 2018, for missing too many days between December 2017 and October 2018. (Jt. Ex. 6 pp. 289-290) Mr. Oppman testified that he understood he was terminated because he ran out of FMLA. (Tr., p. 34) Mr. Oppman applied for both unemployment and Social Security Disability (SSD).

Mr. Oppman continued to seek treatment for his low back condition. He was evaluated by Ronald Kloc, D.O., in October 2018. Dr. Kloc diagnosed "severe central spinal stenosis at L1-L2, but with neurogenic claudication." (Jt. Ex. 7, p. 298) Dr. Kloc began a series of epidural steroid injections which continued through April 2019. (Jt. Ex. 7, pp. 302-309) In June 2021, he sought care at Iowa Specialty Hospital Pain Clinic in Belmond, which resulted in a right lumbar radiofrequency ablation in October 2021. (Jt. Ex. 4, p. 199)

On January 26, 2019, the Social Security Administration awarded Mr. Oppman SSD benefits, with an effective disability date of January 23, 2018. (Jt. Ex. 8, p. 311)

In addition to the treatment records, two physicians have provided expert medical opinions.

On April 23, 2019, John Kuhnlein, D.O., submitted an expert report outlining opinions on medical causation and permanency. He reviewed records, took history and examined Mr. Oppman. He diagnosed the ligament tears in the right knee, as well as "L1-L2 spinal stenosis with possible claudication." (Jt. Ex. 9, p. 323) With regard to medical causation, he opined the following:

> All opinions are expressed within a reasonable degree of medical certainty. Mr. Oppman directly and causally sustained the above-noted ligament tears and partial medial meniscus tear as a result of the January 23, 2018, acute injury sustained while at work for Eaton Corporation. He relates no prior right knee injuries before the January 23, 2018, acute injury when he essentially did the splits, noting a popping sensation as he did the splits, with immediate pain in the right knee. The initial evaluation performed on the date of the injury showed marked clinical abnormalities that were confirmed on February 1, 2018, by the MRI scan. Given the acute pain and dysfunction, with the findings noted very close to the time of the injury, the knee injury and surgical treatment outlined above were related to the January 23, 2018, acute injury.
>
> Mr. Oppman relates the low back pain started within a couple of weeks of the surgery, as his gait changed when he was limping after the surgery, and there were other changes in his activities of daily living, such as the inability to bend the right knee to put his socks on that caused him to change the way he performed his activities of daily living. Mr. Oppman is a morbidly obese gentleman, and that also impacted the way he had to do things after the surgery. The L1-L2 spinal stenosis predated the injury but was asymptomatic. The changes in his gait and activities of daily living "lit up" this pre-existing spinal stenosis and made it symptomatic, based on the beneficial response to the L1-L2 epidural injections performed by Dr. Kloc. It is more likely than not that this low back pain and possible claudication developed as a sequela to the January 23, 2018, right knee injury and May 2, 2018, knee surgery based on the gait changes and the differences in his activities of daily living.

(Jt. Ex. 9, pp. 323-324) He then assigned a 10 percent impairment for the right lower extremity and a 5 percent whole body rating for the low back stenosis. (Jt. Ex. 9, p. 325) His recommended restrictions were quite significant.

> It is impossible for me to assign permanent restrictions only for the knee and back conditions, as Mr. Oppman has multiple significant other medical conditions that impact his functional ability. For example, he has significant dyspnea and wheezing after walking one or two steps. He relates that he is being worked up for either cardiac asthma or pulmonary hypertension, either of which would also significantly limit his work

abilities. His morbid obesity and bilateral lower extremity edema would also be limiting, even though unrelated to the work injuries. Because of these significant comorbidities, I do not believe that a functional capacity evaluation would be of any value in determining his work abilities. As a result, I am going to assign overall restrictions and mention restrictions for the back or knee as best I can.

Material handling restrictions would include lifting 20 pounds occasionally from floor to waist, 20 pounds occasionally from waist to shoulder, and 20 pounds occasionally over the shoulder, but because of his lung conditions, he would not be able to do anything other than lift the weight. He would be unable to do anything useful with it because of his pulmonary condition and carrying the weight would be difficult because of his right knee and the bilateral lower extremity edema.

Nonmaterial handling restrictions would include sitting, standing, or walking on an as able basis with the ability to change positions for comfort. These functions would be limited by a combination of his pulmonary condition, his knee condition, and his other leg conditions. Mr. Oppman can stoop or squat rarely, limited by a combination of his pulmonary condition, his knee and back condition, and his other peripheral leg condition. Mr. Oppman can occasionally bend because of his back condition, but he also becomes dyspneic with this activity. Mr. Oppman cannot crawl because of a combination of his knee condition, his other lower extremity edema issues, his pulmonary condition, and his back condition. Mr. Oppman can rarely kneel because of his knee condition. Mr. Oppman cannot work on ladders or at height because of his pulmonary and knee conditions, as he would be unable to maintain a three-point safety stance safely. Mr. Oppman can very rarely climb stairs, primarily because of his pulmonary condition, but also because of his knee condition to a lesser degree. He can work at or above shoulder height occasionally because of his back condition and the “moment arm” phenomenon in the lumbar spine with such material handling activities, but he would not be able to do many activities because of his pulmonary condition. He can grip or grasp without restrictions. He is not able to operate industrial machinery with his lower extremities, because of a combination of his lung conditions – he would become too dyspneic to operate the machine effectively – his right knee, and his other lower extremity conditions.

There are no vision, hearing, or communication restrictions. Mr. Oppman can travel for work, as long as he can take stretch breaks from time to time. Mr. Oppman can use hand or power tools on an occasional basis. He should avoid working on oily or slick surfaces because of the risk that he might fall, affecting his back and knee. If working on uneven surfaces, good footgear would be appropriate to prevent falls because of the knee condition. There are no personal protective equipment restrictions. Mr. Oppman cannot work on production lines because of his

> lung condition, his knee condition, and the edema in both legs. There are no shiftwork issues.

(Jt. Ex. 9, pp. 325-326)

On January 20, 2022, Joseph Chen, M.D., submitted a report for defendants. He also reviewed records and examined Mr. Oppman. Dr. Chen diagnosed the knee tears as well as lumbar spondylosis with DJD L1-L2 with central spinal stenosis. (Jt. Ex. 12, p. 340) He opined the following with regard to causation: "It is my medical opinion that Mr. Oppman's right knee condition did not lead to his low back symptoms." (Jt. Ex. 12, p. 340) "Records indicate that Mr. Oppman did not report any back pain following his initial work injury on January 23, 2018 or even after slipping and falling on the ice when going in to work to sign papers in February 2018." (Jt. Ex. 12, p. 341) I do not find this opinion convincing. He suggested that it was Mr. Oppman's "personal risk factors that led to his development of this condition. He assigned a 9 percent rating (of the right lower extremity) for the knee condition. (Jt. Ex. 12, p. 342)

In addition to the foregoing, the authorized treating physician, Dr. Baker, prepared a detailed report on September 22, 2020. This report both summarized his treatment of Mr. Oppman and provided expert medical opinions. Dr. Baker opined that Mr. Oppman's "abnormal gait and weight gain from [his] right knee surgery as a result of his January 23, 2018 work injury, materially aggravated, accelerated or sped up the degenerative process in his lumbar back resulting in my referral … to the Mason City Clinic interventional pain specialist Dr. Kloc." (Jt. Ex. 10, p. 330) I find that this opinion is highly convincing and credible.

CONCLUSIONS OF LAW

The first question submitted is the nature of Mr. Oppman's permanent disability. Claimant contends his disability extends into his back and is therefore, industrial. The employer and insurance carrier contend that claimant's disability is limited to his right leg and should be evaluated under Iowa Code section 85.34(2)(p) (2021). The Second Injury Fund agrees with the claimant.

This is primarily an issue of medical causation. That is, whether the stipulated work injury is a substantial cause of the development of Mr. Oppman's low back condition.

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).

When an injury occurs in the course of employment, the employer is liable for all of the consequences that "naturally and proximately flow from the accident." Iowa Workers' Compensation Law and Practice, Lawyer and Higgs, section 4-4. The Supreme Court has stated the following. "If the employee suffers a compensable injury and thereafter suffers further disability which is the proximate result of the original injury, such further disability is compensable." Oldham v. Scofield & Welch, 222 Iowa 764, 767, 266 N.W. 480, 481 (1936). The Oldham Court opined that a claimant must present sufficient evidence that the disability was naturally and proximately related to the original work injury.

The question in this case is whether the claimant developed a sequela injury condition in his low back.

Having reviewed the entire record as a whole, I find that a greater weight of evidence supports a finding that Mr. Oppman did sustain a functional impairment in his low back which resulted from his original work injury. This is based upon Dr. Kuhnlein's expert opinion, Dr. Baker's opinion as a treating physician, combined with Mr. Oppman's credible testimony, as well as relevant treatment records. I reject the opinion of Dr. Chen who did not appear to even utilize the correct legal standard for his medical causation opinion. In any event, this opinion is simply not believable in light of the treatment records and opinions of Dr. Baker.

Since I have found claimant has sustained a disability to his whole body, there is no Second Injury Fund liability. All issues involving the Second Injury Fund are deemed moot.

The next issue is the extent of industrial disability.

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

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

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

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

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City Ry. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

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).

It has long been the law of Iowa that Iowa employers take an employee subject to any active or dormant health problems and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). A material aggravation, worsening, lighting up or acceleration of any prior condition has been a viewed as a compensable event ever since initial enactment of our workers' compensation statutes. Ziegler v. United States Gypsum Co., 252 Iowa 613; 106 N.W.2d 591 (1961). 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).

The refusal of defendant-employer to return claimant to work in any capacity is, by itself, significant evidence of a lack of employability. Pierson v. O'Bryan Brothers, File No. 951206 (App. January 20, 1995). Meeks v. Firestone Tire & Rubber Co., File No. 876894, (App. January 22, 1993); See also, 10-84 Larson's Workers' Compensation Law, section 84.01; Sunbeam Corp. v. Bates, 271 Ark. 609 S.W.2d 102 (1980); Army & Air Force Exchange Service v. Neuman, 278 F. Supp. 865 (W.D. La. 1967); Leonardo v. Uncas Manufacturing Co., 77 R.I. 245, 75 A.2d 188 (1950). An

employer who chooses to preclude an injured worker's re-entry into its workforce likely demonstrates by its own action that the worker has incurred a substantial loss of earning capacity. As has previously been explained in numerous decisions of this agency, if the employer in whose employ the disability occurred is unwilling to accommodate the disability, there is no reason to expect some other employer to have more incentive to do so. Estes v. Exide Technologies, File No. 5013809 (App. December 12, 2006).

Having reviewed the entire record as a whole, I find that the claimant is permanently and totally disabled. Mr. Oppman was 48 years old as of the date of hearing. He has a manual labor work history, having worked for Eaton for most of his adult life. Despite his numerous health conditions prior to this work injury he was a valuable, skilled employee for Eaton. He often worked long hours and has demonstrated high work motivation throughout his work life.

His work injury has resulted in a disability to his right knee. I have found that this condition has resulted in a sequela condition in his low back. The result of this has been a significant amount of treatment and healing culminating in permanent disability in both the right knee and the low back. His restrictions are best stated by Dr. Kuhnlein. (Jt. Ex. 9 pp. 325-326) His employer was unable to find any work for him given his condition. While the stated reason for his termination appears to be excessive absenteeism, the reality is there is no gainful work that Mr. Oppman could perform for Eaton because of the slippery surfaces. Mr. Oppman has been deemed totally disabled by the Social Security Administration. While he has not made a significant job search since recuperating, I find that even if he had it would make little difference.

The defendants argue that claimant's primary disabling condition did not result from his work injury, but rather, other health concerns. I agree that claimant has numerous health concerns which are not related to his work injury, however, the facts demonstrate convincingly that Mr. Oppman has had these conditions for some time and he was always able to work with these conditions. In fact, he not only worked but he was highly productive and valuable. He was able to perform all of the tasks in a fairly heavy work environment with minimal limitations. He is now unable to work because of a combination of all of these conditions – both work related and non-work related. The employer is required to "take the injured worker as it finds him." Given the serious conditions in his right knee and back, I have found he is no longer able to perform any meaningful work in the competitive job market.

Since I found claimant permanently and totally disabled, I conclude that claimant is entitled to benefits from the date of his injury forward. Defendants are entitled to a credit for all of the time that the claimant worked, as well as the workers' compensation benefits paid.

The next issue is whether Mr. Oppman is entitled to medical expenses both past and 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).

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

Having found that the claimant's low back condition was caused by or substantially aggravated by his work injury, I find that he is entitled to the medical expenses set forth in Joint Exhibit 18. I further find that claimant is entitled to future medical treatment for all of his work-related conditions, including treatment directed by Shelley Wells, D.O., as alternate medical care.

The final issue is costs.

Iowa Code section 86.40 states:

> Costs. All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> Costs. Costs 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, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010). The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

I find the employer is responsible for costs as set forth in Joint Exhibit 19.

ORDER

THEREFORE IT IS ORDERED

All benefits shall be paid at the stipulated weekly rate of six hundred nine and 83/100 ($609.83) per week.

Defendants shall pay the claimant permanent total disability benefits commencing from the date of injury through the date of hearing and ongoing as long as he remains permanently and totally disabled.

Defendants shall pay accrued weekly benefits in a lump sum.

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

Defendants shall be given credit for all weeks that he worked following the work injury, as well as all weeks he was paid weekly compensation benefits.

Defendants are responsible for the past medical expenses as set forth in Joint Exhibit 18.

Defendants are responsible for future medical expenses from the treating physicians, including Shelley Wells, D.O.

There is no Second Injury Fund liability.

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

Costs are taxed to defendants consistent with this decision.

Signed and filed this 9th day of November, 2022.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Fitzsimmons (via WCES)

Kent Smith (via WCES)

Jonathan Bergman (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.