BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSH HAYS, Claimant, vs. CENTRAL IOWA FENCING, LTD., Employer, and GRINNELL SELECT INSURANCE, Insurance Carrier, Defendants.	:	File No. 5064784 A R B I T R A T I O N D E C I S I O N Head Note Nos.: 1100, 1401, 1801, 1801.1, 1802, 2206, 2209, 2501, 2700, 2907, 3000

STATEMENT OF THE CASE

Claimant, Josh Hays, filed a petition in arbitration for workers' compensation benefits against Central Iowa Fencing, Ltd., as employer, and Grinnell Select Insurance Company, as insurance carrier. The undersigned heard this case on September 11, 2019, in Des Moines, Iowa.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 5, Claimant's Exhibits 1 through 13, Claimant's Exhibit 15, and Defendants' Exhibits A through M. The last two sentences of Exhibit 4, page 4, starting with "I continued," were redacted from the expert report prior to admittance. Claimant testified on his own behalf. Tiffany Hays and Lynn Jeffress testified on claimant's behalf. Defendants called Nathan Dunahoo and Alan Voshell. The evidentiary record closed at the conclusion of the arbitration hearing.

Counsel for the parties requested the opportunity to file post-hearing briefs. Their request was granted. All parties filed their post-hearing briefs on October 22, 2019, at which time the case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained injuries arising out of and in the course of employment on April 26, 2018, July 23, 2018, July 25, 2018, and/or August 9, 2018;

2. Whether the alleged injuries caused temporary disability and, if so, the extent of claimant's entitlement to temporary disability benefits, if any;

3. Whether the alleged injuries caused permanent disability and, if so, the nature and extent of claimant's entitlement to permanent disability benefits, if any;

4. The proper commencement date for permanent partial disability benefits, should any be awarded;

5. Rate;

6. Whether claimant is entitled to an award of medical expenses;

7. Whether claimant is entitled to reimbursement under Iowa Code section 85.39;

8. Whether claimant is entitled to alternate medical care consisting of continued treatment with Nicholas Nerem, D.C., Robert Rossi, M.D., and Seth Quam, D.O.

9. Whether costs should be assessed against either party and, if so, in what amount.

FINDINGS OF FACT

Josh Hays was born on January 8, 1981, making him 38 years old at the time of the evidentiary hearing. (Exhibit 1, page 1) At the time of the first alleged injury, Mr. Hays and his wife lived together in Norwalk, Iowa. The two separated in July 2018, and moved to separate residences. (Joint Exhibit 5, Deposition page 9) Mr. Hays has two young children; however, due to financial constraints, the children mostly live with their mother. (Ex. 6, pp. 1-2) Mr. Hays does not have a high school education or a High School Equivalency Certificate. (Hearing Transcript, page 18) Since dropping out of high school in the 10th grade, Mr. Hays has completed machine school through LeafGuard. (Hearing Transcript, p. 19) He has received certifications in lead removal, as well as Basic Tool and Die, and Blueprinting. (Id.) Mr. Hays has also obtained a license to drive a straight truck. (Id.) Mr. Hays' employment history consists largely of work as a general laborer. (See Ex. 6, p. 6) He has worked as a machinist, a mechanic, a construction crew member, and a production manager. All positions appear to have involved a significant amount of lifting, carrying, and other physical activities. (See Ex. 6, p. 3; Hr. Tr., pp. 22-31)

By all accounts, claimant is a hard working individual. All of claimant's co-workers spoke highly of his work ethic, his "go, go, go" attitude, and overall willingness to help out. (See Hr. Tr., pp. 168-170)

Mr. Hays began his first of two stints working for Central Iowa Fencing in 2015. (See Ex. 6, p. 3) In June 2016, Mr. Hays left Central Iowa Fencing for 6-8 months to work for Custom Stone and Granite. (Hr. Tr., p. 24) He returned to Central Iowa Fencing in October 2017. (Ex. 6, p. 3)

In the matter at hand, claimant is alleging three potential dates of injury. For reasons that will become clear through the findings of fact section, this arbitration decision will mainly focus on the events that occurred on the July 25, 2018, date of injury. It is relatively undisputed that claimant sustained an injury on April 26, 2018. Generally speaking, the parties also agree on the events that transpired on or about July 25, 2018. It is generally accepted that on July 25, 2018, Mr. Hays and his crew were working at a jobsite in Van Meter, Iowa. All co-workers called to testify at the evidentiary hearing remember this particular job, and testified to the fact this specific jobsite was fairly treacherous given its rocky terrain. The greatest point of contention surrounding the July 25, 2018, date of injury is the specific job duties claimant performed at the jobsite. Defendants contend claimant was not injured while performing his job duties on the date in question; rather, defendants contend claimant injured his low back while moving items out of his house in late July and/or early August 2018.

On April 26, 2018, claimant and a co-worker were removing an old fence post with a farm jack. According to multiple witnesses, when fence posts were removed in this way, they had a tendency to lean to one side. If the post leaned too much, it would break off at ground level. Such a result would require the crew to dig everything out manually, which took significantly more time and energy. To avoid such a result, one crew member would lean into the post to counteract the effects of the farm jack. On the first date of injury, claimant forcefully pushed on the post while his co-worker pulled the post up out of the ground. In the process of pushing on the post, claimant felt something shift or "pop" in his low back; he experienced immediate pain. (See Hr. Tr., pp. 34-35) Claimant subsequently laid down on the ground in an attempt to alleviate some of his pain. Nathan Dunahoo, claimant's co-worker and nephew of owner Mark Dunahoo, testified that he took claimant to his chiropractor, Nicholas Nerem, D.C. for an adjustment shortly after the injury. (Hr. Tr., pp. 130-131) Mark Dunahoo testified he was aware of the April 26, 2018, injury, but he did not fill out any paperwork reflecting the same. (JE5, Depo. p. 10)

Claimant first began presenting to Dr. Nerem for treatment of his low back condition in or before February 2007. (See JE1, p. 1) Claimant presented to Dr. Nerem on a fairly regular basis between February 2007 and October 2010. (See JE1, pp. 1-55) According to both claimant and Dr. Nerem, claimant would typically present for a series of adjustments, his symptoms would resolve, and he would return to normal activities until his next flare-up. (JE5, pp. 3-4) He apparently did not present to Dr. Nerem for adjustments between October 2010 and July 2017.

Mr. Hays returned to Dr. Nerem on July 18, 2017, with complaints of low back pain. (JE1, p. 58) After three adjustments, Dr. Nerem released claimant to "pre-accident status" on August 1, 2017. (JE1, p. 60) As previously noted, claimant began working for Central Iowa Fencing just over two months later.

On the first date of injury, April 26, 2018, claimant presented to Dr. Nerem with complaints of continuous tightness and sharp, throbbing discomfort in the low back. (JE1, p. 61) Claimant was uncertain of whether he reported the injury as work-related. The specific medical record is silent on the matter. (Id.) At this point, it is worth noting Dr. Nerem's medical records are not particularly detailed; rather, each medical record follows a similar, generic work-up and summary. From Dr. Nerem's testimony, it appears as though a large portion of the medical notes are electronically submitted by his patients. For these reasons, I do not find Dr. Nerem's medical records to be particularly helpful in this matter.

Dr. Nerem's treatment improved the majority of claimant's symptoms in the low back and lower extremity to the point he was able to return to work on a full-time basis. Mr. Hays testified that the adjustment helped, but his back never returned to "feeling 100%" after the April 26, 2018, incident at work. (Hr. Tr., p. 36) He testified that after the April incident he never went back to handling his full job duties; however, he did not have any specific restrictions he or the defendant employer followed. Claimant testified that his co-workers would try to help out and take on more of the heavy lifting after the April 26, 2018, work injury. (Hr. Tr., p. 37) Nevertheless, claimant continued to work through his intermittent low back pain.

Claimant did not return to Dr. Nerem's office until July 5, 2018, and/or July 6, 2018, where he described sharp and shooting discomfort in his low back and buttocks. (See JE1, pp. 62-65) To help explain the gaps in treatment, claimant testified he tried to present to Dr. Nerem whenever his work schedule would allow, which was apparently not very often.

On July 23, 2018, claimant was working at a jobsite in Des Moines, Iowa. (See Ex. J, p. 2) The work order provides claimant either presented to the jobsite late, or he left the jobsite early. (Ex. J, p. 2)

Later that day, claimant presented to Dr. Nerem, and complained of continuous sharp, numbing and shooting discomfort in the buttocks. (JE1, p. 66) Dr. Nerem documented that claimant had suffered a setback in his care due to an exacerbation causing an increase in his symptomatology. (Id.) Claimant was instructed to return for chiropractic treatment twice per week, for three weeks. (Id.) Originally, claimant asserted that his second injury occurred on July 23, 2018; however, through discovery, it became clear to claimant that the injury he was describing would have occurred on or about July 25, 2016, while working on a jobsite in Van Meter, Iowa.

According to Mr. Hays, he sustained an exacerbation of his April 2018 low back injury while working on a jobsite in Van Meter, Iowa between July 24, 2018, and July 27, 2018. (See Hr. Tr., p. 44; Ex. M, Depo. p. 51) More specifically, claimant asserts the

exacerbation occurred on July 25, 2018, as a result of pounding fence posts. The alleged work injury of July 25, 2018, will be discussed in greater detail following a review of the medical records.

Mr. Hays testified that the pain in his back skyrocketed at the Van Meter job and he experienced a spider web of pain in his back on the date of injury. (Hr. Tr., p. 47) Claimant also testified that his symptoms worsened over the next few weeks to the point where he could not work with a tool belt on because of the discomfort. (Ex. M, p. 81)

After leaving work on July 25, 2018, claimant presented to Dr. Nerem for another adjustment. (JE1, p. 68) Again, claimant complained of intermittent sharp, numbing, and shooting discomfort in the buttocks. (Id.) Claimant believes he reported an injury to Dr. Nerem; however, he could not be certain. At deposition, Dr. Nerem confirmed that claimant described carrying a heavy item above his head for a significant period of time. (JE5, pp. 1-17, Depo. p. 14) Dr. Nerem further testified that after claimant described this incident, his symptoms, "started getting worse and never really got better." (Id.)

Claimant returned to Dr. Nerem's office on July 27, 2018, July 31, 2018, and August 8, 2018, reporting the same or similar complaints. (JE1, pp. 70, 72, 74) However, for the first time in any of Dr. Nerem's medical records, claimant noted, "left posterior leg, left pelvic and left posterior knee" complaints at his August 8, 2018, visit. (JE1, p. 74) Dr. Nerem's assessment and recommendations remained the same. (Id.) The medical record notes claimant's symptoms, "felt better since the last visit"; which calls into question whether these symptoms were actually "new." (Id.) Again, it is difficult to provide much weight to Dr. Nerem's medical records.

Claimant continued to work for the defendant employer until August 10, 2018. Multiple witnesses testified claimant appeared to be in significant pain and discomfort throughout his final week of work.

Claimant asserts he was fired by Mark Dunahoo on Friday, August 10, 2018. Defendants vehemently dispute this accusation. (JE5, p. 80, Depo. p. 31) According to claimant, Nathan Dunahoo told him on Thursday, August 9, 2018, to take Friday, August 10, 2018, off to rest his back, and that Mark Dunahoo would be calling him. (Hr. Tr., p. 51) Claimant testified that Mark Dunahoo called and told him he no longer had any work available for him, that he was sorry, and that this is where their paths would have to split. (Id.; See Ex. M, Depo. pp. 27-29) Claimant further asserts Mark Dunahoo called him back on Monday, August 13, 2018, and repeatedly told him he was not fired. (Hr. Tr., p. 52)

Defendants subsequently authorized medical treatment through Seth Quam, D.O. (See JE2, p. 1) UnityPoint's workers' compensation form lists April 26, 2018, as the date of injury. (JE2, p. 1)

Claimant first presented to Dr. Quam on August 14, 2018. (JE2, p. 2) Mr. Hays described the April 26, 2018, work injury for Dr. Quam, and relayed that he experienced symptoms in the lumbar spine, hips, and sacrum. (Id.) Claimant noted that his

symptoms had waxed and waned since the April 26, 2018, date of injury. (Id.) Dr. Quam documented that claimant continued to work, despite his discomfort. (Id.) The record provides, "Last week was when the pain started significantly again and he lost his job, but has been offered a job back as long as it [is] cleared." (Id.) Dr. Quam diagnosed claimant with acute left-sided low back pain, with left-sided sciatica, and recommended claimant obtain an MRI. (JE2, p. 3) Dr. Quam restricted claimant from returning to work following the August 14, 2018, appointment. He did not release claimant to light duty work until October 15, 2018. (JE2, p. 12)

After this initial appointment, claimant's claim for workers' compensation benefits was denied. (Hr. Tr., p. 54) Nevertheless, claimant continued to present to Dr. Quam for medical treatment.

Claimant's symptoms had not improved by his August 28, 2018, appointment with Dr. Quam. (JE2, p. 6) Claimant reported that he could not walk two to three blocks without being in pain. He further reported that he could not bend and twist as he normally could. (Id.) Dr. Quam, again, recommended claimant present for an MRI and physical therapy. (JE2, p. 7)

When claimant could not afford to undergo the recommended MRI, his friend, Jeff Lemke, offered to pay for said diagnostic imaging. (See Ex. M, Depo. p. 33) The September 17, 2018, MRI revealed a small posterior disc bulge, asymmetric to the right, superimposed on endplate spurs, which caused a mild mass effect on the descending left S1 nerve root in the left lateral recess, as well as moderate bilateral foraminal stenosis at L4-L5 and mild bilateral foraminal stenosis at L5-S1 and a small central inferior disc extrusion at L4-L5 without nerve root compression. (JE2, pp. 9-10)

After reviewing the MRI results, Dr. Quam recommended claimant present for pain management to consider injections for pain relief. (JE2, p. 10) Dr. Quam provided claimant with a return to work slip, dated October 15, 2018, which provided claimant could work light duty only, with a 25-pound restriction on lifting and carrying. (JE2, p. 12)

Claimant began treating at Broadlawns Medical Center in November 2018. (JE3, p. 1) Robert Rossi, M.D. administered an epidural steroid injection to claimant's low back on December 5, 2018. (JE3, p. 13) Claimant reported that the ESI improved his central low back pain, but markedly increased his left lower extremity symptoms. (See Ex. 1, p. 5)

Claimant has reportedly presented for surgical evaluations since receiving ESIs, however, medical records for the same are not contained in the evidentiary record. (See Ex. 4, p. 4)

As previously mentioned, defendants dispute that claimant sustained a work-related injury on or about July 25, 2018.

Generally speaking, the parties agree on a basic set of events that transpired on or about July 25, 2018. It is generally accepted that on July 25, 2018, Mr. Hays and his

crew were working at a jobsite in Van Meter, Iowa, for the second day in a row. (See Ex. J) All co-workers called to testify at the evidentiary hearing remembered this particular job, and testified to the fact this specific jobsite was fairly treacherous given its rocky terrain.

On July 24, 2018, claimant and the rest of his crew presented for the first day of what would end up being a four-day job in Van Meter, Iowa. The crew attempted to dig out post-holes for several hours. (Hr. Tr., pp. 39-40) During this time, the crew managed to install only three or four posts. (Ex. M, Depo. p. 54) After the workday ended, the crew returned to the shop and spoke to Mark Dunahoo, who agreed to bring heavy duty machinery and a jackhammer to the jobsite the next day to aide in breaking up the various layers of rock in the customer's backyard. (Hr. Tr., pp. 39-40)

Mark Dunahoo presented to the jobsite on the second day and operated the heavy machinery as promised. This is where the parties diverge in their understanding of events.

The work order for the Van Meter jobsite is included in the evidentiary record as Exhibit J. The install acceptance forms provide a list of which crew members worked each day. The form also includes what time the crew departed shop, arrived at the jobsite, departed from the jobsite, and returned to shop.

According to the install acceptance form, Mr. Hays worked the Van Meter jobsite on July 24, 2018, July 25, 2018, and July 27, 2018. (Ex. J, p. 4) Additional forms note claimant worked at a different jobsite on July 23, 2018, July 30, 2018, and July 31, 2018. (Ex. J, pp. 2, 6)

Claimant asserts he left work early on Wednesday, July 25, 2018, and missed work on Thursday, July 26, 2018.[1]

On July 25, 2018, the Van Meter form shows claimant's crew arrived to the jobsite at 8:13 a.m. and departed at 4:55 p.m.[2] (Id.) The July 25, 2018, entry includes the notation, "Josh 3:30." Claimant asserts the "Josh 3:30" notation shows he left the jobsite early due to injury, and took the day off on July 26, 2018, for the same. Nathan Dunahoo confirmed that the notation on the form means Mr. Hays left the jobsite early on July 25, 2018. (Hr. Tr., p. 151)

According to claimant, Mark Dunahoo asked him to start setting posts using the hydraulic post pounder. (Hr. Tr., p. 40) Shortly after he started doing so – approximately three or four posts in – claimant asserts he experienced a marked

[1] Claimant also asserts he only worked three (3) hours on Friday, July 27, 2018. (Post-hearing Brief, page 6) However, Exhibit J reflects claimant worked for three hours at the rock jobsite (Ex. J, p. 4), presumably cleaning up, and then traveled to another jobsite for the remainder of the day. (Ex. J, p. 6)

[2] It appears that the July 25, 2018, entry was edited to reflect the proper depart/arrive times for each box. The timestamps are numbered "1" through "4", and reflect similar depart/arrive times to all other listings; i.e., depart shop between 7:33 a.m. and 7:42 a.m., and arrive at jobsite between 8:08 a.m. and 8:27 a.m.

increase in his central to left-sided low back pain. (Id.) Claimant reported his symptoms to Mark Dunahoo and transitioned to the less strenuous job of setting stringers. (Ex. M, Depo. p. 54)

According to defendants, Mr. Dunahoo did not ask claimant to set posts with the hydraulic post pounder. Rather, defendants assert claimant set stringers or handled other light duty work on the date in question.

Mark Dunahoo did not explicitly deny claimant's allegation; however, he testified he did not recall asking claimant to carry a post pounder on the alleged date of injury. (JE5, p. 77, Depo. p. 20) Mark Dunahoo did recall claimant telling him that his back was starting to hurt again while working at the Van Meter jobsite. (JE5, p. 77, Depo. p. 21) According to Mark Dunahoo, claimant reported that his back was starting to act up after his first day on the Van Meter job. (JE5, pp. 72-88, Depo. pp. 20-21) Mark Dunahoo assumed claimant had aggravated his back at work because of the difficulties presented by the jobsite. (Id.)

Mark Dunahoo testified that on the morning of July 25, 2018, he told claimant he was not to lift anything if his back was starting to flare up again. (JE5, pp. 72-88, Depo. p. 21) He further testified that he told claimant's crew that they were not to let claimant lift anything on the second day of the Van Meter job. (JE5, pp. 72-88, Depo. pp. 21-22)

Claimant does not dispute that he set stringers on July 25, 2018; however, claimant asserts he transitioned to setting stringers after pounding three to four posts and reporting an increase in his low back pain. (Ex. M, Depo. p. 54) Claimant did recall Mark Dunahoo limiting his work activities; however, he testified this did not occur until he returned to work on Friday, July 27, 2018. (Hr. Tr., pp. 48-49)

At hearing, Nathan Dunahoo described the events that occurred on the first day of the Van Meter job. His testimony was nearly identical to claimant's testimony. (See Hr. Tr., pp. 133-134) According to Nathan, the three-man crew spent the entire first day digging out a corner post, breaking down and removing slates of rock, and pounding four posts. (Hr. Tr., p. 134) Nathan testified that after Mark Dunahoo used the skid loader to move things along, he and Alan Voshell pounded posts, and claimant worked on stringers. (Hr. Tr., pp. 134-135) He testified it is possible that Mr. Hays pounded a post at the Van Meter jobsite; however, he contends he did not witness claimant pounding any posts. (Hr. Tr. 148; Hr. Tr., p. 136) Nathan testified Mr. Hays always had a good work ethic and, despite the fact it was not his main job in 2018, Mr. Hays would occasionally pound a post. (See Hr. Tr., p. 147) After confirming the meaning of the notations on the install acceptance form, Nathan testified it would be unusual for Mr. Hays to leave work early, or miss a shift entirely. (Hr. Tr., p. 161)

Nathan testified he did not observe claimant to be in any significant distress at the Van Meter jobsite. (Hr. Tr., p. 137) He did, however, notice claimant appeared to be in significant pain in early August 2018. (Hr. Tr., pp. 137-138) He testified Mr. Hays was unable to wear his tool belt without discomfort, and it seemed as though Mr. Hays could hardly move. (Hr. Tr., pp. 137-138)

Nathan testified he was first asked about claimant's alleged July 2018 injury on or about November 2, 2018. (Hr. Tr., p. 142) Nathan testified he did not specifically remember everything about the Van Meter job when questioned regarding the same in November 2018. (Id.) He did not remember the details of each workday. (Hr. Tr., p. 143) He did not remember Mr. Hays leaving early on July 25, 2018, or not presenting to the Van Meter job on July 26, 2018. (Hr. Tr., pp. 150-151) However, the job in general stuck out in his mind given that it was a rather difficult job. (Id.)

Alan Voshell, another member of claimant's CIF crew, testified at hearing. Mr. Voshell's primary job duties in the spring and summer of 2018 involved pounding posts. (Hr. Tr., p. 165) Like Nathan, Mr. Voshell testified that Mr. Hays was a foreman, and he mainly ran stringers in 2018. (Hr. Tr., p. 166) For reference, "stringers" are the horizontal boards that connect fence poles. The vertical boards, or pickets, are nailed to the horizontal stringers. (See Hr. Tr., p. 166)

For the most part, Mr. Voshell's testimony was duplicative. He did not present as a good historian. He remembered the Van Meter jobsite, however, he admitted his memory regarding the specifics was "not so good." (Hr. Tr., p. 168) Claimant's attorney addressed these deficiencies on cross examination. (Hr. Tr., p. 182) For example, when he was first asked about the Van Meter job, he did not remember Mr. Hays pounding any posts at the jobsite. (Hr. Tr., p. 169) He would later testify that he and claimant attempted to pound posts, but they were told not to bother because Mark would be bringing the skid loader. (See Hr. Tr., pp. 175-176) Mr. Voshell testified the crew, including claimant, took turns using a "heavy bar" to loosen up the rocky terrain on the first day of work. (Hr. Tr., pp. 176-177) Mark Dunahoo provided similar testimony. (JE5, pp. 72-88, Depo. pp. 21-22)

Defendants assert that if claimant sustained an injury at all, it was the result of non-work activities; namely, moving out of his house in late July and early August 2018. The basis of this assertion rests in a statement claimant allegedly made in the CIF shop in late July or early August 2018. According to defendants, claimant told Mark Dunahoo and/or his co-workers, "my back is [expletive] killing me after move." (Ex. I, p. 2) At deposition, Mark Dunahoo clarified that claimant told him that his back was killing him after moving his wife by himself over the past weekend. (JE5, p. 78, Depo. pp. 23-24) Mark Dunahoo believes the conversation took place in front of, or around, Nathan Dunahoo and Alan Voshell. (See JE5, p. 81, Depo. p. 37) Mark Dunahoo estimates that this conversation occurred on or about August 1, 2018. (JE5, p. 78, Depo. pp. 24-25)

Nathan Dunahoo remembered claimant saying his back was hurting from moving; however, he was not sure of the exact words claimant used. (Hr. Tr., pp. 140, 155, 156)

Alan Voshell was non-committal when testifying about claimant's alleged statement. When he was initially asked about the statement, Mr. Voshell focused on claimant's pain complaints, almost as if he did not hear the part of the question that specifically referenced the move. This is evidenced by the fact Mr. Voshell related

claimant's pain complaints to the general aches and pains all CIF employees experience after a day of work. (Hr. Tr., p. 171) (… "I always – you know, we all kind of say it. We get off work, 'oh, my back hurts' …") He later testified he was not certain that Mr. Hays said he injured his back in the process of moving out of his house. (Hr. Tr., pp. 173-174) All Mr. Voshell remembered was that claimant said he had hurt his back. (Hr. Tr., p. 174)

In July 2018, claimant and his wife notified their landlord that they would be moving out of their rental home at the end of the month. (JE5, p. 25, Depo. pp. 7-8) Claimant moved out to Granger, Iowa, while Mrs. Hays moved to an apartment in Norwalk, Iowa. According to Mrs. Hays, claimant advised her that he would not be able to help her in the moving process given the condition of his back. (JE5, Depo. p. 9)

Defendants argue claimant was not onboard with the plan to physically split up the family and move to different residences, so he refused to help Mrs. Hays move her belongings and he dragged his feet on moving himself out of their then-current home. (Post-hearing brief, page 4) There is little evidence to support such a notion. Defendants failed to adequately address the significance of such a notion. While it is certainly plausible Mr. Hays, or any spouse for that matter, would be resistant to such a significant change, such an assertion does not explain away the much more likely explanation – one that is corroborated by multiple witnesses – that claimant physically could not assist in the moving process. Moreover, such an assertion, if true, would contradict defendants' assertion that claimant told his co-workers he injured himself moving his wife out of the house.

Mr. and Mrs. Hays requested a one-week extension to their move out period. Mrs. Hays testified they were ultimately given until August 7, 2018, to get everything out of the house and cleaned. (JE5, Depo. pp. 7-8)

According to Mrs. Hays, she was completely moved out of the residence by the time her new lease had started on or about July 14, 2018.[3] (JE5, p. 27, Depo. p. 8) Mrs. Hays testified she took possession of her apartment on July 13, 2018, at which point she started transporting smaller items using the trunk of her car. (JE5, p. 28, p. 10) The next day, she sought the assistance of an unnamed individual to help her move furniture to her new apartment. (JE5, p. 27, Depo. p. 8) Mrs. Hays testified that she took the majority of the furniture, including the kids' beds, a sofa, and dressers, with her. (JE5, p. 28, Depo. p. 11)

It is likely the unnamed individual that helped Mrs. Hays move is Nathan Dunahoo. If this is not the case, then Mrs. Hays had more than one individual assist her in the moving out process. Nathan Dunahoo testified he moved "the big stuff," such as the kids' beds and bikes, over to Mrs. Hays' new apartment. (Hr. Tr., p. 139) He could not remember the date in which he helped Mrs. Hays. (Hr. Tr., p. 152) Neither party

[3] If true, this would also discredit the assertion that claimant injured himself while attempting to move his wife out of the house in late July or early August 2018.

asked Nathan Dunahoo if he personally witnessed claimant move anything from the house.

Claimant believes he started to move himself out of the house on or about July 28, 2018. (Ex. M, Depo. p. 68) This would mean claimant was injured July 25, 2018, took the day off due to injury on July 26, 2018, returned to work on July 27, 2018, and started the moving process on July 28, 2018. (See Ex. J, p. 4; Ex. M, Depo. p. 68) Claimant testified he tried to do what he could, but he ultimately had to ask his friends and co-workers for assistance. (Ex. M, Depo. p. 68)

Jeff Lemke and Curt Hasty helped claimant move out of his house, on separate days, in late July and/or early August 2018. Both provided testimony in the matter at hand.

Mr. Lemke provided a sworn statement on September 17, 2018. According to his statement, he did not observe claimant move anything of significant weight, or complain that he had suffered injury in the process of moving. (Ex. 13, p. 1) Mr. Lemke asserts he lifted, carried, and moved all items that were of any significant weight on his own. (Id.) Mr. Lemke loaded and unloaded a dresser, a coffee table, a couch, and end tables. (JE5, p. 62, Depo. p. 15) He was unsure as to whether this was all accomplished in one day, or whether the whole process took two days to complete. (See JE5, p. 63, Depo. pp. 18-19)

Mr. Hasty provided a sworn statement in March 2019. (Ex. 13, p. 3) In addition, defendants deposed Mr. Hasty on April 24, 2019. (JE5, pp. 96-106) Mr. Hasty testified he assisted claimant for approximately 30 to 45 minutes sometime in early August, 2018, after Mr. Lemke had already assisted claimant. (See JE5, p. 102, Depo. pp. 24, 28) According to his statement and deposition testimony, most, if not all, of the furniture had already been moved out of the home by the time he provided assistance. (Ex. 13, p. 3; JE5, p. 102, Depo. p. 24) This is consistent with the testimony of Mrs. Hays, Nathan Dunahoo, and Jeff Lemke. Mr. Hasty testified he moved a few pieces of granite, claimant's tools, and claimant's tool box from the garage. (Ex. 13, p. 3) Claimant confirmed Mr. Hasty helped him empty out what was left in the garage. (Ex. M, Depo. p. 68)

Mrs. Hays watched the children and cleaned as claimant moved his belongings to his new residence. (Id.) Mrs. Hays was present when Mr. Lemke assisted claimant, however, she could not recall whether she was at the house when Mr. Hasty helped out. (JE5, p. 29, Depo. p. 14) She remembered observing claimant packing up a bag of stuffed animals, but she did not witness him lifting any items of significant weight. (See Id.; Hr. Tr., p. 109) Mrs. Hays testified claimant could barely stand up at the time. (See JE5, p. 31, Depo. p. 22) In her October 1, 2018, sworn statement, Mrs. Hays provided claimant appeared frustrated with the fact he could not help his friends with the move. (Ex. 13, p. 2)

The heavier household items are accounted for in the various witness accounts. Mrs. Hays testified her friend – likely Nathan Dunahoo – moved her bed, the kids' beds,

a sofa, and dressers, to her new apartment. (See JE5, p. 28, Depo. p. 11) Mr. Lemke testified he moved claimant's dresser, a coffee table, a couch, and end tables. (JE5, p. 61, Depo. p. 13) A number of the granite slabs were given to their neighbor, George, who came and carried them out of the garage. (JE5, p. 30, Depo. pp. 20-21; Hr. Tr., p. 112) Claimant estimated that his neighbor took 65 of the approximately 70 pieces. (Ex. M, Depo. p. 69) Another neighbor, Robert, took the playhouse that claimant had built for his children. (Hr. Tr. p. 112) Mr. Hasty testified he loaded and unloaded claimant's toolboxes, tools, and the remaining pieces of granite. (JE5, p. 102, Depo. p. 24)

No individual with firsthand knowledge of the move testified to claimant lifting heavy objects or injuring himself in the process of moving. Mrs. Hays testified claimant was not in a condition to help her move out. (JE5, p. 27, Depo. p. 9) She further testified claimant could barely bend over to pick up a stuffed animal. (JE5, p. 29, Depo. p. 14) Mr. Lemke did not recall whether claimant moved anything of significant weight. Mr. Lemke testified that claimant, "couldn't do anything." (JE5, p. 62, Depo. pp. 14-15) Nathan Dunahoo was not asked if he witnessed claimant moving anything of significant weight. Mr. Hasty testified that claimant asked him to help with the move because his back would not allow him to do it himself. (JE5, p. 102, Depo. p. 24) He further testified claimant was unable to carry a drawer of screwdrivers. (JE5, p. 104, Depo. pp. 30-31)

There is some testimony to suggest that claimant helped Mr. Lemke move a couch. (Ex. M, Depo. p. 72) ("I mean, I may have helped him or Tiff may have helped him.") Mr. Lemke testified that claimant did not lift the couch; rather, he apparently helped Mr. Lemke maneuver the couch through an entryway to the front of the house where Mr. Lemke then carried it to his truck. (JE5, p. 62, Depo. p. 15) Claimant testified that the couch was one of the lightest items that needed to be moved. (Id.)

It is likely claimant helped out with the move more than he voluntarily acknowledged at hearing. When asked about moving out of his house during his recorded statement, claimant relayed that he and his wife slowly moved throughout the whole month of July 2018. (Ex. F, p. 17) ("[A] truck a day at that") Mr. Lemke and Mr. Hasty only testified to helping claimant move on two separate days in July and August 2018. When asked if there was a weekend in which claimant moved his wife out, by himself, claimant replied, "Well, she would have been helping." (Id.)

The undersigned is also skeptical of Mr. Lemke's ability to load and unload an entire couch by himself. That being said, the evidentiary record is void of any information pertaining to Mr. Lemke's physical build and lifting capabilities. The evidentiary record is also void of any information pertaining to the size and weight of the couch in question, or whether any assistive devices were used by Mr. Lemke in the moving process. Without this information, it is difficult to say Mr. Lemke did or did not move the couch by himself. Of the five witnesses with firsthand knowledge of the move, exactly zero testified to claimant lifting anything of significant weight. While it is likely claimant helped out more than he leads on, there is little evidence to support a finding claimant lifted anything of significant weight or that he sustained an injury in the process. I cannot find that claimant sustained a new injury, or aggravated his low back condition, while moving from his home in July and August 2018.

Defendants also assert claimant was in a hurry and under significant pressure to move all of his belongings out of his house before the landlord's deadline and that this pressure contributed or further supports the idea that claimant actively participated in the moving process. There is little to no evidence to support a finding that claimant felt rushed. Claimant received an extension on his move-out deadline. Moreover, Mrs. Hays credibly testified that she took the majority of the furniture and was completely moved out on or about July 14, 2018. Likewise, Nathan Dunahoo testified to there being little left in the house after he helped Mrs. Hays move. Claimant and Mr. Lemke testified Mr. Lemke was able to move the heavier items in a single day. Mr. Hasty testified most if not all of the furniture was already moved by the time he assisted Mr. Hays with the move. It does not appear as though claimant had a significant amount of items to move to his new house between July 15, 2018, and August 7, 2018.

Defendants further point to claimant's well-documented history of low back complaints to support their assertion claimant's condition is not work-related. Claimant began presenting to Dr. Nerem for treatment of his low back pain in or before February 2007. (See JE1, p. 1) Claimant presented to Dr. Nerem on a fairly regular basis between February 2007 and October 2010. (See JE1, pp. 1-55) According to both claimant and Dr. Nerem, claimant would typically present for a series of adjustments, his symptoms would resolve, and he would return to normal activities until the next flare-up. (JE5, pp. 3-4) He did not present to Dr. Nerem for adjustments between October 2010 and July 2017. Mr. Hays returned to Dr. Nerem on July 18, 2017, with complaints of low back pain. (JE1, p. 58) After three adjustments, Dr. Nerem released claimant to "pre-accident status" on August 1, 2017. (JE1, p. 60)

As previously noted, claimant returned to work for Central Iowa Fencing just over two months later. Mr. Hays testified he was not experiencing back issues when he returned to work for Central Iowa Fencing in October 2017. (Hr. Tr., p. 34) Claimant worked in a full duty position between November 2017 and April 2018. Mark Dunahoo testified he did not have to accommodate claimant prior to his work injuries. (JE5, pp. 72-88, Depo. p. 15) Claimant very clearly had pre-existing low back issues for which he required periodic medical treatment. Yet, there is no evidence he lost significant time from work, job opportunities, or suffered any loss of earning capacity as a result of his low back condition prior to April 2018.

Lastly, defendants point out that claimant only referenced the April 26, 2018, work injury in his recorded statement, taken on August 17, 2018. Defendants contend it was not until September 13, 2018, when claimant filed his petition, that they were notified of a July 2018 injury. Claimant asserts he initially attributed his condition to the April 26, 2018, injury because in his mind he never fully recovered from the same. While it is troubling claimant did not discuss the Van Meter job at the time of his recorded statement, claimant's explanation is entirely plausible when considering claimant was known to work through his complaints. To the lay person, an acute event causing them to lay down on the ground and seek immediate medical attention is much more memorable than transitioning from one job duty (pounding posts) to another (setting stringers) due to an aggravation in pain, especially when the individual is conditioned to work through pain. Indeed, claimant appears to have sustained other,

slight aggravations, for which he sought treatment for, on or about July 5, 2018, and July 23, 2018. Regardless, the question of whether claimant initially remembered the aggravation occurring at the Van Meter jobsite is less important than whether evidence exists to show the aggravation actually occurred.

I do not find defendants' arguments against claimant's credibility to be convincing. Claimant did not give the undersigned any reason to question the veracity of his testimony at the evidentiary hearing. He appeared sincere in his testimony. I do not believe claimant, Mrs. Hays, Mr. Lemke, and Mr. Hasty conspired to cover up an injury that occurred while claimant was moving out of his home. Similarly, I do not believe claimant brought a claim against CIF as revenge for Mark Dunahoo sending him home to be checked out by a doctor. These claims are purely speculative and are not supported by the evidentiary record. I find claimant to be a credible witness.

Ultimately, the parties obtained competing expert medical opinions as to whether claimant's low back condition arose out of and in the course of his employment with CIF. There are four expert opinions regarding causation in this matter. In addition to written reports, Drs. Nerem and Quam provided deposition testimony. (See JE5)

In a letter, dated August 30, 2018, Dr. Nerem agreed with, and amended, several pre-written opinions attributed to him by defendants. (Ex. 3, pp. 3-4) Dr. Nerem confirmed that claimant reported an increase in his symptoms at his July 23, 2018, appointment. Dr. Nerem disagreed with defendants' pre-written opinion that during claimant's July 2018 visits, claimant did not provide any history of any particular activity or aggravation to his back that may have occurred in July 2018. (Ex. 3, p. 4) Instead, Dr. Nerem provided, "He talked about holding something heavy over his head for many hours at work." (Id.) At deposition, Dr. Nerem testified claimant's low back condition never got better after this event. (JE5, p. 5, Depo. p. 14) Dr. Nerem also disagreed with the assertion that claimant first presented with complaints in the left lower extremity on August 8, 2018. According to Dr. Nerem, claimant "always had glute/hip pain during July." (Id.) Dr. Nerem agreed that the leg complaints could be a sign of a herniated disc. (Id.)

In similar letters, dated August 17, 2018, October 16, 2018, and August 9, 2019, Dr. Nerem agreed with a number of pre-written opinions attributed to him by claimant's counsel. (Ex. 3, pp. 1, 6, 8) In addition to confirming several of his prior opinions, Dr. Nerem agreed with the opinion that claimant suffered a work-related aggravation of his April 26, 2018, back injury in July 2018. (Ex. 3, pp. 6, 8) At deposition, Dr. Nerem testified he was aware that claimant moved out of his house in late July or early August 2018. (JE5, p. 11, Depo. p. 38) Dr. Nerem also agreed with the opinion that claimant's treatment since April 26, 2018, is due to claimant's work injury and subsequent work-related aggravation in July 2018. (Ex. 3, p. 8)

Dr. Quam drafted a report on September 6, 2018. (Ex. C, p. 1) After reviewing claimant's medical records, Dr. Quam provided it was apparent that claimant's symptoms markedly progressed between his chiropractic appointments on July 31, 2018, and August 8, 2018. (Id.) He also noted that the first medical record to discuss

left lower extremity symptoms is dated August 8, 2018. (Id.) Dr. Quam did not mention Dr. Nerem's updated opinions noting claimant reported left lower extremity symptoms throughout July 2018. (See Ex. 3, p. 4)

At his deposition, Dr. Quam discussed the onset of claimant's symptoms in the left lower extremity. More specifically, Dr. Quam discussed what he typically expects following an impingement injury. Dr. Quam explained that if the impingement is severe, he would expect such pain to result immediately after the injury. (JE5, p. 48, Depo. p. 18) However, he explained that varying levels of inflammation and swelling could occur at the level of the nerve between the date of injury and up to two weeks later. (Id.) Essentially, Dr. Quam provided that if claimant's impingement was not severe, the exacerbating injury likely occurred within the 14 days prior to the onset of his symptoms. Dr. Quam further provided that if it is true claimant did not experience symptoms in the left lower extremity until August 8, 2018, then the April 26, 2018, injury did not directly cause said symptoms. (JE5, p. 48, Depo. p. 19) Again, there is some dispute as to when claimant first experienced the left lower extremity symptoms.

Dr. Quam signed off on a pre-written opinion letter from claimant's attorney on September 12, 2018. (Ex. 4, pp. 1-2) The letter does not expressly address the July 2018 injury; however, pre-written opinion No. 4 indicates Dr. Quam believes claimant sustained an injury on April 26, 2018, and subsequently exacerbated the same through his continuing work activities. (Ex. 4, p. 1) Pre-written opinion No. 3 discusses claimant lifting heavy objects and working on uneven terrain; however, it cannot be said opinion No. 3 reflects Dr. Quam's opinion that claimant likely exacerbated his back injury lifting heavy objects and working on uneven terrain. Pre-written opinion No. 3 only addresses Dr. Quam's understanding of Dr. Nerem's opinion. (Ex. 4, p. 1) ("[I]t is your understanding that according to Dr. Nerem's letter […]") Nevertheless, Dr. Quam does indirectly address causation in pre-written opinion No. 4. (Id.)

At the request of his attorney, Mr. Hays presented to John Kuhnlein, D.O. for an independent medical evaluation on January 10, 2019. (Ex. 1) After reviewing the medical records and conducting an examination of claimant, Dr. Kuhnlein opined that Mr. Hays suffered work-related injuries on April 26, 2018, and on or about July 23, 2018. (Ex. 1, p. 9) Specifically, Dr. Kuhnlein opined that the July 2018 injury materially and permanently aggravated claimant's pre-existing lumbar condition. (Id.)

In response, defendants scheduled claimant to present for an independent medical evaluation with Joseph Chen, M.D., on July 19, 2019. (Ex. B, p. 3) Mr. Hays testified that Dr. Chen met with him for approximately 10 to 15 minutes and did not perform tests similar to those performed by Dr. Kuhnlein, or any other physicians. (Hr. Tr., p. 69) After examining claimant and reviewing the medical record, Dr. Chen diagnosed claimant with chronic back and leg pain, with left-sided nerve tension signs consistent with a left S1 radiculitis. (Ex. B, p. 6) Dr. Chen opined claimant's nerve is irritated, but not pinched, and does not require surgical intervention. (Id.)

Dr. Chen noted some discrepancies between the medical records he reviewed, and the oral history provided to him by claimant prior to his examination. (See Ex. B, p.

6) Most notably, Dr. Chen pointed out that claimant did not report left leg and knee symptoms until August 8, 2018, which is inconsistent with the oral history allegedly provided by claimant that he experienced symptoms in the left lower extremity immediately following the April 2018 work injury. (Ex. B, p. 7) Dr. Chen opined this indicates claimant began experiencing left lower extremity pain between July 31, 2018, and August 8, 2018. (Id.) Given this single discrepancy, Dr. Chen opined claimant's condition is not causally related to any of the alleged dates of injury. (Id.)

Dr. Quam drafted a final report on August 30, 2019. (Ex. 4, p. 4) Dr. Quam provided claimant continues to experience low back pain with radiation into the left lower extremity. (Id.) The medical record provides claimant is able to perform eight-hour workdays, for 40 hours per week, at the sedentary to light work category. (Id.) It is noted claimant underwent an evaluation at the University of Iowa Neurosurgical Spine Center, where it was recommended that he obtain an updated MRI and EMG of the lumbar spine, to further determine the source of claimant's pain. (Id.; See Hr. Tr., p. 70)

In total, there are three expert opinions that provide claimant sustained an injury on April 26, 2018, and a subsequent aggravating injury through his work activities on or about July 25, 2018. Dr. Chen is the only expert physician to find claimant's low back condition is not causally related to any of the alleged dates of injury.

I do not find Dr. Chen's opinions to be particularly persuasive in this instance. Dr. Chen's opinion is based almost entirely on the assumption that claimant did not experience radiating pain into his left lower extremity until August 8, 2018. From Dr. Nerem's deposition testimony, we know claimant reported radiating pain into his left lower extremity throughout July 2018. Moreover, claimant testified that he experienced intermittent radiating pain in his lower extremities following the April 26, 2018, injury, but his main focus was his low back pain. (Ex. M, Depo. p. 63)

I am not convinced by Dr. Chen's opinion that because claimant allegedly did not experience symptoms in his left lower extremity until the time period between July 31, 2018, and August 8, 2018, that the same are not related to any of the alleged dates of injury. Essentially, Dr. Chen's opinion is an assessment of claimant's credibility rather than an assessment of a mechanism of injury. He offers no opinion as to whether claimant's condition could have resulted from the work activities he alleges to have performed on or about July 25, 2018.

Interestingly, Dr. Chen's report does assert claimant could have aggravated his low back in the process of moving out of his home. Dr. Chen bases this opinion on "records from Mr. Hays' deposition." There is no evidence to support a finding that claimant sustained an injury in the process of moving out of his house. This assertion is purely speculative and dependent upon an ambiguous statement claimant allegedly made to his co-workers. Moreover, this alternative opinion indirectly supports the assertion that claimant could have aggravated his low back "[lifting] heavy objects" such as a hydraulic post-pounder.

Although claimant likely participated more than he acknowledged at deposition and at hearing, there is little to no evidence to suggest claimant sustained an injury in the process of moving his belongings. When viewing the evidentiary record as a whole, it does appear that claimant's low back condition materially worsened after both incidents at CIF.

While I do not expressly reject the opinions of Dr. Nerem, I do not put a significant amount of stock in his physical medical records. It cannot be said that Dr. Nerem's medical records provide sufficient information to be considered reliable as an accurate representation of claimant's condition. Moreover, Dr. Nerem's medical records do not bolster either party's timeline. Claimant presented to Dr. Nerem's office on four occasions between July 25, 2018, and August 9, 2018. If we follow claimant's timeline, we would expect to see a spike in claimant's pain complaints on or about July 25, 2018. Similarly, if we follow defendants' timeline, we would expect to see a spike after August 4, 2018. Instead, Dr. Nerem's medical records note consistent improvement in lumbosacral function and pain on July 25, 2018 (25%), July 27, 2018 (50%), July 31, 2018 (65%), and August 8, 2018 (70%). (JE1, pp. 68-74) These medical records do not match the multiple witness accounts of claimant hardly being able to walk in August 2018.

When analyzing the evidentiary record as a whole, the expert medical opinions of Drs. Kuhnlein and Quam are significantly more persuasive than the opinions of Dr. Chen. For the above stated reasons, I reject the causation opinion of Dr. Chen and accept the causation opinions expressed by Drs. Kuhnlein and Quam. I accept Dr. Nerem's opinions to the extent that his reports and testimony bolster the findings of Drs. Kuhnlein and Quam. I find claimant has proven he sustained a permanent aggravation of his pre-existing and underlying low back condition.

Specifically, I find claimant sustained an initial injury on April 26, 2018, that improved, but did not resolve. I find claimant suffered a subsequent exacerbation on or about July 25, 2018, which materially and permanently aggravated claimant's pre-existing condition. Only after the July 25, 2018, incident and subsequent progression of his condition was claimant rendered unable to return to work. Therefore, I find that it was the cumulative effect of the successive injuries that caused claimant's ultimate injury. I find that the work injury was a cumulative injury that manifested when claimant was forced to take a day off of work and acknowledge the severity of his injuries on August 10, 2018. On this date, the severity of claimant's condition won out over his noted work ethic.

Claimant's recorded statement and deposition testimony describe his low back injury as a natural progression that started in April 2018, and became significantly worse after the Van Meter job. When asked what prompted claimant to file a current workers' compensation claim in August 2018 for an injury that occurred in April 2018, claimant provided,

> I've been fighting the pain in my back basically since [April], there are good weeks and bad weeks, and uh, me and Mark spoke about it, and he

> had me to [sic] start doing less, start doing a little bit less, and start doing a little bit less, and the pain would progress, and progress, and progress.

(Ex. F, p. 16) Claimant testified that his crew was aware of his low back condition following the April 26, 2018, work injury. Claimant testified Mark Dunahoo would ask him once or twice each week how his back was holding up. (Ex. M, Depo. p. 61) Claimant testified that his back was sore during this time period, but he kept "pressing on." (Id.) Claimant testified there was never a time in which he told Mark or any member of his crew that he could not handle a specific job duty. (Ex. M, Depo. p. 62) Claimant asserts that after the Van Meter job, his back pain got worse and worse to the point where he could not wear a tool belt for longer than 10 or 15 minutes. (Ex. M, Depo. p. 61) Again, despite his strong work ethic, claimant could not push through the pain once his condition progressed.

Claimant is seeking temporary total disability, temporary partial disability, or healing period benefits from August 9, 2018, to the present. Claimant has not returned to full duty work since August 9, 2018. He has not been capable of returning to substantially similar employment since August 9, 2018.

Suspension of temporary benefits is allowed if suitable work is offered and declined. An offer of suitable temporary work must be in writing. The evidentiary record is void of a written offer of suitable temporary work. It is asserted that defendants verbally offered claimant light duty work; however, an oral offer of suitable temporary work does not meet the requirements outlined in the amended workers' compensation act. I find defendants did not provide a written offer of temporary work to claimant. I find claimant is entitled to temporary disability benefits.

Dr. Kuhnlein and Dr. Quam agree that claimant has not reached MMI for his low back condition. Based on claimant's testimony and Dr. Quam's most recent report, it appears additional treatment is still pending, including an updated MRI and EMG of the lumbar spine, to pinpoint the source of claimant's pain and discomfort. As such, there remain additional recommendations for claimant with respect to his low back condition. I find that those treatment recommendations are reasonable and appropriate for claimant's low back condition. I find that those treatment recommendations may provide, or lead to additional recommendations that may impact claimant's functional abilities, including his ability to potentially return to substantially similar work. I therefore find claimant had not reached MMI as of the date of the arbitration hearing.

As such, I find that it would be premature to determine the level of claimant's permanent disability at this time. Rather, I find that recommendations for treatment exist and that such treatment should be undertaken before a determination of claimant's permanent disability occurs. Claimant has been denied care under the workers' compensation system. Due to financial constraints, his care has been limited, and, according to Dr. Kuhnlein, he has not received appropriate care for his condition. If claimant's condition is able to be treated, it is possible his functional abilities and earning capacity will increase.

On the date of injury, claimant was married, and entitled to four exemptions. Claimant believes that his gross weekly wages were $888.21 for a weekly benefit rate of $597.26. Defendants contend claimant's gross weekly wages were $771.69, for a weekly benefit rate of $525.54. Claimant's pay fluctuated each week, as he was paid, in part, on a commission basis.

Claimant requests alternate medical care. Claimant's request for authorization of Drs. Nerem, Quam, and Rossi is reasonable.

Claimant asserts a claim for reimbursement of medical expenses he paid out-of-pocket, as well as a request for award of past outstanding medical expenses and an award that requires defendants to satisfy and hold claimant harmless from such past medical expenses. I find that the medical expenses contained in Exhibit 5 are causally related to claimant's alleged August 9, 2018, work injury at CIF. Defendants stipulated that the medical providers would testify as to the reasonableness of their treatment and charges and that the medical expenses claimed related to the contested injury claims and conditions. I specifically find that the medical treatment and charges contained in Exhibit 5 are reasonable, necessary, and causally related to claimant's August 9, 2018, cumulative work injury at CIF.

Claimant seeks payment of Dr. Kuhnlein's IME report; however, no defendant-retained physician had assessed claimant's permanent impairment prior to claimant's IME appointment with Dr. Kuhnlein.

CONCLUSIONS OF LAW

The first issue in this case is whether claimant sustained an injury to his low back on April 26, 2018, July 25, 2018, and/or August 9, 2018, which arose out of and in the course of his employment with the defendant employer.

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).

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

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).

In this case, I found the causation opinions of Dr. Kuhnlein and Dr. Quam to be more persuasive than those of Dr. Chen on the issue of whether claimant sustained a permanent aggravation of his underlying low back condition. Having found that claimant proved a material and permanent aggravation of his underlying low back condition, I conclude that claimant proved he sustained a work-related injury at CIF.

Claimant produced evidence of at least two separate incidents that occurred while performing his work activities at CIF. While there are two injurious events depicted in the medical records and through claimant's testimony, contemporaneous medical records depict a gradual worsening of claimant's condition to a point where he could no longer work for the defendant employer. The cumulative effects of claimant's work activities, including the two distinct events in April and July 2018, resulted in the development of a permanent low back injury to claimant with a manifestation date of August 9, 2018.

Claimant seeks an order for the payment of past medical expenses contained in Exhibit 5.

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. Iowa Code section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

All medical expenses appear to be for the treatment of claimant's low back condition. Defendants denied compensability of the low back condition. I find the medical treatment claimant received was reasonable, necessary, and causally related to the August 9, 2018, work injury.

When the employer abandons care through the denial of compensability of an injury the injured employee may select his own medical care. If the injury is deemed to be compensable then the claimant may recover the costs of the reasonable medical care. See Bell Bros. Heating and Air Conditioning v. Gwynn, 779 N.W.2d 193 (Iowa 2010).

Because I found that claimant's treatment through Drs. Nerem, Quam, and Rossi up to the date of the arbitration hearing was reasonable and causally related to his work injury, I conclude defendants are responsible for payment and/or reimbursement of the causally related medical expenses set forth in Claimant's Exhibit 5.

The next issue in this case is whether claimant has reached MMI for his low back condition. The Iowa Supreme Court has described MMI as "stabilization of the condition or at least a finding that the condition is 'not likely to remit in the future despite medical treatment.'" Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 200 (Iowa 2010) (citation omitted).

In this case, none of the physicians who offered expert medical opinions found claimant to be at MMI for the low back condition. As a result, I found claimant had not yet reached MMI. I therefore conclude claimant's claim for industrial disability is not yet ripe for determination.

Claimant is seeking a running award of temporary disability benefits.

According to the medical evidence I have accepted as most convincing in this record, claimant had not yet achieved MMI prior to the evidentiary hearing. However, claimant had returned to part-time work for a different employer. Claimant is being accommodated in his current position, and he is making considerably less money than he was while working for the defendant employer.

Claimant's status as of the date of the evidentiary hearing qualifies for temporary partial disability benefits. "Temporary partial disability" or "temporarily, partially disabled" means the condition of an employee for whom it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, but is able to perform other work consistent with the employee's disability. Iowa Code section 85.33(2).

Defendants assert claimant is not entitled to temporary benefits because he terminated his own employment or abandoned his job with Central Iowa Fencing. Defendants further assert that even if it is found that claimant is entitled to temporary disability benefits from August 9, 2018, through the present, claimant's benefits would have been suspended or forfeited during the period of his refusal to come back to work. Such arguments ignore the requirements of Iowa Code section 85.33.

There is little evidence to support the assertion claimant abandoned his position with the defendant employer. Claimant was told to take Friday, August 10, 2018, off due to his condition. Defendants were, or should have been aware Dr. Quam was restricting claimant from returning to work, pending MRI results and physical therapy, in August 2018. (See JE2, pp. 3, 5) Defendants authorized claimant's initial appointment with Dr. Quam and would have had access to his medical records. (See JE2, p. 1) Defendants denied liability for claimant's injuries shortly after the August 14, 2018, appointment. Claimant did not receive a return to work slip until October 15, 2018. Four days later, claimant notified defendants that he had been released to light duty work through his deposition testimony. (Ex. M, Depo. pp. 25, 31-32) Claimant also testified to his belief that he had been terminated in August 2018. (Ex. M, Depo. p. 21) Defendants did not correct claimant or make a written offer of employment at that time, or at any time thereafter.

Defendants are correct that the suspension of temporary benefits is allowed if suitable work is offered and declined. However, for injuries occurring on or after July 1, 2017, offers of suitable, temporary work must be in writing. Iowa Code section 85.33(3)(b). No such written offer of suitable, temporary work exists in the evidentiary record.

In this case, there is no evidence the defendant employer ever produced a written offer of suitable temporary work to claimant. Claimant subsequently obtained accommodated employment with a different employer. If the employer does not offer the worker suitable work and the employee chooses to work elsewhere while temporarily

partially disabled he is entitled to temporary partial disability benefits. Iowa Code section 85.33(3). I conclude claimant is entitled to a running award of temporary disability benefits from August 10, 2018, through the present.

The Iowa Supreme Court has specifically noted that a claimant's healing period terminates whenever the first of three factors in Iowa Code section 85.34(1) is met. Evenson v. Winnebago Industries. Inc., 881 N.W.2d 360 (Iowa 2016). The factors are whether (1) the employee has returned to work, (2) it is medically indicated that significant improvement from the injury is not anticipated (MMI), or (3) the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury. Iowa Code § 85.34(1).

In this case, I found that claimant was off work between August 10, 2018, and November 5, 2018. I found claimant began performing accommodated, part-time work on November 5, 2018. I found claimant was not medically capable of performing substantially similar employment from August 10, 2018, through the date of the arbitration hearing. At the time of hearing, I found claimant was not at MMI. He did not return to work for the defendant employer, and he was not medically capable of returning to substantially similar employment. He did, however, accept a part-time position as a cashier at Casey's General Store. Claimant is working significantly less hours, and making significantly less money per hour. His position is modified. Thus, I conclude claimant satisfied his burden to show he is entitled to a running award of temporary partial disability benefits. I further find claimant is entitled to temporary total disability benefits between August 10, 2018, and November 5, 2018.

The next issue to be decided is claimant's workers' compensation rate.

As a preliminary matter, the parties disagree whether claimant was married at the time of his work injuries. Claimant contends he was married at the time of his work injuries, and asserts entitlement to four exemptions. Defendants contend claimant was not married at the time of his work injury, and assert claimant is only entitled to three exemptions.

At the time of the April 26, 2018, and July 25, 2018, work injuries, claimant was legally married to Tiffany Hays. This remained the case on the date of hearing. However, the couple physically separated by moving to different residences in July 2018. There is evidence in the record to support a finding that the couple had decided to separate prior to July 2018.

In Iowa, a couple is legally separated when the court declares that their assets and liabilities are no longer joint and that they have an arrangement for alimony and for child custody, visitation and support. Iowa Code section 598.28.

There is no evidence in the record that claimant, or his wife, petitioned the court to recognize their separation. No tax returns were submitted supporting or refuting claimant's assertion he was married on the dates of injury. Simply living apart does not constitute a legal separation, or separate maintenance. Moreover, this agency has held

that a married but separated individual is still entitled to claim the spouse as an exemption for purposes of calculating rate. Ackerman v. Bridgestone, File No. 5032181 (Arb. Dec. May 4, 2011) As such, I find claimant was married on the date of injury and he is entitled to four exemptions in determining his workers' compensation rate.

Second, the parties dispute claimant's gross weekly earnings. Neither party submitted a significant amount of evidence concerning the same. The evidentiary record does, however, contain claimant's paystubs from January 15, 2018, to August 20, 2018. (Ex. 9, pp. 4-35)

It is evident claimant became a full-time employee on or about February 25, 2018. (See Ex. 9, p. 11) It appears claimant was paid an hourly rate from February 25, 2018, to March 10, 2018, and then on a commission basis from March 11, 2018, through his last date of work. (Ex. 9, pp. 11-35) In his recorded statement, claimant testified he was paid on a commission basis until his last week of work. (Ex. F, pp. 4-5) However, claimant's paystubs reflect he was paid on a commission basis through his last day of work. (See Ex. 9, pp. 34-35) As such, for purposes of calculating claimant's rate, I find claimant was paid on a commission basis.

An employee who is paid a salary, plus commission has his or her rate calculated pursuant to Iowa Code section 85.36(6). Oberreuter v. Moorman Manufacturing, File No. 1041484 (App. Dec. April 30, 1999) Typically, thirteen weeks of commissions prior to the date of injury are used and averaged. This average commission is then added to the base rate established by the claimant's salary to determine the average weekly wage.

Unfortunately, it is not clear whether claimant was paid a salary plus commission, or if claimant's pay was strictly commission based. It is also unclear what percentage claimant took home on commission. In his recorded statement, claimant asserts he received 19 percent commission. However, claimant's work orders provide claimant received between 28 and 33 percent commission, depending on the job. (Ex. J, pp. 2, 6)

Claimant contends the paychecks for the weeks ending on June 2, 2018, and July 7, 2018, are abnormally low and not representative of his customary earnings given that they include one less day of work due to the Memorial Day and July 4th holidays.

This agency does not automatically exclude weeks of vacation or holiday pay as unrepresentative. Gall v. Maytag Corp., File No. 5013691 (App. Dec. May 26, 2006); See Gaylord v. Quaker Oats, File No. 5010059 (Arb. Dec. June 3, 2005)

It is likely claimant mistakenly believed the May 26, 2018, paycheck, totaling $478.84, included the Memorial Day holiday; however, Memorial Day 2018 fell on Monday, May 28, 2018. Claimant earned $1,123.60 the week of Memorial Day 2018. (Ex. 9, p. 24) The June 2, 2018, paycheck is not uncharacteristically low in terms of the sheer amount of earnings. In fact, it is the second highest pay period in the 13-week sample. (Ex. 9, p. 24)

Typically, this agency is less concerned with the amount of the earnings, and more concerned with the hours of work claimant missed out on due to their holiday pay being limited to 8 hours. The claimant who customarily works overtime does not do so on a holiday as his or her hours are limited. Unfortunately, the June 2, 2018, paycheck does not provide the number of hours claimant worked, only that he received a commissions in the amount of $1,123.60. This amount is not abnormally low when compared to all other paystubs.

The wage records in evidence show claimant was paid on an hourly basis the week ending July 7, 2018. This is likely due to the July 4th holiday. Claimant was paid for working a total of 38.59 hours the week of July 7, 2018. (Ex. 9, p. 29) Eight (8) of the 38.59 hours were considered holiday pay. (Ex. 9, p. 29) The only other week in which claimant worked a full week and was paid on an hourly basis is the week of March 3, 2018, when he worked 41.89 hours. (Ex. 9, p. 11) Without additional information, it is difficult to conclude the July 7, 2018, paycheck is abnormally low.

Similarly, claimant contends the weeks ending on August 4, 2018, and August 11, 2018, should be excluded as unrepresentative because claimant was injured on or about July 25, 2018, and he worked less hours thereafter as a result. Typically, I would agree with claimant that these weeks should be excluded from claimant's rate calculation; however, claimant provided no evidence that his injury negatively impacted the amount of hours he worked or the amount of his weekly, commission based earnings. The work order forms from the week ending August 4, 2018, reflect claimant was paid his same percentage in terms of commission. (See Ex. J, pp. 2, 6) Moreover, Mark Dunahoo testified claimant would still receive his full commission on jobs he had to leave early or miss entirely. (See JE5, p. 86, Depo. pp. 54-55)

With respect to his final week of work, claimant stated the defendant employer paid him for the Friday he missed work. (Ex. F, p. 16) Such a statement does not support a finding that claimant's earnings for the week of August 11, 2018, were negatively impacted by his injury. For these reasons, I cannot find that the weeks ending June 2, 2018, July 7, 2018, August 4, 2018, and August 11, 2018, do not accurately represent claimant's customary earnings.

The undersigned personally verified defendants' calculations. I find defendants' rate calculation accurately reflects claimant's average weekly earnings. I accept defendants' rate calculation and find claimant's workers' compensation rate for the August 9, 2018, cumulative injury is $525.54. Claimant's rate is based on an average weekly rate of $771.69, and an exemption status of M-4.

Claimant seeks an order for alternate medical care and specifically requests that Drs. Nerem, Quam, and Rossi be assigned as claimant's authorized treating physicians. Defendants denied liability for the care claimant seeks.

"[T]he employer has no right to choose the medical care when compensability is contested." Bell Bros Heating v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). "The statute contemplates that an injured employee may select his or her own medical care when

the employer abandons the injured employee through the denial of compensability of the injury." Id. Therefore, given defendants' denial of liability, I conclude that the defendant employer has no right to assert the authorization defense or challenge claimant's assertion of a claim for alternate medical care.

In this case, defendants have not provided ongoing medical care for claimant's low back condition. Defendant's lack of care is not reasonable nor compliant with Iowa Code section 85.27. Claimant's request for alternate medical care will be granted and defendant will be ordered to provide and pay for causally related future medical care as recommended by Drs. Nerem, Quam, and Rossi.

The next issue for determination is whether claimant is entitled to reimbursement for an independent medical evaluation under Iowa Code section 85.39. Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low.

Claimant seeks reimbursement for his IME with Dr. Kuhnlein. The Iowa Supreme Court provided a literal interpretation of the plain-language of Iowa Code section 85.39, stating that section 85.39 only allows the employee to obtain an independent medical evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. Des Moines Area Reg'l Transit Auth, v. Young, 867 N.W.2d 839, 847 (Iowa 2015). Under the Young decision, an employee can only obtain an IME at the employer's expense if an evaluation of permanent disability has been made by an employer-retained physician.

Dr. Chen, an employer-retained physician, conducted a defense medical examination on July 19, 2019. Dr. Kuhnlein conducted an IME of claimant on January 10, 2019, well before Dr. Chen examined claimant. As such, defendants are not liable for reimbursing the full cost of Dr. Kuhnlein's IME. However, the cost of obtaining a medical report in lieu of testimony by a medical expert is a taxable cost pursuant to Iowa Code section 86.40 and 876 IAC 4.33(6). Young, 867 N.W.2d 839 (Iowa 2015).

The last issue to be addressed is costs. Assessment of costs is a discretionary function of the agency. Iowa Code § 86.40. Because claimant was generally successful in his claim, I conclude it is appropriate to assess claimant's costs in some amount.

Claimant seeks an assessment of the costs for his filing fee ($100.00), and Dr. Kuhnlein's report ($2,224.40).

In this case, Dr. Kuhnlein has provided a breakdown of his expenses related to his IME. Dr. Kuhnlein's report breaks his charges into two categories, "IME Exam" and "IME Report." Dr. Kuhnlein charged $2,224.40, for drafting his report.

Defendants argue claimant is limited to the cost of the report portion of Dr. Kuhnlein's bill. I agree. However, defendants mistakenly believe Dr. Kuhnlein only charged $700.00 for his report. In reality, Dr. Kuhnlein charged $700.00 for the first

hour of drafting his report, and an additional $1,524.40 for the total time spent drafting his report after the 1-hour mark. (Ex. 15, p. 2)

In his report, Dr. Kuhnlein provides his fees are reasonable based on his training and certification as a Board Certified Specialist in Occupational and Environmental Medicine, the time spent with claimant obtaining his history and performing the examination, the time spent in preparing his report, and the time spent by his staff preparing the file for use in preparing this report. (Ex. 1, p. 12) I accept Dr. Kuhnlein's explanation regarding the reasonableness of his fees. I decline defendants' invitation to limit Dr. Kuhnlein's fees to $150.00 as provided in Iowa Code section 622.72. This agency has held that the taxable cost of a doctor's report is not limited to $150.00, if reasonable. Such a decision has been affirmed on judicial review. Emco v. Samardzic, 819 N.W.2d 426 (Iowa Ct. App. 2012).

It should be noted that claimant filed a post-hearing motion to strike portions of defendants post-hearing brief. First, claimant sought to strike the "penalty" section of defendants brief, asserting he did not make a claim for penalty benefits on the hearing report or at the evidentiary hearing. Penalty must be plead on the hearing report. Allen v. Tyson Fresh Meats, Inc., 913 N.W.2d 275 (Iowa Ct. App. 2018) It is not enough that claimant asserted entitlement to penalty benefits on his petition. The petition is merely a means to provide notice to defendants of a possible claim. I find claimant did not make a claim for penalty benefits. Claimant's motion to strike is granted as to penalty benefits.

Second, claimant sought to strike portions of defendants post-hearing brief that argue against industrial disability. Claimant asserts defendants stipulated that claimant is entitled to industrial disability benefits by noting claimant's PPD benefits would be based on an industrial disability standard as opposed to the scheduled member. It should be noted that defendants disputed claimant's entitlement to permanent partial disability benefits altogether. I do not find claimant's argument convincing. Defendants merely acknowledged that if permanent partial disability benefits were awarded, they would be awarded on an industrial disability basis, not a scheduled member basis. Claimant's motion to strike is denied as to industrial disability.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay temporary total disability benefits from August 10, 2018, through November 5, 2018, at the rate of five hundred twenty-five and 54/100 dollars ($525.54) per week.

Defendants shall pay temporary partial disability benefits based on a weekly benefit rate of five hundred twenty-five and 54/100 dollars ($525.54) commencing November 5, 2018, and continuing until such time as Iowa Code section 85.33 is met.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by

the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendants shall pay directly to the medical provider, reimburse claimant for any out-of-pocket expenses, and hold claimant harmless for all medical expenses contained in Claimant's Exhibit 5.

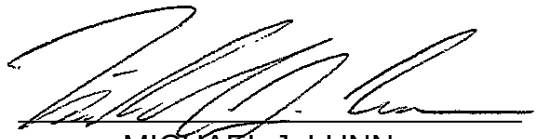
Defendants shall provide claimant ongoing medical care of his low back condition.

Defendants shall authorize Dr. Quam, Dr. Nerem, and Dr. Rossi as claimant's authorized treating physicians for the low back condition.

Defendants shall reimburse claimant's costs in the amount of two thousand three hundred twenty-four and 40/100 dollars ($2,324.40).

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

Signed and filed this 28th day of May, 2020.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Stephen Spencer (via WCES)

Nick Platt (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.