BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOHN W. THIELKING,

Claimant,

vs.

GLAZER'S DISTRIBUTORS OF IOWA, INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5053369

APPEAL

DECISION

Head Note Nos: 1100; 1802; 1803; 2501

Claimant John W. Thielking appeals from an arbitration decision filed on December 8, 2016. Defendants Glazer's Distributors of Iowa, employer, and its insurer, New Hampshire Insurance Company, respond to the appeal. The case was heard on June 30, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 15, 2016.

The deputy commissioner found claimant sustained a five percent industrial disability due to bilateral inguinal hernias that arose out of and in the course of his employment with defendant-employer on April 21, 2014, entitling claimant to 25 weeks of benefits. However, the deputy commissioner determined claimant failed to prove his subsequent groin and testicular pain and corresponding treatment were causally related to the April 21, 2014, date of injury. Based on his conclusion that claimant's groin and testicular pain was not related to his work injury, the deputy commissioner determined claimant reached maximum medical improvement (MMI) on July 8, 2014. The deputy commissioner found claimant was entitled to healing period benefits from May 8, 2014 to July 7, 2014, and 25 weeks of PPD benefits starting July 8, 2014, all at the stipulated rate of $266.66. Costs were taxed to defendants.

Claimant on appeal asserts the deputy commissioner erred in finding claimant's groin and testicular conditions were not causally related to his work injury. Claimant additionally asserts that the deputy commissioner's industrial disability determination was too low. Lastly, claimant asserts the deputy commissioner erred in adopting the MMI date of July 8, 2014.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, pursuant to Iowa Code sections 86.24 and 17A.15, I respectfully disagree with the presiding deputy commissioner's findings, analysis, and conclusions. Therefore, the arbitration decision is reversed in part and modified in part.

FINDINGS OF FACT

Claimant was 34 years old at the time of the hearing. (Hearing Transcript, page 18) He has a bachelor's degree in biology with a minor in chemistry from Grand View University. (Tr., p. 19) At the hearing, he indicated he eventually planned to pursue chiropractic school. (Tr., p. 20)

After high school and before attending Grand View, claimant worked in customer service for Citi Group for roughly four years. (Exhibit 3, p. 216) While taking classes at Grand View, claimant worked part-time in the biology lab and as a barista. (Id.) Claimant found full-time employment after graduation, first with the Iowa Donor Network for a few months in 2008, then at a call center in 2010, and then with Starbucks from 2011 to 2013. (Id.) Claimant's last job before being hired with defendant-employer was a seasonal position with a Christmas tree farm in 2013. (Ex. 3, p. 217) Claimant started working for defendant-employer as a merchandiser stocking shelves in February of 2014. (Tr., p. 23) His job as a merchandiser required the ability to lift up to 60 pounds. (Tr., p. 24)

Prior to February of 2014, claimant was suffering from numerous personal health problems. For example, in a note from his primary care provider, John A. Carstensen, M.D., dated January 13, 2014, claimant's ongoing conditions included Type 2 diabetes, hypogonadism, obesity, obstructive sleep apnea, depression, esophageal reflux, and hypertriglyceridemia, and he had just recently recovered from acute pancreatitis. (Ex. 1(a), pp. 10-11) However, claimant was required to undergo a pre-employment physical prior to being hired with defendant-employer, and he passed. (Tr., p. 24)

Claimant sustained a stipulated work injury on April 21, 2014, when he noticed bilateral bulges in his lower abdomen. (Tr. p. 30) Claimant was evaluated by Judith Nayeri, D.O., after he reported the injury to defendant-employer. (Ex. 1(b), pp. 24-25) Dr. Nayeri assessed bilateral abdominal wall hernias and referred claimant to a general surgeon. (Id.) That surgeon was Willie McClairen, M.D., who performed a surgical repair of claimant's bilateral inguinal hernias on May 13, 2014. (Ex. F-1, pp. 39-40)

Claimant was seen in follow-up with Dr. McClairen on May 20, 2014. (Ex. F-1, p. 41) The visit note indicates claimant told Dr. McClairen he was "doing quite well," but

claimant disputed this description at hearing. (Tr., p. 32) Though claimant had hoped to recover from surgery without narcotics, he filled his prescription within 24 hours after surgery due to his pain levels. (Tr., p. 32)

Claimant testified he initially believed his pain in the one to two weeks after surgery to be "normal surgical recovery pain" due to the surgical incision through the abdominal wall, but he grew concerned when the pain began to spread throughout the lower abdomen and into his groin. (Tr., pp. 32-33) The pain in his groin was unlike any pain he experienced before his hernia repair surgery. (Tr. p. 34)

Dr. McClairen, in his note from claimant's June 9, 2014 follow-up appointment, documented discomfort in claimant's left testicle. (Ex. F-1, p. 42) As a result, Dr. McClairen recommended an ultrasound as soon as possible. (Ex. F-1, p. 42) The ultrasound, performed the following day, revealed no abnormalities. (Ex. F-1, p. 43)

No abnormalities were discovered during an emergency room examination for abdominal and testicular pain on June 11, 2014, or in a subsequent CT scan of the abdomen and pelvis on June 24, 2014. (Ex. F-2, pp. 44-46; Ex. F-3, p. 51) Still, claimant's discomfort persisted, so at his final appointment with claimant, Dr. McClairen recommended evaluation by pain management and a urologist. (Ex. 1c, p. 31)

Claimant described his experience with Dr. McClairen as "horrible." Claimant testified at hearing he felt Dr. McClairen was "really unconcerned with the amount of pain that [he] was in." (Tr., pp. 34, 36) As a result, at the recommendation of Dr. Carstensen, claimant requested a second opinion with Scott Hamling, M.D. (Tr., pp. 35-36)

Defendants agreed to authorize Scott Hamling, M.D., for treatment, and claimant was evaluated by Dr. Hamling for the first time on July 8, 2014. (Ex. F-4, pp. 53-55). Claimant explained that the pain he was experiencing at the time of his initial evaluation with Dr. Hamling was the same pain he developed in the one to two weeks after surgery. (Tr., p. 38) Dr. Hamling indicated claimant may be a candidate for nerve injections, though claimant was not experiencing the classic symptoms most often seen with nerve entrapment. (Ex. F-4, p. 55) Dr. Hamling also told claimant he may benefit from physical therapy, but returning to work and increased activity should not cause damage or re-injury. (Ex. F-4, p. 55)

In a letter to defendants on July 15, 2014, Dr. Hamling modified his recommendations, stating as follows:

> [A]lthough previous consultation was suggested for pain management by his previous surgeon, I do not believe [claimant's] pain is classic neuropathic pain. He has no signs of classic nerve entrapment pain on examination or history. Therefore, pain management consultation may not be of significant benefit.

> In light of his lack of classic symptomatology in regard to nerve pain, I have cleared him to return to work without lifting restrictions and without need for pain management consultation at this time.

(Ex. F-4, p. 56)

Dr. Hamling's office then instructed claimant to follow up with a pain management physician if he continued to have pain. (Ex. 1g, pp. 64-65)

As a result, on July 23, 2014, claimant returned to Dr. Carstensen. (Ex. 1f, p. 41) Dr. Carstensen gave claimant a work excuse until his appointment with a physician in pain management. (Ex. 1f, p. 43) The July 23, 2014 appointment with Dr. Carstensen was not authorized by defendants. (Tr., p. 42)

Claimant was evaluated by Thomas Hansen, M.D., in the pain clinic on July 28, 2014. (Ex. 1h, p. 70) Dr. Hansen performed bilateral ilioinguinal blocks, discussed the possibility of using a stimulator, and restricted claimant from returning to work. (Ex. 1h, pp. 71-72)

When claimant returned to Dr. Hansen on August 18, 2014, he reported the injections provided some short-term relief of the inguinal pain but not the testicular pain. (Ex. 1h, p. 75) Dr. Hansen performed repeat injections and again raised the possibility of using a stimulator. (Id.) He released claimant to return to sedentary work as of September 3, 2014. (Ex. 1h, p. 77)

Defendants terminated claimant's employment upon receipt of Dr. Hansen's release to sedentary duty. (Tr., p. 45)

Because claimant was not interested in a stimulator and the injections performed by Dr. Hansen were negatively impacting claimant's blood sugar and A1C levels, claimant did not pursue any additional treatment with Dr. Hansen. (Tr., p. 45-46) None of claimant's treatment with Dr. Hansen was authorized by defendants. (Tr., p. 42)

Notably, Dr. Hansen was of the opinion that claimant's pain after his hernia repair "would be considered to be a work-related issue." (Ex. 1h, p. 75) He stated claimant's groin pain was "most likely" resulted from claimant's inguinal hernia surgery, and that ilioinguinal neuralgia is "frequently seen with inguinal hernia surgeries." (Ex. 1h, p. 79)

Claimant then returned to Dr. Hamling on August 26, 2014. Dr. Hamling placed claimant at MMI, again noting claimant did not have classic neuropathic symptomatology. (Ex. F-4, p. 62) He was released from care without any limitations or restrictions. (Id.)

At the recommendation of his parents, claimant then went to see Michael Feloney, M.D., with a request for ilioinguinal nerve removal. (Tr., pp. 56-57; Ex. 1i, pp. 84-86) Dr. Feloney recommended claimant seek out a surgeon who specialized in that

procedure, and he released claimant without any care or treatment. (Ex. 1i, p. 86) Dr. Feloney was not an authorized physician. (Tr. p. 57)

Claimant then went online and found Eric Williams, M.D., in Maryland. (Tr., p. 46) Claimant first saw Dr. Williams on December 15, 2014. (Ex. 1j, p. 87) Claimant reported to Dr. Williams that "immediately after surgery he had severe unremitting bilateral groin and testicular pain." (Ex. 1j, p. 88) After his examination of claimant, Dr. Williams was of the opinion that claimant had "bilateral symptomatic neuromas of the ilioinguinal, iliohypogastric, and genital branch of the genitofemoral nerve." (Ex. 1j, p. 89) He recommended a bilateral resection of the nerve branches. (Id.)

Dr. Williams performed the nerve resection surgery on December 17, 2014. (Ex. 1j, p. 90) During surgery, Dr. Williams "identified immediately a huge ilioinguinal, iliohypogastrice nerve complex" that "traveled directly into the surgical scar and directly under his Ethibond sutures" and was "directly near his mesh." (Id.) In fact, "the nerve itself was adjacent to the stitches and tied up in scar tissue." (Id.)

This first surgery "greatly reduced" claimant's pain at the incision site, but claimant continued to have pain "on both sides on the spermatic cord." (Tr., pp. 47-48; Ex. 1j, pp. 95-96) As a result, Dr. Williams performed a second surgery on January 27, 2015 to "specifically evaluate the spermatic cord." (Ex. 1j, pp. 96-99) The second surgery provided relief to claimant's left-sided groin symptoms. (Tr., pp. 48-49) In June of 2015, claimant returned to Dr. Williams in an attempt to relieve the groin symptoms on his right side. (Ex. 1j, pp. 108-110) A third surgery was performed on June 15, 2015, which significantly improved claimant's pain, leaving only "occasional" pain at his incision site. (Ex. 1j, pp. 111-114; Tr., p. 50) None of claimant's treatment with Dr. Williams was authorized by defendants.

In a responsive letter to claimant on September 17, 2015, Dr. Williams confirmed that claimant's neuropathic pain from a nerve injury was "caused by hernia surgery." (Ex. 1j, p. 119) He agreed that claimant's hernia repair in May of 2014 "was a direct substantial cause of the condition which eventually required [Dr. Williams'] surgical care." (Ex. 1j, p. 120) He recommended that claimant look for work in the medium physical demand category and to avoid heavy lifting and carrying for the foreseeable future. (Ex. 1j, pp. 119-120) By November of 2015, however, Dr. Williams indicated claimant could lift up to 50 pounds and push up to 100 pounds. (Ex. 1j, p. 123)

After his treatment with Dr. Williams in 2015, it does not appear from the record that claimant received additional care other than being prescribed muscle relaxers and anti-inflammatories by Dr. Carstensen. (Tr. p. 53)

Claimant was evaluated by John Kuhnlein, D.O., for purposes of an independent medical examination (IME) at the request of his attorney on February 5, 2016. (Ex. 1a) In his report dated March 8, 2016, Dr. Kuhnlein opined that claimant's postoperative testicular and groin pain developed as a sequela to claimant's surgical hernia repair. (Ex. 1a, p. 13) Dr. Kuhnlein assigned an MMI date of December 15, 2015, which was

six months after his final surgery with Dr. Williams. (Ex. 1a, p. 14) For claimant's hernia condition, Dr. Kuhnlein assigned 15 percent whole body impairment. (Ex. 1a, p. 15) He assigned an additional one percent whole body impairment for claimant's nerve resections, for a total whole body impairment of 16 percent. (Id.) Dr. Kuhnlein recommended claimant limit his lifting to a 40-pound maximum. (Id.)

In a letter to defendants dated May 31, 2016, presumably in response to Dr. Kuhnlein's IME report, Dr. Hamling explained in detail why he was of the opinion that claimant did not sustain any injuries to his nerves during the hernia repair. He stated the surgery performed on claimant "would not occur near the nerve plexus," and had a nerve become entrapped during the surgery, there would have been "an onset of acute discomfort at that time." (Ex. F-4, p. 64) Dr. Hamling noted Claimant's first complaint of discomfort in the medical record did not occur until June 9, 2014, nearly a month after surgery. (Id.) Dr. Hamling also explained his examination did not elicit any of the expected pain or discomfort from claimant. (Ex. F-4, p. 65) Based on the delay in reported symptoms and Dr. Hamling's inability to reproduce claimant's pain, he found no support for the existence of a nerve entrapment that could be linked to claimant's hernia repair surgery. (Id.)

With these opinions in mind, the threshold issue to be decided is whether the symptoms claimant experienced after his bilateral hernias were surgically repaired are causally related to the April 21, 2014, work injury. The deputy commissioner, relying on the opinion of Dr. Hamling, found that claimant's groin and testicular pain (and resulting treatment) were not related to his April 21, 2014 work injury. For the reasons that follow, I respectfully disagree.

In support of his opinion that there was no nerve entrapment during claimant's hernia repair, Dr. Hamling explained in his May 31, 2016, letter that the type of hernia repair performed on claimant "would not occur near the nerve plexus." (Ex. F-4, p. 64) In June 2014, however, Dr. Hamling seemingly made a conflicting statement to Dr. Carstensen, when he told Dr. Carstensen that claimant's symptoms were likely "due to nerve irritation from the surgery that occurs many times." (Ex. 1f, p. 40)

Of even greater significance, however, are the findings of Dr. Williams during his first operation on claimant in December 2014. (Ex. 1j, p. 90) Not only did Dr. Williams identify a huge nerve complex that traveled "directly" into claimant's surgical scar and near the mesh implant, but he also discovered that the nerve was "tied up in scar tissue." (Id.) Thus, Dr. Hamling's statement that claimant's hernia repair would not have occurred near the nerve plexus was directly undercut by objective operative findings.

Further, although Dr. Hamling was of the opinion in his May 31, 2016, letter that any nerve entrapment would have produced "acute" discomfort (Ex. F-4, p. 64), he told Dr. Carstensen in June 2014 that pain from nerve irritation "usually gets worse the first few weeks as the muscle grows into/incorporates the mesh." (Ex. 1f, p. 40) Dr. Hamling's statement to Dr. Carstensen is consistent with claimant's description of increasing symptoms in the one to two weeks after surgery. (Tr., pp. 32-33)

Lastly, Dr. Hamling's opinion that claimant's nerves were not entrapped during the hernia repair is not consistent with the significant relief experienced by claimant after the nerve resection surgeries performed by Dr. Williams. Dr. Hamling failed to explain why these surgeries were so successful if claimant's nerves were not the underlying issue. For these reasons, Dr. Hamling's opinion is given little weight.

Instead, I find the opinion of Dr. Williams, which is supported by the opinions of Drs. Kuhnlein and Hansen, to be the most persuasive. Dr. Williams opined that claimant's nerve injury was "caused by hernia surgery" and that the hernia repair "was a direct substantial cause of the condition which eventually required [Dr. Williams'] surgical care." (Ex. 1j, pp. 119-120) This is consistent with Dr. Hansen's statement that claimant's groin pain was "most likely" from claimant's inguinal hernia surgery (Ex. 1h, p. 79) and it's consistent with Dr. Kuhnlein's opinion that claimant's postoperative testicular and groin pain was a sequela to claimant's surgical hernia repair. (Ex. 1a, p. 13)

The deputy commissioner rejected Dr. Williams' opinion because it was based on "an incorrect history." However, the "incorrect history" relied upon by Dr. Williams was claimant's report of groin and testicular pain "immediately after surgery." (Ex. 1j, p. 88) It is acknowledged that the first mention of post-operative discomfort does not appear in the medical records until June 9, 2014 (Ex. F-1, p. 42); however, claimant testified he did, in fact, have pain after surgery, but he initially attributed it to nothing more than "normal surgical recovery pain." (Tr., p. 32)

Further, even assuming the history relied upon by Dr. Williams was incorrect, Dr. Williams discovered during the first surgery he performed on claimant that claimant's nerve was tied up in scar tissue. (Ex. 1j, p. 91) Thus, even if Dr. Williams considered an inaccurate or incomplete history, his opinion had support in objective surgical findings.

For these reasons, I respectfully disagree with the deputy commissioner and I find claimant's groin and testicular symptoms were a sequela of claimant's hernia repair. Because claimant's hernia repair was necessitated by the stipulated April 21, 2014, work injury, I find claimant's groin and testicular conditions are causally related to the April 21, 2014, work injury. The deputy commissioner's finding that claimant's testicular pain was not related to his hernia surgery or work with defendant-employer is therefore reversed.

Having found claimant's groin and testicular conditions to be compensable, the next issue to be decided is claimant's entitlement to reimbursement for medical treatment. Claimant asserts the summary of medical charges on page 135 of Exhibit 2a accurately reflects the charges he incurred relating to unauthorized medical treatment for his groin and testicular pain. (Tr., p. 54) The first three dates of service listed on Exhibit 2a page 135 are related to treatment and diagnostic exams ordered by claimant's authorized treating physicians; as such, I find defendants are responsible for

the charges incurred on May 13, 2014, June 10, 2014, and June 24, 2014. (Ex. 2a, p. 135)

After claimant's July 8, 2014, appointment with Dr. Hamling, it appears defendants, for all practical purposes, took the position that claimant's ongoing complaints were not work-related. I, however, found claimant's groin and testicular complaints are compensable. Thus, I find claimant is entitled to recovery for the costs of the care obtained with unauthorized physicians so long as the care was reasonable and related to his groin and testicular conditions. Even if defendants had not denied liability for claimant's ongoing groin and testicular complaints, claimant testified the unauthorized care he received with Drs. Hansen and Williams was beneficial. There is no evidence in the record the treatment performed by, or charges incurred with, these providers was unreasonable. Therefore, I find claimant has shown entitlement to reimbursement for unauthorized care with those providers.

However, for purposes of clarity and because defendants argue some of the claimed expenses are not related to treatment of claimant's groin and testicular conditions, I will address claimant's remaining claimed expenses line by line.

The July 28, 2014, and August 18, 2014, dates of service are for pain management visits with Dr. Hansen. Because these visits were for reasonable treatment of claimant's groin and testicular complaints, which I found to be related to claimant's work injury, and because claimant testified the injections performed by Dr. Hansen were beneficial (Tr., p. 86), I find defendants are responsible for the charges incurred during claimant's July 28, 2014, and August 18, 2014, appointments. (Ex. 2a, pp. 140-141)

The next date of service is for claimant's October 27, 2014, appointment with Dr. Feloney. The appointment with Dr. Feloney was at the direction of claimant's parents and not advised by any physician. (Tr., p. 57) Further, Dr. Felony provided no treatment and recommended claimant seek treatment that claimant had already been considering on his own. (Tr., p. 57) Thus, I find defendants are not responsible for charges incurred during claimant's appointment with Dr. Feloney.

The next several dates of service, December 17, 2014, through February 4, 2015, are all related to reasonable care provided by Dr. Williams. (Ex. 2a, pp. 135, 143-156, 165-167). Because these visits were for treatment of claimant's groin and testicular complaints, which I found to be related to claimant's work injury, and because claimant testified the care provided by Dr. Williams was beneficial (Tr., pp.47, 49), I find defendants are responsible for the charges incurred on December 17, 2014, January 27, 2014, and February 2, 2015. (Ex. 2a, pp. 135, 143-156, 165-167).

The next service date listed is February 10, 2015, which corresponds to an emergency room visit. (Ex. 2a, pp. 135, 157) The record reveals claimant was seen in the emergency room on February 10, 2015, with a "[s]evere headache likely related to sinusitis." (Ex. H, p. 79) While there is some mention of the medications claimant was

taking due to his recent nerve surgery, the clinical impression in the emergency room was sinusitis. (Ex. H, p. 84) Thus, I find this visit was not related to treatment of claimant's work injury, and defendants are not responsible for any charges incurred in this visit.

The next service date listed is a February 26, 2015, appointment with Susan Funk. (Ex. 2a, pp. 135, 158) There is no corresponding treatment note in the record. I do not have sufficient information to determine whether this treatment was related to claimant's work injury. I find defendants are not responsible for any charges related to care received by claimant on February 26, 2015.

The last service date listed is June 15, 2015, when claimant had his final surgery with Dr. Williams. (Ex. 2a, pp. 135, 159-164, 168). Because this visit was for reasonable treatment of claimant's groin and testicular complaints, which I found to be related to claimant's work injury, and because claimant testified the care provided by Dr. Williams was beneficial (Tr., p. 50), I find defendants are responsible for the charges incurred on June 15, 2015. (Ex. 2a, pp. 135, 159-164, 168).

Although not listed in the summary, I find defendants are not responsible for the charges on pages 136 and 137 of Exhibit 2a. This appears to be a psychiatric evaluation and not related to treatment of claimant's work injury.

Next, claimant asserts the summary of charges on page 169 of Exhibit 2b accurately reflects the charges he incurred for prescription medication relating to his groin and testicular pain. (Tr. p. 54) I find all of the prescriptions listed on page 169 of Exhibit 2b are related to treatment of claimant's work injury except for the final prescription of ondansetron prescribed by Dr. Carstensen on February 17, 2016. There is no corresponding treatment note from this date, so I have insufficient information to determine whether this prescription was related to claimant's work injury. Thus, I find defendants are responsible for all costs listed on page 169 of Exhibit 2b, except for the final charge of $88.79.

Claimant asserts the summary of charges on page 177 of Exhibit 2c accurately reflects the charges he incurred for mileage to and from his unauthorized medical treatment. (Tr. pp. 54-55) I find defendants are responsible for the mileage listed on page 177 of exhibit 2c except for the following: October 27, 2014, appointment with Dr. Feloney; November 17, 2014, appointment with Dr. Hansen; December 12, 2014, appointment with Dr. Carstensen; trips to Walgreens from March 23, 2015, to October 16, 2015; and February 17, 2016 appointment with Dr. Carstensen. I found defendants are not responsible for reimbursement for the appointment with Dr. Feloney, so I likewise find they are not responsible for reimbursement of claimant's mileage for that appointment. There is no corresponding treatment record for a November 17, 2014 appointment with Dr. Hansen, so I have insufficient information to determine whether that appointment and corresponding mileage was for treatment of claimant's work injuries. The record contains no information regarding what prescriptions claimant filled at Walgreens from March 23, 2015, through October 16, 2015, so I have insufficient

information to find defendants responsible for the corresponding mileage for those trips. Finally, there is no corresponding treatment record for a February 17, 2016, appointment with Dr. Carstensen, so I have insufficient information to determine whether that appointment and the corresponding mileage was for treatment of claimant's work injuries.

Claimant asserts the summary of charges on page 178 of Exhibit 2d accurately reflects the charges he incurred for airfare to and from his unauthorized medical treatment with Dr. Williams in Maryland. (Tr. p. 55) He also asserts the summary of charges on page 202 of Exhibit 2e accurately reflects the meal expenses he incurred while seeking unauthorized medical treatment with Dr. Williams in Maryland. (Tr. p. 55) There is no evidence in the record that these charges are unreasonable. Because claimant's trips to Maryland were for treatment of claimant's groin and testicular complaints, which I found to be related to claimant's work injury, and because claimant testified the care provided by Dr. Williams was beneficial (Tr., p. 47, 49-50), I find defendants are responsible for the transportation and meal expenses incurred while traveling to Maryland. The deputy commissioner's finding with respect to claimant's entitlement to reimbursement for medical expenses is therefore modified.

The next issue on appeal is whether claimant is entitled to additional healing period benefits. The deputy commissioner, having found claimant's groin and testicular pain were not compensable, used Dr. Hamling's MMI date of July 8, 2014. However, based on my finding that claimant's groin and testicular symptoms and resulting treatment were related to his work injury, I adopt the MMI date assigned by Dr. Kuhnlein, which was December 15, 2015. (Ex. 1a, p. 14) Although claimant was released to return to work by Dr. Hamling in July 2014, his release was based on his opinion that claimant's ongoing groin and testicular symptoms were not work-related, an opinion I did not find convincing. Both Dr. Carstensen and Dr. Hansen restricted claimant from returning to work during this same time period (Ex 1f, p. 43; Ex. 1h, p. 72), and when Dr. Hansen released claimant to sedentary duty in September 2014, claimant was terminated by defendant-employer. (Ex. 1h, p. 77; Tr., p. 45) Claimant did not return to work in any capacity until he was hired by the United States Postal Service (USPS) in late December of 2015. (Tr., p. 72) Thus, I find claimant is entitled to healing period benefits from May 8, 2014, when he was originally restricted from returning to work, until December 14, 2015, the day before he achieved MMI. The deputy commissioner's finding with respect to claimant's entitlement to healing period benefits is therefore modified.

The final issue on appeal is whether claimant is entitled to additional PPD benefits. The deputy commissioner determined claimant sustained a five percent industrial disability. I respectfully disagree and I find claimant sustained 20 percent industrial disability as a result of his bilateral hernia injury and groin and testicular sequela injuries for the reasons explained below.

With respect to claimant's functional impairment, Dr. Kuhnlein assigned a 16 percent whole body impairment rating for claimant's hernia and nerve conditions. (Ex.

1a, p. 15) I find this impairment rating persuasive. With respect to claimant's physical restrictions, Dr. Kuhnlein recommended claimant limit his lifting to a 40-pound maximum. (Id.) Dr. Williams was of a similar opinion, restricting claimant to a 50-pound lift limit. (Ex. 1j, p. 123) Claimant, however, was exceeding both of these restrictions at the time of the hearing in his job as a mail handler with USPS. He explained that he is required as a mail handler to perform "lots of lifting heavy things," up to 70 pounds, along with loading and unloading semis. (Tr., pp. 28-29, 70) Claimant testified he was physically capable of performing the work. (Tr. p. 53) Thus, I find that while claimant's physical abilities were impacted by his work injuries, he is capable of performing physically demanding work.

Claimant was terminated in September 2014 by defendant-employer as a result of his inability to return to unrestricted work. Although claimant was off work for a significant period of time, he was able to find work with USPS in December of 2015. (Tr., p. 28) He continued to be employed by USPS at the time of the arbitration hearing, working roughly 40 hours per week at the rate of $14.60 per hour, and he planned to continue working there for the foreseeable future. (Tr., pp. 28-29). Because claimant successfully found higher-paying, physically demanding work, I find claimant sustained a 20 percent industrial disability, which entitles him to 100 weeks of PPD benefits. The deputy commissioner's finding with respect to claimant's entitlement to PPD benefits is therefore modified.

CONCLUSIONS OF LAW

The initial inquiry in this case is whether claimant's groin and testicular pain that manifested after his bilateral hernia repair is causally related to the April 21, 2014 work injury. 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).

An injury is considered to be a sequela of an original work injury if the employee sustained a compensable injury and later sustained further disability that is a proximate result of the original injury. Mallory v. Mercy Medical Center, File No. 5029834 (Appeal February 15, 2012). The Iowa Supreme Court held long ago that "where an accident occurs to an employee in the usual course of his employment, the employer is liable for all consequences that naturally and proximately flow from the accident." Oldham v. Schofield & Welch, 266 N.W. 480, 482 (1936). The Court explained as follows:

> If an employee suffers a compensable injury and thereafter suffers further disability which is the proximate result of the original injury, such further disability is compensable. Where an employee suffers a compensable injury and thereafter returns to work and, as a result thereof, his first injury is aggravated and accelerated so that he is greater disabled than before, the entire disability may be compensated for.

(Id. at 481)

A sequela can be an after effect or secondary effect of an injury. Lewis v. Dee Zee Manufacturing, File No. 797154, (Arb. September 1989). One form of seqeula from a work injury is an adverse effect from medical treatment for the original injury. Where treatment rendered with respect to a compensable injury itself causes further injury, the subsequent injury is also compensable. Yount v. United Fire & Casualty Co., 256 Iowa 813, 129 N.W.2d 75 (1964). For example, the death of a claimant who died on the operating table during surgery for a work injury may be compensable, since the injury caused the need for surgery. Breeden v. Firestone, File No. 966020, (Arb. February 27, 1992). As another example, a claimant who fell as a result of dizziness from medication he was taking to treat a work injury is to be compensated for both the original injury and the resulting fall as a sequela of the first injury. Hamilton v. Combined Ins. of America, File Nos. 854465, 877068, (Arb. February 21, 1991).

Based on the surgical findings and opinion of Dr. Williams, I found claimant's groin and testicular symptoms were caused by his hernia surgery. Because claimant's groin and testicular symptoms were an adverse result from medical treatment related to his original hernia injuries, I conclude claimant carried his burden to prove he sustained a sequela injury to his groin and testicles. The deputy commissioner's finding that claimant's groin and testicular symptoms are not compensable is therefore reversed.

Having concluded claimant's groin and testicular symptoms are causally related to his April 21, 2014 work injury, the next issue to be decided is claimant's entitlement to reimbursement for medical expenses and mileage, transportation, and meal costs related to treatment for his groin and testicular pain.

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of their own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

876 Iowa Administrative Code rule 8.1(2) also provides for recovery of medical mileage and meals.

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 1975). Upon their denial of liability, defendants lose the right to control the medical care sought by claimant during the period of denial, and the claimant is free to choose his care. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010). In other words, when liability is denied, defendants are precluded from asserting an authorization defense as to any future treatment during the period of denial. Id.

Even when defendants do not deny liability for the injury, claimant is entitled to reimbursement for any unauthorized care so long as he shows the care was reasonable and beneficial. To be beneficial, the medical care must provide a more favorable medical outcome than would likely have been achieved by the care authorized by the employer. Id. at 206. The claimant has a significant burden to prove the care was reasonable and beneficial. Id. at 206.

Claimant is not entitled to reimbursement for medical bills unless claimant shows that they were paid from claimant's funds. See Caylor v. Employers Mutual Casualty Co., 337 N.W.2d 890 (Iowa Ct. App. 1983). Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Where medical payments are made from a plan to which the employer did not contribute, the claimant is entitled to a direct payment. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 867-68 (Iowa 2008) ("We therefore hold that the commissioner did not err in ordering direct payment to the claimant for past medical expenses paid through insurance coverage

obtained by the claimant independent of any employer contribution.") See also: Carl A. Nelson & Co. v. Sloan, (Iowa App. 2015) 873 N.W.2d 552 (Iowa App. 2015) (Table) 2015 WL 7574232 15-0323. Claimant has the burden of proving that the fees charged for such services are reasonable. Anderson v. High Rise Construction Specialists, Inc., File No. 850096 (App. July 31, 1990).

Based on my finding that the first three dates of service listed on Exhibit 2a page 135 are related to treatment and diagnostic exams ordered by claimant's authorized treating physicians, I conclude defendants are responsible for the charges incurred on May 13, 2014, June 10, 2014, and June 24, 2014. (Ex. 2a, p. 135)

Because defendants in the instant case denied liability for claimant's ongoing groin and testicular complaints in July of 2015, they cannot assert an authorization defense for care relating to treatment of claimant's groin and testicular complaints received at claimant's own expense after that point. However, even assuming defendants did not deny liability, I conclude, based on the findings of fact above, that claimant satisfied his burden to prove the care received from Drs. Hansen and Williams was reasonable and beneficial.

More specifically, I conclude defendants are responsible for the charges incurred on the following dates based on my findings that the care provided on these dates was related to claimant's work injury and was both reasonable and beneficial: July 28, 2014 and August 18, 2014 [appointments with Dr. Hansen] (Ex. 2a, pp. 140-141); December 17, 2014, January 27, 2014, and February 2, 2015 [related to treatment provided by Dr. Williams] (Ex. 2a, pp. 135, 143-156, 165-167); June 15, 2015 [related to treatment provided by Dr. Williams] (Ex. 2a, pp. 135, 159-164, 168).

Based on the above findings of fact, I conclude defendants are responsible for the costs of all of the prescriptions listed on page 169 of Exhibit 2b except for the final prescription of ondansetron prescribed by Dr. Carstensen on February 17, 2016.

Based on the above findings of fact, I conclude defendants are responsible for the mileage listed on page 177 of Exhibit 2c except for the following: October 27, 2014 appointment with Dr. Feloney; November 17, 2014 appointment with Dr. Hansen; December 12, 2014 appointment with Dr. Carstensen; trips to Walgreens from March 23, 2015 to October 16, 2015; and February 17, 2016 appointment with Dr. Carstensen.

Lastly, based on the above findings of fact, I conclude defendants are responsible for the travel and meal expenses incurred during claimant's trips to Maryland for treatment with Dr. Williams. Thus, the deputy commissioner's findings with respect to claimant's entitlement to medical expenses and travel expenses are modified.

The next issue to be considered is whether claimant is entitled to additional healing period benefits. Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1)

provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981).

Based on the above findings of fact, I conclude claimant's healing period ended when he reached MMI on December 15, 2015. Up until that point, claimant had not returned to work and was not medically capable of returning to substantially similar employment. Thus, I conclude claimant is entitled to receive healing period benefits from May 8, 2014, through December 14, 2015. The deputy commissioner's conclusion with respect to claimant's entitlement to healing period benefits is therefore modified.

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

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

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

Based on the fact findings above, I find claimant sustained a 20 percent industrial disability as a result of his work injuries. Of great significance is claimant's return to the workforce in a physically demanding job that exceeds the restrictions recommended by his surgeon and IME physician. Because claimant sustained a 20 percent industrial disability, he is entitled to 100 weeks of benefits, commencing on December 15, 2015, at the stipulated rate of $266.66. The deputy commissioner's conclusion regarding claimant's entitlement to PPD benefits is therefore modified.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 8, 2016, is reversed in part and modified in part.

Defendants shall pay claimant healing period disability benefits from May 8, 2014, through December 14, 2015, at the stipulated weekly rate of two hundred sixty-six and 66/100 dollars ($266.66).

Defendants shall pay claimant one hundred (100) weeks of permanent partial disability benefits at the stipulated rate of two hundred sixty-six and 66/100 dollars ($266.66) per week commencing December 15, 2015.

Defendants shall receive a credit for all benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall reimburse/pay as appropriate the medical expenses as detailed above.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, and defendants shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 26th day of July, 2018.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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