

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRYAN HEMPHILL,

Claimant,

vs.

CITY OF CEDAR RAPIDS,

Employer,
Self-Insured,
Defendant.

File No. 20012547.01

ARBITRATION DECISION

Head Notes: 1108.50, 1402.40,
1803, 2907

STATEMENT OF THE CASE

Bryan Hemphill, claimant, filed a petition in arbitration seeking workers' compensation benefits from the City of Cedar Rapids, self-insured employer as defendant. Hearing was held via Zoom on May 4, 2023.

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. The parties are now bound by their stipulations.

Bryan Hemphill and Michael Leaven were the only witnesses to testify live at trial. The evidentiary record also includes Joint Exhibits 1-11, Claimant's Exhibits 1-7 and Defendant's Exhibits A-M. Claimant filed a written objection to defendant's exhibit L. Defendant filed a response. At the time of hearing claimant was given the option to have additional time to obtain rebuttal evidence to defendant's exhibit L; claimant declined. Claimant's objection was overruled, and defendant's exhibit L was admitted into evidence. All other exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on June 16, 2023, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained any permanent disability as the result of the stipulated September 9, 2020 work injury. If so, the extent of industrial disability he is entitled to receive.

2. The appropriate commencement date of any permanent partial disability benefits.
3. Claimant's gross weekly earnings at the time of the work injury.
4. Whether claimant is entitled to payment of past medical benefits.
5. Whether claimant is entitled to additional medical care.
6. Whether claimant is entitled to reimbursement for an independent medical examination.
7. Assessment of costs.

FINDINGS OF FACT

The undersigned, having considered all the evidence and testimony in the record, finds:

The parties stipulated that claimant, Bryan Hemphill, sustained an injury to his back which arose out of and in the course of his employment on September 9, 2020. Defendant, City of Cedar Rapids ("the City"), disputes that the injury resulted in any permanent disability and disputes that claimant's current condition is related to the work injury.

At the time of the hearing Mr. Hemphill was 59 years old. (Hearing Transcript, p. 13) He worked for the City for approximately 30 years. He began working for the City part-time in 1988 and was hired full time in 1991. (Tr. p. 15; Defendant's Exhibit H, p. 25) Mr. Hemphill began working in the solid waste department filling in as needed. He then became a heavy equipment operator at the landfill. He eventually transferred to a laborer in the sewer department. In 2005, Mr. Hemphill transferred to the lead equipment operator in the maintenance department. (Tr. pp. 15-16) His title was lead equipment operator III in the sewer department. (Def. Ex. C, p. 5) His work duties included setting manholes to grade, tearing out storm line, and putting in new storm sanitary as well. He considered this a construction position; he performed this for approximately ten years. (Tr. pp. 15-16) In 2015, Mr. Hemphill transferred to a televising operator position in the sewer department. In this position he operated an iPad and led a crew which would go to a manhole, lower a camera, and film the sewer. His primary responsibility was televising the sewer. (Tr. p. 17) This is the position he was in at the time of the work injury.

It should be noted that Mr. Hemphill has a history of back pain that predates the injury in question. In September 2014, while at work, Mr. Hemphill stepped on a tennis ball and fell on his right buttock. (Joint Exhibit 2, p. 8) He had burning, numbness, and tingling in the right buttock and leg. (Tr. p. 28) An MRI revealed a disk bulge at L5. (JE2, p. 10; JE3, p. 40) Mr. Hemphill saw Chad D. Abernathy, M.D. who diagnosed L4 radiculopathy secondary to right L4-L5 far lateral disc extrusion. Dr. Abernathy

performed a lumbar laminectomy in September 2014. (JE4, pp. 43-44; JE5, p. 46) Mr. Hemphill returned to work for the City in November 2014. On March 11, 2015, Dr. Abernathey placed Mr. Hemphill at maximum medical improvement (MMI) and assigned a 7 percent whole body impairment rating. (JE5, pp. 44-45) He noted that Mr. Hemphill had “only modest residual low back pain and LE paresthesia.” (JE4, p. 44)

In January 2016, Mr. Hemphill presented with back pain and paresthesias after stepping in a hole at work. He had numbness and tingling down his right leg. Mr. Hemphill rated his pain as 8 out of 10. Ann C. McKinstry, M.D.’s assessment was low back pain with lumbar radiculopathy. Due to his increase in symptoms, she ordered an MRI. (JE2, pp. 11-12) The January 15, 2016 MRI showed broad-based L5-S1 disk bulge, eccentric to the right that abutted the descending nerve roots bilaterally, right greater than left. There was also severe right foraminal narrowing with impaction on the exiting right L5 nerve root. Additionally, the MRI showed broad-based right posterior lateral disk protrusion at L4-L5 with severe foraminal narrowing; disk bulging at L3-L4, more toward the left; mild disk bulging at L2-L3 and L1-L2. (JE3, pp. 41-42) Dr. McKinstry’s impression was low back pain with lumbar radiculopathy, work-related. She referred Mr. Hemphill back to Dr. Abernathey who recommended an epidural steroid injection. (JE2, p. 13) Mark Kline, M.D. performed L5-S1 interlaminar epidural steroid injections on February 10, 2016 and July 18, 2016. (JE5, pp. 47-51) There is a gap in treatment from July 2016 until November 2018.

In August or September 2018, Mr. Hemphill was setting up pumps at work due to flooding. While carrying a hose he stepped in a hole. He slammed down with his right foot which caused his back to flare up. He had back pain and stabbing and numbness in his buttock area. (Tr. pp. 31-32)

On November 9, 2018, Mr. Hemphill returned to Dr. McKinstry for evaluation of low back pain. Dr. McKinstry noted that this was initially listed as a new injury, but after reviewing his history, she felt his symptoms seemed to be related to the distinct injury in September 2015. She noted his symptoms were identical to those he had from a different back injury in 2014 which resulted in an L4-L5 discectomy by Dr. Abernathey. The doctor’s assessment was chronic low back pain with lumbar radiculopathy stemming from an injury in 2015. His symptoms responded well to ESIs in the past, so she referred him for another possible injection. She also recommended an MRI. (JE2, pp. 14-20) Mr. Hemphill testified the MRI was not authorized by his employer. He testified that he did receive another injection from Dr. Kline; however, he has been unable to obtain the clinical notes from that injection. (Tr. pp. 33, 55-56)

Mr. Hemphill underwent an annual physical at Work Well Clinic on February 6, 2020. He listed complaints of low back pain and right leg numbness. (JE2, pp. 22-23)

This brings us to the September 9, 2020 work injury. Mr. Hemphill was climbing onto a Bobcat when he slipped off of the bucket and landed on his right butt cheek. He estimates that he fell two and a half to three feet. He felt pain in his right buttocks and during the remainder of his shift his back started to burn in the lower region. His right leg was tingling and becoming numb. (Tr. pp. 18-19)

That same day Mr. Hemphill went to the emergency room at Mercy Medical Center. He complained of back, right hip, and calf pain after slipping when getting off a Bobcat. He reported that his right foot felt numb. A CT of his lumbar spine was performed and compared with a radiograph from May 23, 2004. The impression from the CT was relatively advanced lumbar spondylosis without evidence of acute fracture or dislocation. Christine Walker, ARNP's diagnosis was low back pain with sciatica. Mr. Hemphill was discharged with muscle relaxers and NSAIDS. He was to rest for 3 days and then return to full duty work with no restrictions. (JE5, pp. 52-58; JE6, p. 63; Def. Ex. C, p. 5)

On September 14, 2020, Mr. Hemphill went to the Work Well Clinic where he saw William J. Manely, PA-C. He reported that on September 9, 2020, he got into a skid loader and stepped down with his right foot and developed acute onset of pain in his right lower back and down his right leg, with numbness and tingling into his right foot. He rated his pain as 6 out of 10. Mr. Hemphill reported that he had surgery for low back pain and right radiculopathy in 2003 by Dr. Abernathey. Mr. Hemphill inaccurately reported that he had been asymptomatic since 2003 following the surgery. He had increased discomfort with any attempts of heavy lifting or standing and sitting for any extended period. The impression was low back pain with right radiculopathy. PA Manely noted Mr. Hemphill could work with the limitations of sit/stand as needed, lift, push, pull a maximum of 10 pounds. No climbing. (JE2, pp. 24-26)

Mr. Hemphill began physical therapy at Rock Valley on September 16, 2020. He was to undergo therapy 2 to 3 times per week for 6 weeks. (JE7, pp. 64-66)

On September 23, 2020, Mr. Hemphill returned to PA Manely. He continued to have pain in his lower back. He had numbness and tingling throughout his right foot with no improvement and pain down his right leg from his back. He also continued to have low back pain. PA Manely's impression was low back pain with right radiculopathy. Mr. Hemphill was allowed to work with limitations of max lift, push, pull of 10 pounds and sit or stand as needed. An MRI was recommended. Mr. Hemphill was to continue with physical therapy and return to PA Manely after the MRI. (JE2, pp. 27-28)

An MRI of the lumbar spine was performed on September 29, 2020. The impression was transitional S1 vertebral body with a rudimentary S1-S2 disc. Numbering was consistent with previous exam dated January 15, 2016; interval progression in the degenerative changes at L3-L4, L4-L5 and L5-S1 compared to previous examination. (JE8, pp. 71-72)

Mr. Hemphill returned to PA Manely on October 1, 2020 to review his MRI. He continued to have right low back pain with foot symptoms of intermittent numbness and tingling in the foot. The impression was low back pain with right radiculopathy. PA Manely recommended a referral to a pain management clinic. Mr. Hemphill was to continue with his limitations at work. (JE2, pp. 29-30)

On October 7, 2020, PA Manely authored a missive wherein he answered questions posed to him by the defendant. (JE2, pp. 31-32) Based on the available records and the history provided to PA Manely, he opined that Mr. Hemphill's current

symptomatology was likely related to the reported work incident on September 8, 2020. (JE2, pp. 31-32)

On October 27, 2020, Mr. Hemphill reported to physical therapy that he had no back pain and stated his numbness/tingling was much better. The therapist noted pain-free range of motion and suggested a progression to full-duty work without restrictions. (JE7, pp. 67-68)

Mr. Hemphill went to the CRS Pain Clinic where he saw Mark D. Kline, M.D. on October 30, 2020. He reported right low back and buttock pain that radiated to the posterior aspect of his right thigh into the right calf and the plantar aspect of the right foot. Mr. Hemphill described his pain as 1 out of 10. His symptoms began on September 9, 2020 due to a work injury. Dr. Kline noted he underwent a right-sided discectomy at L4-L5 in 2014. He did well after surgery with resolution of his preoperative complaints. Dr. Kline noted he had seen Mr. Hemphill on February 10, 2016 for complaints of recurrent low back pain radiating into his right lower extremity. He reported his symptoms resolved with an interlaminar epidural injection at the L5-S1 level. Dr. Kline's impression was low back pain and right lower extremity radicular symptoms in the setting of a right-sided disc protrusion at L5-S1 level. His symptoms persisted despite conservative measures. The previous epidural injection was helpful for similar symptoms in 2016. Dr. Kline performed an L5-S1 interlaminar ESI on October 30, 2020. (JE8, pp. 73-77)

Mr. Hemphill returned to PA-C Manely on November 16, 2020. He reported significant improvement since his evaluations at the pain clinic. Other than occasional stiffness, he reported total resolution and felt he was ready for a trial of regular duty work. He had been increasing his activity at home without difficulties. Mr. Hemphill felt 95 percent improved. The impression was low back pain with right radiculopathy, improved. Mr. Hemphill was ready to attempt a trial of regular duty. He was to have a telephonic follow-up in 1 week for anticipated final evaluation. (JE2, pp. 33-35)

On November 23, 2020, Mr. Hemphill returned to PA Manely. He reported total resolution of his symptoms. He denied back complaints and denied numbness, tingling, and weakness. He had been performing all essential functions of his job without any limitations. He had also been fully active at home and at work without difficulties. Mr. Hemphill felt he had returned to the baseline he was at prior to the injury. PA Manely noted Mr. Hemphill was capable of continuing full-duty work without limitations. Mr. Hemphill was to continue with his home exercise program. If Mr. Hemphill developed any further problems related to this injury, he was instructed to contact his employer for further evaluation. Mr. Hemphill was released without restrictions. (JE2, pp. 36-38)

On December 13, 2020, physical therapy noted Mr. Hemphill was discharged from physical therapy because he had a resolution of symptoms. (JE7, p. 70)

On January 4, 2021, Mr. Hemphill went to the Atkins Family Medical Clinic for medication management and a well man exam. He reported he had no concerns. Mr. Hemphill was noted to be negative for back pain, gait problem, and joint swelling. (JE9, pp. 78-81) Mr. Hemphill returned to the emergency department at Mercy Medical Center on January 31, 2022. He was seen for a left knee injury that is not the subject of this

litigation. (JE5, pp. 59-62) On February 4, 2022, Mr. Hemphill saw Edward J. Ford, M.D. at the Work Well Clinic for his left knee. (JE2, p. 39)

Unfortunately, Mr. Hemphill was terminated from his employment with the City on April 28, 2022. Mr. Hemphill acknowledged that he was terminated for reasons not related to the work injury. (Def. Exs. D and E; Tr. p. 47) Prior to his termination, Mr. Hemphill was back performing his regular duties without any restrictions for nearly two and a half years. (Tr. p. 46) During this timeframe he did not miss any work due to back pain and he did not report any problems to the City. (Tr. pp. 46-47, 61-62)

On June 22, 2022, just shy of two months after his job with the City ended, Mr. Hemphill's attorney requested that the City authorize and arrange medical care because he had experienced a "progressive increase in lower back pain related to his work injury." (Def. Ex. J, p. 30) On June 29, 2022, defendant advised that they would not be authorizing any further medical treatment. Defendant cited the November 23, 2020 note from the Work Well Clinic which indicated that his work-related complaints had fully resolved. (Def. Ex. J, p. 31)

Defendant contends that Mr. Hemphill did not treat for his low back between November 2020 and February 2023. Claimant testified that at some point during this period he received another injection from Dr. Kline. It is unknown to the undersigned whether this injection occurred or not because there are no records or bills to support this contention. Although there is no written evidence of Mr. Hemphill treating for his back during this time, there is written evidence that he did see medical providers for other purposes. In January 2021 and 2022 he saw his family doctor for annual exams. There was no mention of any back pain. (Tr. p. 48; JE 9, pp. 78-79, 82-83)

In August 2022, Mr. Hemphill began working at Wright-Way Trailers and remained employed there at the time of the hearing. His position is a full-time technician, fixing trailers. He does have health insurance through Wright-Way Trailers. Mr. Hemphill described the job as fairly physical and way more physical than his job with the City. He lifts tires and climbs underneath trailers. His job requires squatting, bending, lifting, kneeling, and lying on his back. Mr. Hemphill admitted that his job duties have aggravated or worsened his low back. Additionally, it was his job duties at Wright-Way Trailers that caused him to return to treatment with his family doctor and subsequently Dr. Barber. He enjoys his job and has not applied for other jobs. (Tr. pp. 35-42; Def. Ex. M, depo. pp. 46-49)

On February 14, 2023, a little over five months after Mr. Hemphill began working for Wright-Way Trailers, he went to Atkins Family Medical Clinic where he saw Abigail R. Reiter, P.A. He reported chronic right buttock pain that radiated down his right leg. His pain had progressively worsened over the past 3 months. Previously he had epidurals to manage his symptoms. He also took Aleve and Tylenol to take the edge off. He reported right elbow pain. He was using a power tool at work that strained his wrist/forearm muscles. P.A. Reiter's assessment was intervertebral disc disorder with radiculopathy of lumbosacral region, hypertension, and reflux disease. Mr. Hemphill did not mention the September 2020 work injury. He was referred to an orthopedist for consideration for back surgery. (JE9, pp. 92-94)

On February 28, 2023, Mr. Hemphill presented to Joshua Barber, M.D. for evaluation and management of low back, bilateral leg heaviness/weakness, and right leg radicular pain. His pain has been going on for 5 to 10 years and had progressively gotten worse. Dr. Barber noted a history of L4-L5 decompression by Dr. Abernathy after an accident in 2009. He had trouble standing and walking for more than 3 minutes without needing to lean forward or sit down. Mr. Hemphill worked as a mechanic. Dr. Barber's assessment included right lumbar radiculopathy, lumbar degenerative disc disease, scoliosis of lumbar region due to degenerative disease of spine, spondylolisthesis of the lumbar region, failed back surgical syndrome and compression fracture of L3 vertebra. Dr. Barber noted Mr. Hemphill was a 59-year-old man with lumbar spinal stenosis with neurogenic claudication and right L4-S1 radiculopathy. Mr. Hemphill did not want a repeat lumbar injection; he sought a definitive solution. Dr. Barber recommended a lumbar MRI and CT for evaluation and pre-surgical planning. Mr. Hemphill was to follow-up after the imaging. (JE1, pp. 5-7)

At the request of his attorney, Mr. Hemphill underwent an independent medical examination (IME) with Farid Manshadi, M.D. on March 2, 2023. In addition to examining Mr. Hemphill, Dr. Manshadi reviewed the medical records provided to him. Dr. Manshadi noted Mr. Hemphill's back injury in September of 2015 and subsequent treatment, including the two ESIs. Mr. Hemphill reported to Dr. Manshadi that he had good relief of his lower back symptoms for about two years after the 2016 injections. Then in the summer of 2018 Mr. Hemphill experienced a gradual increase in his lower back pain and he sought treatment. He attributed the 2018 increase in pain to a workday that required him to walk more than usual. Mr. Hemphill reported the September 9, 2020 work injury to Dr. Manshadi. At the time of Dr. Manshadi's examination Mr. Hemphill was working as a mechanic. Mr. Hemphill reported his job as a mechanic was very hard on him, especially with prolonged standing. He used 4 to 6 Aleve per day. Mr. Hemphill attributed his lower back discomfort to his work injury. He stated that just sitting in a chair in the exam room caused him to have an increased burning sensation in the right lower back with radiation to the right leg. (Claimant's Exhibit 1, pp. 1-19)

Dr. Manshadi felt Mr. Hemphill was suffering from right L5-S1 radiculopathy with weakness of the hip girdle muscles, especially involving the hip abductors and extensors, as well as reduced light touch and pinprick involving the right L5-S1. He opined,

[T]he work injury of 09/09/2020 caused significant material aggravation of the above diagnosis where Mr. Hemphill has had progression of his underlying degenerative changes in his spine. It is well documented from an MRI of 09/29/2020 where it is indicated interval progression in the degenerative changes in the L3-L4, L4-L5 and L5-S1 compared to the previous examination which was performed on 01/15/16.

(Cl. Ex. 1, pp. 18-19)

Dr. Manshadi felt Mr. Hemphill would require further treatment for his back and surgical decompression and fusion would probably be indicated if conservative

measures failed. However, if Mr. Hemphill did not receive additional treatment, then Dr. Manshadi would place him at MMI as of March 2, 2023. Dr. Manshadi assigned 10 percent whole person impairment and cited to Table 15-3 on page 384 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. Additionally, he assigned permanent restrictions. Mr. Hemphill was to avoid any activity which required repetitious bending or stooping or twisting at his waist. Additionally, he was to avoid prolonged standing and should be allowed to sit, stand, and walk on an as-needed basis. (Cl. Ex. 1, p. 19)

Mr. Hemphill returned to Dr. Barber on April 19, 2023. The doctor noted Mr. Hemphill had severe low back pain, degenerative lumbar scoliosis, spondylolisthesis, and right radicular/neurologic symptoms with subjective weakness. He had functional weakness and significant negative implications on his quality of life. Mr. Hemphill was adamant that he wanted to proceed with surgical intervention as conservative management has been ineffective. Dr. Barber recommended a fusion at L3-L5 with fixation, L5-S1 TLIF with L3-S1 posterior decompression with instrumented fusion. (JE11, pp. 97-99)

On April 20, 2023, PA Manely signed a check-the-box letter authored by defendant. PA Manely was provided information regarding Mr. Hemphill's employment with the City and Wright-Way Trailers. He was also provided medical notes from February of 2023 and Dr. Manshadi's IME report. PA Manely was also made aware of Mr. Hemphill's deposition testimony about his work at Wright-Way aggravating his low back. PA Manely opined that when he discharged Mr. Hemphill from his care in November 2020, Mr. Hemphill's work injury had resolved with no permanent impairment or restrictions. Additionally, he opined that Mr. Hemphill's current alleged complaints and course of treatment were not causally related to the 2020 work injury. (Def. Ex. L, pp. 33-34)

Mr. Hemphill testified in his deposition and at the arbitration hearing that he has had chronic low back pain since 2014. (Def. Ex. M, depo. pp. 14-16) At the hearing he testified as follows:

Q. . . . I believe you testified that basically since 2014 you've had ongoing chronic low back pain; correct?

A. Yes.

Q. And also basically since that time you've had pain, numbness or tingling in your right buttocks going down your leg to your foot; correct?

A. Yes

Q. And those were active symptoms that you had even after your last treatment in 2018 up until your 2020 injury; correct?

A. Yes.

Q. You've basically had to live with that since 2014; correct?

A. That is correct.

Q. And I think that's why it was phrased by your attorney, and the records reflects that, that when you were done treating for the 2020 injury in November of 2020, you had basically returned back to your baseline status that you were before that injury; correct?

A. Yes

(Tr. pp. 43-44).

Michael Leaven also testified at the hearing. Mr. Leaven was Mr. Hemphill's supervisor at the City. According to Mr. Leaven, from the time Mr. Hemphill returned to work in November 2020 until his termination in April 2022, he never complained of back pain or any other issues from the 2020 work injury. (Tr. pp. 61-63)

There is no question that Mr. Hemphill sustained a work-related injury on September 9, 2020. The central dispute in this case is whether Mr. Hemphill sustained permanent disability as the result of the injury. There are two experts who have offered their opinions on this issue.

Dr. Manshadi, conducted an IME on March 2, 2023. He diagnosed Mr. Hemphill with right L5-S1 radiculopathy with weakness of the hip girdle muscles, especially involving the hip abductors and extensors, as well as reduced light touch and pinprick involving the right L5-S1. He stated that the work injury of September 9, 2020 caused significant material aggravation of that diagnosis. He noted that Mr. Hemphill had a progression of his underlying degenerative changes in his spine which was documented on the September 2020 MRI compared to an MRI from January 2016. Dr. Manshadi does not provide any explanation of how the work injury aggravated Mr. Hemphill's condition. Additionally, Dr. Manshadi does not explain the gap in symptoms from November 23, 2020 until February 14, 2023; this is the period from when Mr. Hemphill stated his back pain returned to his preinjury baseline until he received treatment on February 14, 2023 and reported that he had experienced an increase in symptoms over the prior three months. Dr. Manshadi does not explain Mr. Hemphill's return of symptoms nearly two years after his job with the City ended.

Additionally, Dr. Manshadi does not explain why he believes the current symptoms are related to the September work injury versus the previous back injury which resulted in surgery in 2014. I do not find Dr. Manshadi's causation statement to be consistent with the record as a whole or to be persuasive. Mr. Hemphill returned full-time to his pre-injury job with no restrictions for over two years. During this time, there is no documented evidence that Mr. Hemphill sought any treatment for his back. In fact, Mr. Hemphill did not seek treatment for his back until months after his job with the City was terminated. Additionally, Mr. Hemphill admitted that he had returned to baseline by November 23, 2020. Furthermore, Dr. Manshadi does not comment on how Mr. Hemphill's current work at Wright-Way may or may not have contributed to his current symptoms. Due to the lack of rationale in his report, I do not find the opinions of Dr. Manshadi to be persuasive or consistent with the evidentiary record as a whole.

PA Manely also provided his opinion in this case. He treated Mr. Hemphill close in time to the injury and also had the opportunity to review the 2023 treatment records. On November 23, 2020, Mr. Hemphill reported to him that he had returned to regular duty work with no restrictions and without any difficulties. Mr. Hemphill reported that his symptoms had resolved. PA Manely discharged Mr. Hemphill from his care. He was also aware of Mr. Hemphill's deposition testimony regarding his job duties at Wright-Way Trailers. PA Manely opined that in November 2020 when he discharged Mr. Hemphill from his care his work injury had resolved with no permanent impairment or residuals. He opined that Mr. Hemphill's current alleged complaints and course of treatment were not causally related to the 2020 work injury. I find PA Manely's opinion to be persuasive and consistent with the evidence as a whole. Therefore, I find that Mr. Hemphill has failed to demonstrate by a preponderance of the evidence that his symptoms after November 23, 2020 are related to the September 9, 2020 work injury. I further find that he did not sustain any permanent impairment as the result of the work injury.

Mr. Hemphill is seeking payment of past medical expenses as set forth in claimant's exhibit 7. A review of the exhibits demonstrates claimant is seeking payment for services incurred at Physicians Clinic of Iowa, P.C. in February 2023. He is also seeking payment for treatment he received from Atkins Family Medical Clinic in February and March 2023. Because he failed to demonstrate that his symptoms after November 23, 2020 are related to the September 9, 2020 work injury, I find the defendant is not responsible for any medical expenses incurred after November 23, 2020. I find the past medical expenses that Mr. Hemphill seeks payment for all occurred after November 23, 2020. Thus, I find defendant is not responsible for the expenses set forth in claimant's exhibit 7.

Mr. Hemphill is seeking future medical treatment, specifically the fusion surgery recommended by Dr. Barber. However, I find that Mr. Hemphill has failed to demonstrate by a preponderance of the evidence that his symptoms after November 23, 2020 are related to the September 9, 2020 work injury. Thus, I find Mr. Hemphill has failed to demonstrate entitlement to additional treatment.

Mr. Hemphill is seeking an assessment of costs as set forth in claimant's exhibits 6. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. I find that he was not successful in his claim and therefore exercise my discretion and do not assess costs against the defendant. Each party shall bear their own costs.

Because Mr. Hemphill has failed to demonstrate entitlement to any weekly benefits as the result of the September 9, 2020 work injury, any issues regarding the appropriate commencement date, appropriate weekly rate of workers' compensation, or apportionment or credit are moot.

CONCLUSIONS OF LAW

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. 6.904(3).

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. 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); Dunlavy 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).

Based on the above findings of fact I conclude claimant has failed to demonstrate by a preponderance of the evidence that his symptoms after November 23, 2020 are related to the September 9, 2020 work injury. I further conclude that he did not sustain any permanent impairment as the result of the work injury. As such, I conclude claimant has failed to demonstrate entitlement to any weekly benefits as the result of the September 9, 2020 work injury.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Based on the above findings of fact, I conclude claimant has failed to demonstrate by a preponderance of the evidence that his symptoms after November 23, 2020 are related to the September 9, 2020 work injury. Claimant is seeking payment of past medical expenses that were incurred after November 23, 2020. Therefore, I conclude that defendant is not responsible for the medical expenses set forth in claimant's exhibit 7.

Claimant is also seeking future treatment under Iowa Code section 85.27. However, I concluded claimant has failed to demonstrate by a preponderance of the evidence that his symptoms after November 23, 2020 are related to the September 9,

2020 work injury. Thus, I find claimant has failed to demonstrate that defendant is responsible for additional treatment. Claimant's request for the treatment is denied.

According to the hearing report, claimant is seeking reimbursement for the IME performed by Dr. Manshadi. Iowa Code 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. In his post-hearing brief claimant does not argue entitlement to reimbursement under section 85.39. Defendant argues that claimant is not entitled to reimbursement under section 85.39 because the triggering events of section 85.39 were not met to warrant the reimbursement. I find claimant failed to demonstrate that an employer-retained physician evaluated permanent disability prior to Dr. Manshadi on March 2, 2023. I conclude claimant has failed to demonstrate entitlement to the IME pursuant to Iowa Code section 85.39.

Finally, claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. I conclude that claimant was not successful in his claim and therefore exercise my discretion and do not assess costs against the defendant. Each party shall bear their own costs.

Because claimant has failed to demonstrate he sustained any permanent disability as the result of the September 9, 2020 work injury, the remaining issues are rendered moot.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing from these proceedings.

Each party shall bear their own costs.

Defendant 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 August, 2023.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nate Willems (via WCES)

Aaron Oliver (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.