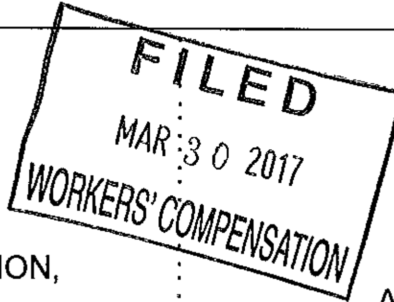
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



TROY HODGSON, Claimant, vs. BRETT VOSS CONSTRUCTION, Employer, and OWNERS INSURANCE COMPANY, Insurance Carrier, Defendants.	:	File No. 5048684 ARBITRATION DECISION Head Note Nos.: 1802, 1803

STATEMENT OF THE CASE

Troy Hodgson, claimant, filed a petition in arbitration seeking workers' compensation benefits from Brett Voss Construction and its insurer, Owners Insurance Company, as a result of an injury he allegedly sustained on November 26, 2013 that allegedly arose out of and in the course of his employment. This case was heard in Des Moines Iowa, and fully submitted on October 1, 2016. The evidence in this case consists of the testimony of claimant, Michelle Hodgson, Brett Voss and Joint Exhibits 1 – 7A, Claimant's Exhibits 8 – 14 and Defendants' Exhibits A – J. Claimant moved to orally amend the petition to change the injury date from November 25, 2013 to November 26, 2013[1]. Defendants had no objection. The motion was granted.

ISSUES

1. Whether claimant sustained an injury on November 26, 2013 which arose out of and in the course of employment;

2. Whether the alleged injury is a cause of temporary disability and, if so, the extent;

3. Whether the alleged injury is a cause of permanent disability and, if so;

4. The extent of claimant's disability.

[1] As many of the medical records refer to November 25, 2013 as the injury date, I have not changed all of the reference to the injury date to November 26, 2013 in this decision.

5. Whether the claimant is an odd-lot employee.

6. Claimant's gross earnings and weekly rate.

7. Whether claimant is entitled to alternative care.

8. Whether claimant is entitled to payment for an independent medical examination.

9. Assessment of costs.

STIPULATIONS

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 and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations. The defendants agreed claimant sustained a fall that arose out of and in the course of his employment, but do not stipulate claimant sustained temporary or permanent injuries due to that fall.

FINDINGS OF FACT

The deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

Troy Hodgson, claimant, was 45 years old at the time of the hearing. He dropped out of high school in tenth grade. He has not obtained a GED or attended any vocational or trade school. (Transcript, page. 8) Claimant obtained a commercial driver's license in 2002 and the license was current at the time of the hearing. Claimant received a certificate to perform asbestos removal and a certificate to drive a forklift truck. (Exhibit J, page 48)

Claimant worked for Brett Voss at Brett Voss Construction. Claimant has also worked for Ron Voss, Brett Voss' father. (Tr. pp. 8, 9) He resumed working for these employers in April/May 2013 and last worked in Aril 2014. (Tr. p. 10) He worked for these two entities simultaneously. Ron Voss' business is called R & B Construction. Claimant was earning $15.00 per hour R & B Construction and $13.50 for Brett Voss Construction. (Tr. p. 12) As an employee of Brett Voss Construction, claimant built basement foundations. As an employee for Ron Voss he drove a dump truck and helped around the shop. (Tr. p. 11) Claimant admitted that the work he performed for Brett Voss Construction was weather dependent. (Tr. p. 59) Claimant testified that he would work for whichever employer needed him. (Tr. p. 73)

Claimant worked for R & B Construction driving semi and dump trucks from approximately 2005 through 2008. (Tr. p.15) He worked for R & B Construction setting forms for foundations and footings from approximately 1999 through 2002. (Tr. p.17)

Between 2008 and 2012 claimant worked long haul truck driving. (Tr. p. 13) Claimant's net income from his trucking job in 2012 was $24,540.00. (Tr. p. 13; Ex. 11, p.3) Claimant worked for Gunderson trucking and Fremont Farms from 2002 – 2005. He would perform a number of tasks including driving and work on the chicken farm. Claimant also worked for Pepsi and Snack Express loading and unloading trucks. He worked pasteurizing eggs and briefly doing asbestos removal. (Tr. p. 18) Claimant worked as a cook at a truck stop for about three years. (Tr. p. 53; Ex. J, p. 49) His vocational history is also set forth in the vocation report, Exhibit 9.

On November 26, 2013, claimant was removing forms from a foundation. He stepped on a dirt clod and fell backward. Claimant described the fall as, "And then when I grabbed the wall, I folded backwards like a taco." (Tr. p. 20) Claimant said he was at grade level and fell into a hole. He said the pain from the fall made him cry. He was helped up out of the hole and into a truck. (Tr. p. 22) Claimant sat in the truck until the end of the work day. Brett Voss asked if he wanted to go to the hospital and claimant declined. (Tr. pp. 24, 60) Claimant said that he thought he would have to pay for the medical treatment if he went to the doctor/hospital. (Tr. p. 25)

Claimant went to Springfield Missouri over the Thanksgiving holiday. He returned to work in December. Claimant said that he and Brett Voss worked on building an addition and put in a concrete or brick wall. Claimant testified he has a difficult time as he was hurting and had to sit and ended up just holding the story pole. (Tr. p. 26)

Claimant completed time sheets for his work in December 2013. (Tr. p. 63; Ex. 11, pp. 28, 29) In December 2013, at one point he worked six days straight and worked ten or more hours four days. (Ex. 11, p. 29) The last day he worked for Brett Voss Construction was April 16, 2014. (Tr. p. 66)

Claimant was also doing work for R & B Construction after his fall at work. Claimant testified that between the two, R& B Construction and Brett Voss Construction he worked about 40 hours a week. (Ex. J, p. 53)

Claimant said that Brett Voss in December 2013 offered for claimant to use his teeter bed— a device that allows one to hook your feet in and hang upside down to stretch the back. (Tr. p. 27) Claimant said he and his co-worker and friend, Jim Sherwood obtained the teeter bed and set it up in claimant's home. That took place either in December 2013 or January 2014. (Tr. p. 28)

Claimant went to a chiropractor on January 9, 2014 due to low back pain. (Tr. p. 9; Ex. 6, pp. 1, 2) Claimant's next medical care was in March 2014. Claimant continued to work during this time. He described the work as not being regular hours, somewhat sporadic. (Tr. p. 30)

Claimant said that Brett Voss recommend he see a doctor and claimant went to the Mahaska Health Partnership and saw Diane Nutter, ARNP. Brett Voss authorized medical care for claimant at that time. (Tr. p. 32, Ex. 2, p. 3) Claimant testified he had two epidural injections that were authorized by defendants. He said the second injection made his pain worse. (Tr. p. 33)

Claimant was next referred to Daniel Miller, D.O., in May 2014 who referred claimant to Cassim Igram, M.D., in June 2014. Claimant said that Dr. Igram told him that he did not need surgery and was referred back to Dr. Miller. Dr. Miller recommended water therapy, which claimant said was helpful only while in the water. (Tr. p. 36).

ARNP Nutter assessed claimant with chronic pain syndrome March 9, 2015. (Ex, 2, pp. 18, 19)

Claimant saw Joseph Chen, M.D., at the University of Iowa Hospitals and Clinics (UIHC) for a second opinion in October 2014. Dr. Chen did not provide claimant with any treatment recommendations and a referral back to Dr. Miller. (Tr. p. 40) Claimant was informed after the visit with Dr. Chen that his workers' compensation benefits would be terminated and referred claimant to Dr. Miller. (Tr. p. 38) Claimant was informed that he was not entitled to any additional medical care after the appointment with Dr. Chen and obtained care on his own. (Tr. p. 41) The notes of the nurse case manager stated that Dr. Chen told her that "based off of exam his muscles are so tight and this is the cause/source of his pain." (Ex. 13, p. 1) The report stated that Dr. Chen did not recommend a FCE as he thought claimant would fail and recommended no further treatments. (Ex. 13, p. 1)

Claimant was referred to Timothy Miller, M.D., at Ottumwa Regional Health Center for an injection on January 30, 2015. Due to his back condition, the injection was not performed. (Tr. p. 42)

Claimant returned to the UIHC and saw neurosurgeon Matthew Howard, III, M.D., on February 5, 2015. Dr. Howard did not recommend surgery. (Tr. p. 44) Claimant started seeing a primary care physician and pain management physician at the UIHC. (Tr. p. 45)

Dr. Howard agreed with a letter prepared by defendants that in light of the work history of claimant working some after November 25, 2013 and gap in treatment, claimant's current neck and back complaints were not caused by his fall and that claimant's MRI findings were age appropriate and that claimant is not a surgical candidate. (Ex. C, pp. 15, 16)

At the time of the hearing claimant was taking morphine and Hydrocodone, muscle relaxants, as well as anti-depression medication. (Tr. p. 47) Claimant testified he needed a walker to walk at the time of the hearing. Claimant testified that he has an extremely sedentary lifestyle and typically only is able to sit in his chair and lay down

during the day. (Tr. 50) He said that his pain has gotten worse despite the medical treatment he has received. (Tr. p. 68)

Michelle Hodgson, claimant's wife testified. Ms. Hodgson said that James Sherwood brought the teeter bed to their house in the end of December 2013. (Tr. p. 76) Ms. Hodgson said that after his fall and before his first appointment with a doctor in March 2014 claimant was making complaints, he could not sit for very long and she would help him get up. (Tr. p. 78) She said that claimant started using a walker in August or September 2015. (Tr. p. 78) Ms. Hodgson has to assist the claimant in getting out of bed and with showers. She also assists when claimant has to use stairs. She confirmed claimant lives an extremely sedentary life and spends almost all of his time at home or at the doctors. (Tr. p. 81)

Brett Voss, owner of Brett Voss Construction, testified. Mr. Voss considered claimant, in one part of his testimony a full time employee. (Tr. p. 92; Ex, 12, p. 1) Mr. Voss said that for the most part, the work at Brett Voss Construction is weather dependent. (Tr. p. 93)

Mr. Voss did not see claimant fall at work, but did see two co-workers help claimant up after his fall. (Tr. p. 94) Mr. Voss asked claimant if he wanted to see a doctor after he fell and was told no. (Tr. p. 95) Claimant sat in the truck and was not able to do anymore work that day. (Ex. 12, p. 2) Mr. Voss agreed that the time sheets submitted by claimant in exhibit 11 were accurate.

Mr. Voss said that he did not recall claimant struggling to perform work in December 2013 or that claimant told him he could not work. (Tr. p. 96) He did not notice claimant having difficulty in January 2014 performing his work. (Ex. 12, p. 6) Mr. Voss did notice in February 2014 claimant was having difficulty in performing his work due to back pain. (Tr. p. 98; Ex. 12, p. 3) Mr. Voss testified that it was at this time he loaned claimant the teeter bed. (Tr. p. 99) In March when claimant returned to work Mr. Voss noticed claimant was in more pain and he recommended claimant see a doctor. (Tr. 99)

Mr. Voss agreed that he provided an affidavit in this matter, Exhibit D, page 21, that claimant did not complain about back pain or having difficulty performing work. (Tr. p. 105) Mr. Voss agreed that he provided a teeter hang-up devise– an inversion device to claimant. (Tr. p. 106) Mr. Voss was not certain when exactly he loaned the teeter device to claimant. (Tr. p.108) Mr. Voss was asked and answered,

> Q. And did you loan the teeter board to Mr. Hodgson because he was complaining of back pain and problems and you wanted to see if it would help him? Would you agree?
>
> A. I would agree with that, yes.

(Tr. p. 109) Mr. Voss also agreed that claimant told him before January 9, 2014 that claimant was going to see a chiropractor. (Tr. p. 110) Mr. Voss in another part of his testimony agreed that claimant was generally working part-time for Brett Voss Construction, but was able to work addition hours for R & B Construction. (Tr. pp. 110, 111)

Mr. Voss completed an affidavit that was provided to some of claimant's medical providers. (Ex. D, pp. 20, 21) The affidavit stated that claimant fell at work on November 25, 2013 and that claimant worked with him a few additional jobs during a lay off period, including laying a foundation around the end of December 2013. Mr. Voss said that claimant did not complain of pain during that time. And claimant complained of back pain in mid-February and was not able to complete the job he was working with Mr. Voss. (Ex, D, pp. 20, 21)

James Sherwood, a co-worker of the claimant testified via deposition. Sherwood was at the work site on November 26, 2013, and saw some fellow co-workers assist the claimant after his fall.

He worked with claimant in December 2013. Mr. Sherwood said that the claimant took it easier while working in December. (Ex. 14, p. 2) Mr. Sherwood testified that he thought that he picked up the teeter bed before January 1, 2014. (Ex. 14, p. 3) Mr. Sherwood noticed claimant was having a difficult time walking in February and March 2014. (Tr. p. 4)

On January 9, 2014, claimant went to Hoekstra Chiropractic because his low back was hurting. (Ex. 6, p. 1)

On March 10, 2014, claimant was seen by Diane Nutter, ARNP for back pain. ARNP Nutter noted claimant fell in November while at work. (Ex. 2, p 1) Her review of the musculoskeletal was:

> Back pain (Location: Lumbosacral spine. The severity is described as severe. Associated symptoms include no. Status: worsening. This has been occurring for 4 month(s). Radiation to the right leg right buttock. Exacerbated by walking. Quality: aching. Trauma: Work injury.)

(Ex. 2, p. 2) Her assessment was L5 radiculopathy, acute. (Ex. 2, p. 3) An x-ray report on that date showed retrolisthesis at L5-S1 level. (Ex. 2, p. 4) An MRI of March 13, 2014 showed:

> IMPRESSION:
>
> Small left paramedian disc protrusion at L5-S1 level.
>
> Minimal degree of retrolisthesis at L5-S1 level.
>
> No acute compression deformities or spondylolisthesis is seen.

Cauda equina is normal.

(Ex. 2, p. 5) On March 26, 2014 and April 18, 2014, claimant received a lumbar steroid injection. (Ex. 2, pp. 6, 8) On May 4, 2014, Daniel Miller, M.D., examined claimant on May 14, 2014 and assessed claimant with cervicalgia, neck pain and back pain – lumbar. (Ex. 4, p. 2) On May 27, 2014, Dr. Miller referred claimant to Cassim Igram, M.D., for his back pain. (Ex. 4. p.4)

On June 11, 2014, Dr. Igram noted claimant had an onset of November 25, 2013 and that his problem is worsening. (Ex. 5, p. 1) Dr. Igram noted that the MRI was unremarkable. He did not believe there was a need for surgical intervention and claimant was referred back to Dr. Miller. (Ex. 5, p. 3) On July 28, 2014, Dr. Miller noted marked pain behavior including guarding and crying. (Ex. 4, p. 10) Dr. Miller saw claimant a number of times until September 25, 2014. Claimant expressed extreme pain, constipation issues during all of these visits. Dr. Miller was not able to determine why claimant's condition would not improve. (Ex. 4, p. 14)

On September 25, 2014, Dr. Miller responded to a letter from defendants' attorney. Dr. Miller stated in part:

> 1. Given the the [sic] 3-1/2 half month gap between the date of the incident and the first treatment in March, I do not believe that Mister Hodgson's current complaints are caused or materially aggravated by the November 25, 2013 incident. According to the account given to me, Mister Hodgson sustained a significant fall. I would expect that if there were significant injuries that he would seek treatment immediately not 3-1/2 months later. Not only did the symptoms seem to really manifest themselves to significant degree 3-1/2 months after the injury, the symptoms have progressively been getting worse and appears that new symptoms are developing.

(Ex. A, p. 1) Dr. Miller noted that the MRIs of the claimant were consistent with degenerative disc disease and not an acute injury and that several treatment modalities did not help Mr. Hodgson. Dr. Miller said claimant was not a surgical candidate and another referral to a nonsurgical back specialist to determine if claimant's symptoms were related to his fall at work would be appropriate. (Ex. A. p. 1)

Sunil Bansal, M.D., performed an independent medical examination (IME) on August 22, 2014. (Ex. 8, pp. 11 – 17) Dr. Bansal wrote, "Of note is that he was not complaining of radicular neck or back pain just prior to the incident. Therefore, mechanistically and temporally, Mr. Hodgson's neck and back condition is causally related to the November 25, 2013 injury." (Ex. 8, p. 16) Dr. Bansal provided a five percent whole person rating for the neck and a five percent whole person rating for the back. (Ex. 8, p. 17)

On July 1, 2016, Dr. Bansal performed another IME. (Ex. 8, pp. 1 – 10) On the date of this IME claimant was using a wheeled walker. (Ex. 8, p. 6) Dr. Bansal did not change his opinion as to diagnosis, causation and impairment rating. (Ex. 8, p. 9) Claimant placed restriction of no lifting over 10 pounds occasionally and no lifting over 5 pounds frequently. He also recommended no frequent lifting or twisting, standing and walking as tolerated. Additionally, he limited claimant to sitting, standing and using his walker to 10 minutes. (Ex. 8, p. 9) I find these to be claimant's restrictions.

Joseph Chen, M.D., at the University of Iowa Hospitals and Clinics (UIHC) examined claimant on October 21, 2014. Dr. Chen noted claimant was using a quad cane with grimacing and dramatic pain behavior. (Ex. 1, p. 4) At that appointment, Dr. Chen told the claimant and his wife:

> I told them that chronic pain is difficult to understand and that the best treatment I could advise for him is 1) to understand the reason for why he has chronic pain and 2) what he can do to manage his chronic pain and 3) what medicine cannot do for his chronic pain.

(Ex.1, p. 6) Dr. Chen wrote that claimant had only minimal age appropriate changes without bony or nerve abnormalities in his spine. (Ex. 1, p. 6) Dr. Chen in this appointment wrote:

> I discussed chronic musculoskeletal pain with him. I explained that chronic pain frequently cannot be completely identified with current medical technologies. I briefly explained to him that the best explanation for his pain is that he has increased small fiber nerve "irritability" that excessively stimulates or "short-circuits" his spinal cord which, instead of normally "filtering" such signals, inadvertently "amplifies" these sensations and overwhelms his brain's ability to "over-ride" these pain signals. I explained the absence of successful medical intervention to "block" the innumerable small fiber nerves coming from these painful muscles, joints, and soft tissue structures, nor the ability for us to "re-program" his spinal cord filters to his pre-injury state. Successful strategies for improving a person's ability to "over-ride" these pain signals include using of cognitive-behavioral exercises, learning stress management and pain management skills, or treating underlying mental health conditions such as anxiety, depression, and PTSD. His patient-entered questionnaire scores today indicate quite high scores for anxiety and depression and poor mental health functioning.

(Ex. 1, pp. 6, 7) He found the claimant at maximum medical improvement and recommended restriction of sedentary work. He agreed with the 5 percent ratings for claimant's back and neck. (Ex. 1, p. 7)

On November 24, 2014, Dr. Chen agreed with a letter prepared by defendant's counsel concerning the claimant's condition. Dr. Chen was unable to state with a reasonable degree of medical certainty that claimant's condition and symptomology was caused or aggravated by his fall on November 25, 2013. Dr. Chen agreed that claimant's MRI showed normal age related findings and that claimant's current complaints are myofascial in nature. (Ex. B, pp. 5, 6) Mr. Chen did not agree with Dr. Bansal. Dr. Chen concluded that if the affidavit from Brett Voss were true claimant's condition was not caused or materially aggravated by his fall on November 25, 2013. (Ex. B, p. 6)

On February 17, 2015, Matthew Howard, M.D., at the UIHC neurosurgery clinic evaluated claimant. A CT scan and trial of gabapentin was recommended. An addendum to Dr. Howard's stated the Spine Team had evaluated claimant and decided he was not a surgical candidate. (Ex. 1, p. 13)

Rahul Rastogi, M.D., of the pain clinic at UIHC on March 10, 2015, evaluated claimant. Dr. Rastogi's assessment was:

> Assessment:
>
> 43 year-old male with history of eight foot fall backwards in November 2013 with complaints of chronic back and right leg pain with saddle anesthesia, lower limb weakness, and urinary retention. Concern today is raised for a central/spinal cord etiology based on his clinical examination and complaints.
>
> 1. Chronic pain
> 2. Right lower limb weakness
> 3. Right lower limb hyperreflexia
> 4. Saddle anesthesia
> 5. Urinary retention

(Ex. 1, p. 23) Dr. Rastogi's assessment was the same on April 8, 2015 after an EMG was negative. (Ex. 1, p. 28) Claimant received an epidural injection at the T7 level. (Ex. 1, p. 29)

On June 11, 2015, claimant went to David Katz, M.D., at the UIHC to establish primary care. Dr. Katz's assessment was:

> 1. Chronic back and neck pain, with neurologic deficits in non-dermatomal distribution.
>
> - Concerned about CRPS with total body pain – will refer to Neurology for further evaluation.

- Will give trial of oxycodone XR 20 mg at hs with oxycodone for breakthrough pain (for use during day).

- Consider restarting gabapentin at n.v.

2. Depression. Will switch citalopram to duloxetine 30 mg daily. Patient warned about potential adverse effects.

3. Chronic constipation. Increase MiraLax to 2 scoops daily. Start senna 2 tabs bid if no improvement.

4. Urinary hesitancy. May be aggravated by pain meds. Partial improvement with flomax – consider increase to 0.8 mg daily at next visit.

5. HTN. Continue atenolol-chlorthalidone for now. Will start KCl 20MEq daily on account of hypokalemia.

6. Morbid obesity. Aggravated by inactivity and obesigenic meds (including gabapentin, atenolol). Also need to consider OSA.

7. Cerumen impaction. Needs ear lavage at n.v.

8. Hematochezia. Likely secondary to external hemorrhoids, but will need lower endoscopy. See #3 above.

9. History of AMI with atypical CP. No evidence ischemia on EKG today. Will check lipid panel today.

10. Preventive care. Deferred until n.v.

(Ex. 1, p. 32) On September 15, 2015, Dr. Kratz noted claimant was unable to walk more than 50 feet on his own due to back pain. (Ex. 1, p. 36) On December 10, 2015, Torage Shivapour, M.D., at the UIHC examined claimant. Dr. Shivapour wrote, "I explained to them that his clinic presentation and neuro exam do not suggest and [sic] specific neurological problem that we are able to address. His reported pain would best be managed by the Pain Specialist." (Ex. 1, p. 44) On March 17, 2016, claimant was evaluated for his mobility problem. He was assessed with at least 80 percent mobility impairment. (Ex. 1, p. 52) On July 5, 2016, claimant was informed that that he does not have any significant vascular disease. (Ex. 1, p. 57)

Claimant has requested that weekly workers' compensation rate is $404.22 based upon married with 4 exemptions. (Ex. 11, p. 1) Claimant asserts he was working part-time for Brett Voss Construction and part time for R & B Construction. He combines the wages of these two employers for the year and Rubendall Trucking before the accident to arrive at his weekly rate of $404.22. (Ex. 11, p. 1)

Defendants assert that claimant's rate should be used based upon claimant earnings from August 8, 2013 through November 13, 2013, defendants assert that claimant's rate is the state minimum for 2013 of $197.43. (Ex. E, p. 22)

Carman Mitchell, M.S., C.D. M.S., C.R.C., evaluated the claimant on July 14, 2016. Based upon the restrictions of Dr. Bansal, claimant's education and work history she found him to have a 100 percent loss of access to prior work, as well as a 100 percent loss of earnings. (Ex. 9, p. 4)

On June 29, 2016, Daniel McGuire, M.D., evaluated claimant. He noted claimant had seen at least 4 spine surgeons and had a number of different modalities of treatment without success. His impression was:

> IMPRESSION:
>
> 1. Work injury, November 2013.
> 2. Essentially benign scans.
> 3. Unexplained physical elements.

(Ex. 10, p. 2) Dr. McGuire stated that surgery was not an option. He stated, "So, I believe he has an impairment. I believe he is at MMI. I do not believe he can currently work. In the 2 times I have seen him, I do not believe there is any rehabilitation possible that would radically change the situation." (Ex. 10, p 2)

Claimant is essentially homebound and has lost 100 percent earning capacity. He cannot perform any work.

CONCLUSIONS OF LAW

Has claimant proven causation?

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6)(e).

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.

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).

In this case only Dr. Bansal has provided a clear opinion the claimant's fall on November 26, 2013 is the cause of claimant's current symptomology and disability. The opinions of spinal specialists however are consistent that the claimant's MRI's do not show anything significantly more than a normal spine. Dr. McGuire did not provide an opinion on causation.

The medical evidence does not explain the debilitating chronic and unrelenting symptoms that claimant now has. As noted above he is totally disabled, he has no earning capacity. There is a lack of evidence as to what is causing claimants disabling condition. There is no doubt he is totally disabled. His condition has had catastrophic impact on claimant and his family, but the claimant did not prove that specific work fall has caused he current conditions.

There is a lack of convincing medical evidence that the fall on November 26, 2013 is the cause of his current condition. Claimant correlates his current condition with his fall in November 2013. Correlation is not always causation. In reviewing the medical reports, the more convincing reports are those of Dr. Miller, Dr. Chen and Dr. Howard.

Claimant did prove that he obtained the teeter board toward the end of December 2013. The evidence also shows that he was engaged in a number of hours of work and that his coworker and employer did not notice claimant having difficulty until late February. The medical evidence offered by claimant does not support a cumulative injury. Claimant asserts that the November 26, 2013 injury caused his current impairments. The claimant has failed to carry his burden to show that his fall on November 26, 2013 is the medical cause of his current conditions.

I find claimant is entitled to the payment of his July 1, 2016 IME. The IME took place after defendant authorized physicians opined that claimant did not have a permanent injury. Claimant is awarded the IME cost pursuant to Iowa Code section 85.39 in the amount of $1,975.00.

All other issues are moot as I have found claimant failed to carry his burden of proof.

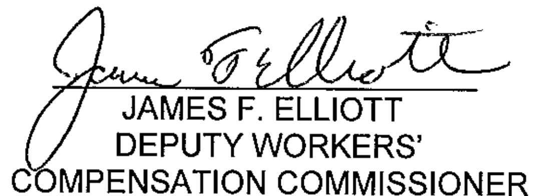
ORDER

Defendants shall pay claimant one thousand nine hundred seventy-five dollars ($1,975.00) for the IME report.

Claimant shall take nothing further.

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

Signed and filed this 30th day of March, 2017.



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JFE/kjw

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.