BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

| | | |
|---|---|---|
| BAJRO RIZVIC, | FILED | |
| Claimant, | MAY 31 2019 | File No. 5058293 |
| vs. | WORKERS COMPENSATION | ARBITRATION |
| TITAN TIRE CORPORATION, | | DECISION |
| Employer, | | |
| ZURICH AMERICAN INS. CO., | | |
| Insurance Carrier, Defendants. | | Head Note: 1108 |

## STATEMENT OF THE CASE

Claimant, Bajro Rizvic, filed a petition for arbitration seeking workers' compensation benefits from Titan Tire Corporation, the employer and Zurich American Insurance Company, the insurance carrier.

The matter came on for hearing on April 12, 2018, before Deputy Workers' Compensation Commissioner Joseph L. Walsh in Des Moines, Iowa. The record in the case consists of Claimant's Exhibits 1 through 8; Defense Exhibits A through I; Joint Exhibits 1 through 14; as well the sworn testimony of claimant, Bajro Rizvic and his spouse Hazima Rizvic. Amy Pederson was appointed as the court reporter for the proceedings. Azra Sikric was deemed qualified by all parties and served as the Bosnian language interpreter. The parties briefed this case and the matter was fully submitted on June 4, 2018.

## ISSUES AND STIPULATIONS

The following issues and stipulations were submitted. All of the stipulations have been accepted by the agency and are deemed binding at this time.

It is stipulated that claimant suffered an injury which arose out of and in the course of employment on August 24, 2016. The primary issue is whether this injury resulted in any permanent disability. It is stipulated that if the claimant is entitled to permanent disability benefits, the disability is industrial. The defendants dispute that claimant has suffered any permanent disability. The parties dispute the commencement

date for any permanent disability benefits.

The parties stipulate to the elements which comprise the rate of compensation. The parties contend the correct rate of compensation is $719.89 per week. Affirmative defenses have been waived.

The claimant seeks medical expenses as outlined in Claimant's Exhibit 7. The claimant seeks reimbursement for his independent medical evaluation. The defendants have conceded that this expense is owed. It should be paid without delay. Claimant seeks alternate medical care. He contends the defendants have abandoned care. The defendants contend that claimant's ongoing treatment is not causally connected to his work injury. The parties agree that no permanency has been paid to date.

## FINDINGS OF FACT

Bajro Rizvic is a 42-year-old Bosnian man who appears older than his stated age. He testified live and under oath at hearing through a Bosnian interpreter. His answers were often long and expressive. He appeared uncomfortable at hearing, frequently stretching his neck and back and making facial expressions bordering on a grimace. He would occasionally stiffen up and he regularly flexed his fingers. He did not turn his head to the left during the hearing. While the claimant's mannerisms were fairly dramatic, I find his testimony to be generally credible. He was relatively consistent with other portions of the record. His credibility is a key issue herein.

Mr. Rizvic immigrated to the United States in approximately 1995 because of armed conflict. He initially located in the Washington, D.C., area and then moved to Iowa in 1997. He is married to Hazima Rizvic for the past 25 years. Mr. Rizvic's formal education is limited. He completed the eighth grade in Bosnia and has no other formal training in the United States. His English language skills are minimal and required the use of an interpreter at hearing. His primary language is Bosnian.

After arriving in the United States, Mr. Rizvic worked in the meatpacking industry for several years. He first performed heavy labor for Smithville Meat and after he arrived in Iowa, he performed heavy work for Iowa Packing in Des Moines. He essentially butchered a high volume of hogs on a daily basis. In approximately 2000, Mr. Rizvic began working in the maintenance department for Iowa Packing. He worked 70 to 80 hours per week, performing a wide variety of tasks, including digging holes, building walls and moving heavy equipment.

In approximately 2002, he began working at Titan Tire. He was employed as a full-time tire builder. He regularly worked 60 hours per week and earned upwards of $1,100 per week. This was the best paying job claimant ever held. He was motivated to maintain this employment. His job description is in the record. It was heavy work. He was required to be on his feet all day long, lift heavy and bulky objects, push/pull up to 50 pounds, and grasp with a force of 25 pounds. Many tasks were performed repetitively and the description specified the need to have full range of motion of the

cervical spine. (Claimant's Exhibit 1)

On August 24, 2016, Mr. Rizvic was working for Titan in his ordinary course of employment. He agreed to help a co-worker replace tire materials on a machine. He stepped up on a metal stair to place a metal bar in order to lock materials in place. In the process, Mr. Rizvic came into contact with exposed electrical wires. He was electrocuted immediately. He testified his body became stiff and he began shaking while attempting to push away from the machine. He was eventually able to separate from the machine and move off the metal step. He testified he had difficulty breathing. He was taken to an office to report the injury. Mr. Rizvic's testimony about how the injury occurred is consistent with the statement in his personnel file. (Cl. Ex. 1, pp. 4-6)

The first medical documentation of the incident was an email prepared by Michael Bales, EMT.

> On 8/24/2016 at about 23:48 Bajro Rizvic CC# 4311 came to the S/O office and tried to talk to walt [sic] but was not conveying what he was trying to convey, that being that he was shocked by 220VAC
>
> Eval: Pt seemed jittery, radial pulse was strong on left side but weaker on right side and bilateral check was not equal. Pt also had left side stiffness from neck down and complained of arms tingling.
>
> Pt had black marks on the bottom of each palm and when asked if it was grease or dirt he did not know how he got them, Pt also complained of abdomen sides hurting.
>
> Pt stated that when he received the shock he stiffened up was knocked back and almost fell over that he started to sweat.

(Cl. Ex. 1, p. 6)

Mr. Rizvic was taken to Mercy Medical Center in Des Moines. The medical note describes treatment for an electrical burn at work causing pain in his bilateral hands, trunk and lower extremities. (Jt. Ex. 2, p. 1) Other departments were consulted and claimant was kept for observation. (Jt. Ex. 3, p. 5) He had some weakness in his hands and difficulty flexing his fingers. He was evaluated extensively and remained in the hospital until August 26, 2016, and instructed to follow up for evaluation with Trauma Services in two weeks. (Jt. Ex. 2, p. 16) He was instructed to remain off work.

Titan, however, directed claimant to a different clinic, Methodist Occupational Health, Judith Nayeri, D.O., where he was evaluated on August 30, 2016.

> Currently, he complains of 10 or 11 places on his body where he claims he does not have strength like before. He said he has trouble getting up from a sited [sic] position. He aches all over. He feels weak. He has pain in both his elbows and clicking. When he grips he has pain into his chest

> as well as bilaterally. Laughing he gets left chest pain. The pain in his chest is a quick, sharp pain, but he says it is severe. His legs feel numb and tingly from his knees down. He said his whole body is tight. He cannot reach down. He never had a headache before and he always has pain on his upper right head. He can turn his head to the right, but not the left, and his whole body feels like it is popping or crunching when he moves.

(Jt. Ex. 3, p. 18) Dr. Nayeri stated that in spite of all his symptoms she "cannot find anything seriously wrong with him." (Jt. Ex. 3, p. 19) Dr. Nayeri attributed his ongoing symptoms and pain to muscle spasm in his neck and prescribed medications and physical therapy. (Jt. Ex. 3, p. 19) Mr. Rizvic was not interested in the medications. His symptoms, however, did not subside. In September 2016, "myalgias from transient muscle contraction" was diagnosed. (Jt. Ex. 3, p. 22) He began physical therapy on September 2, 2016 with Millennium Therapy. (Jt. Ex. 4) The therapist noted that his active cervical range of motion was better with "distraction based testing." (Jt. Ex. 4, p. 30) The therapist became frustrated with the inconsistent symptoms Mr. Rizvic presented. (Jt. Ex. 4, p. 41)

In September 2016, Mr. Rizvic was evaluated by Richard McCaughey, D.O. He performed a thorough evaluation. At that time, he was experiencing tightness and tenderness in his arms, legs, neck and back. (Jt. Ex. 3, p. 21) Upon examination of his extremities, Dr. McCaughey noted no "overt pain behavior with generalized palpation of any of his extremities and no palpable abnormalities." (Jt. Ex. 3, p. 21) He did have inconsistent effort in the neurologic examination.

By October 2016, Mr. Rizvic was referred to Kurt Smith, D.O., who took over the medical care at that point. In October, his primary symptoms were neck pain and bilateral leg pain. Dr. Smith diagnosed neuralgia and myalgia, ordered additional physical therapy and prescribed significant medications for pain management. (Jt. Ex. 5, pp. 44-46) Mr. Rizvic experienced only modest relief. Trigger point injections were attempted as well. (Jt. Ex. 5, p. 53)

On November 17, 2017, the therapist reported the following. "It is very difficult to provide consistent and appropriate treatment due to multitude of symptoms reported during each treatment. These at times do not coincide with treatments provided, activities performed or have physiological correlation." (Jt. Ex. 4, p. 41)

In November 2016, Dr. Smith recommended stopping with the physical therapy which had plateaued. (Jt. Ex. 5, p. 58) At that time, Dr. Smith ordered an MRI of the cervical spine, as well as an EMG. (Jt. Ex. 5, p. 55) By this time, the symptoms had settled into Mr. Rizvic's left neck and left upper back. He described his pain as "aching, burning and stabbing." (Jt. Ex. 5, p. 55) The MRI showed a disk herniation on his left side at C5-C6. (Jt. Ex. 5, p. 63) Mr. Rizvic underwent an epidural injection which helped very little. (Jt. Ex. 5, pp. 65-66) No physician, however, has specifically related any of the MRI findings to his current symptoms. Dr. Smith continued to conservatively

treat Mr. Rizvic's symptoms through medication management and restrictions.

On February 2, 2017, Dr. Smith evaluated Mr. Rizvic in follow-up. On that date, he noted the following.

> Continued left-sided neck pain. Physical therapist noting inconsistencies with full participation; self-limits. There are noted inconsistencies in examination. Evidence that he is not taking medications as prescribed; has not filled Lyrica or tizanidine since November, though stating in December that he was taking and did not need a refill.

(Jt. Ex. 5, p. 72) It is noted that from October 18, 2016 through February 2017, Dr. Smith had provided treatment to the claimant without any concerns about inconsistencies, symptom magnification or malingering. On February 2, 2017, after having learned information somehow about the therapist's concerns, his approach to Mr. Rizvic changed. He ordered an EMG/NCS at that time.

On February 17, 2017, Dr. Smith reviewed the EMG/NCS with Mr. Rizvic. The EMG was abnormal, demonstrating C8 radicular findings which did not correlate with the MRI. At that time, Dr. Smith noted there "continues to be inconsistencies in examination." (Jt. Ex. 5, p. 78) It appears Dr. Smith was merely referring to the fact that the EMG findings did not seem to be the cause of Mr. Rizvic's pain. On that date, Dr. Smith referred claimant to Trevor Schmitz, M.D., an orthopedist specializing in spine injuries. Both physicians practice at Iowa Orthopedics.

On March 1, 2017, Dr. Schmitz performed a full evaluation and reviewed the diagnostic tests. He noted the testing (MRI/EMG) results but concluded the following. "I do not see anything on his EMG or magnetic resonance imaging that could explain diffuse LEFT arm numbness and tingling. He has several findings on examination consistent with a nonanatomic source for his pain. He also has some evidence of symptom magnification." (Jt. Ex. 5, p. 82) Dr. Schmitz noted that Mr. Rizvic can "only be evaluated with significant coaching. He does have a significant amount of give way pain." (Jt. Ex. 5, p. 81) He did not recommend any surgical intervention and referred him back to Dr. Smith.

In turn, Dr. Smith evaluated Mr. Rizvic on March 21, 2017, and documented that claimant was not taking his medications as prescribed. That is to say, claimant was failing to take his medications. (Jt. Ex. 5, p. 86) Dr. Smith abruptly stopped his care for noncompliance. (Jt. Ex. 5, p. 87) He ordered a functional capacity evaluation and released him. It is somewhat unclear, or at least unexplained, why Dr. Smith ordered an FCE in this case.

On March 9, 2017, Titan contacted Mr. Rizvic regarding his employment. "You have been absent from work since February 14, 2017 without documentation. You were sent a request for information on February 22, 2017. You were sent an offer of work on March 2, 2017. To date no information has been provided nor have you

contacted us regarding the offer of work." (Cl. Ex. 1, p. 9) There had been an earlier, unsuccessful attempt to return Mr. Rizvic to work. (Def. Ex. E)

On March 23, 2017, defense counsel authored a report which Dr. Schmitz signed essentially indicating that Mr. Rizvic's pain complaints "were not credible" based upon the objective testing performed.[1] (Jt. Ex. 5, p. 84) The objective tests included a positive axial compression test where a physician pushes down on the patient's head, which should not cause any pain. Mr. Rizvic apparently indicated he did have pain.

The FCE was performed on April 4, 2017. The report was determined to be valid.

> Bajro Rizvic demonstrated consistent performance throughout testing. This, in combination with physiological responses (heart rate and respiratory rate), movement and muscle recruitment patterns both aware and unaware of observation, indicates that the results of his evaluation can be considered to be an accurate representation of Bajro Rizvic's functional abilities.

(Jt. Ex. 9, p. 127) The FCE placed rather significant permanent restrictions upon Mr. Rizvic.

> Bajro Rizvic demonstrated the ability to occasionally Lift up to 25 lbs, Floor to Waist, 20 lbs. Waist to Shoulder, Floor to Shoulder 15 lbs. Carry up to 25 lbs. Bajro Rizvic demonstrated Frequent sitting, Occasional standing, Occasional walking, Frequent reaching at desk level, Occasional reach floor level, Unable balancing, Occasional stooping, Occasional kneeling, Frequent object handling, Frequent fingering, Frequent simple hand grasp, Occasional firm hand grasp, Frequent fine/gross hand manipulation, Not Tested stair climbing, crouching, crawling. At this time, client would not be able to perform the repetitive job duties and material handling required on the job as a Tire Builder.

(Jt. Ex. 9, p. 127)

On April 12, 2017, Dr. Smith modified those restrictions some, allowing Mr. Rizvic to lift up to 30 pounds and recommending occasional walking and frequent sitting. (Jt. Ex. 5, p. 93) In the record, there is no real explanation for why he modified the restrictions from the FCE.

---

[1] The letter is dated March 2, 2017, on the first page. This is a typographical error, as the first paragraph states that the letter is in follow up to a conference on March 15, 2017 and page two of the letter documents a date of March 22, 2017. Dr. Schmitz signed off that the letter was an accurate representation of his opinion on March 30, 2017. (Jt. Ex. 5, p. 85)

At this point, Mr. Rizvic sought out treatment on his own. He had discussed his electrocution on subsequent visits with his primary physician, Majed Barazanji, M.D. On April 19, 2017, Dr. Barazanji documented that Mr. Rizvic was seeking another orthopedic opinion for his neck pain. (Jt. Ex. 8, p. 116) Dr. Barazanji recommended an MRI of the head and referred claimant to a psychiatrist for depression and anxiety. (Jt. Ex. 8, p. 117) Dr. Barazanji also filled out FMLA paperwork for the claimant on April 27, 2017. (Cl. Ex. 4)

Mr. Rizvic returned in May 2017, at which time he was referred to Amber Buyck, P.A.-C., at Des Moines Orthopedic Surgeons. Ms. Buyck diagnosed left neck, trapezius, shoulder and upper arm pain, significant cervical range of motion limitations C5-6 spondylosis and left C6 foraminal stenosis. (Jt. Ex. 11, p. 130) She recommended evaluation with a physiatrist. It is unclear from this record, why claimant did not see a spine specialist at this time.

In any event, he was evaluated by Amy Lynch, D.O., on May 26, 2017. Dr. Lynch had difficulty communicating with the claimant due to the language barrier. (Jt. Ex. 12, p. 135) She decided to request the records to see what had been attempted previously and recommended an EMG/NCS on the right side. (Jt. Ex. 12, p. 135) Mr. Rizvic returned to Dr. Barazanji who suggested a possible referral to the University of Iowa Hospitals and Clinics or the Mayo Clinic. (Jt. Ex. 8, p. 124)

On June 21, 2017, Dr. Smith opined that claimant suffered no impairment from his work-related injury. (Jt. Ex. 5, p. 94) There is little explanation in this report regarding the fact that significant permanent restrictions were assigned with a zero impairment rating. It appears that Dr. Smith questioned Mr. Rizvic's truthfulness.

Steven Adelman, M.D., then evaluated Mr. Rizvic on June 26, 2017, with the assistance of an interpreter. (Jt. Ex. 13, p. 137)

> Mr. Rizvic is a 42-year-old man who comes accompanied with his wife and interpreter for evaluation of a multitude of symptoms following a work related injury in August 2016 when apparently he was electrocuted. He had been seen by workmen [sic] compensation physician's [sic] and apparently the case has been closed. Nevertheless he tells me that since that time he has issues of neck pain, weakness, loss of strength, and headaches. His symptoms have remained unchanged over the last 6 months. He describes loss of strength within [sic] inability to lift objects. He is placed on a 25 pound weight restriction from work. He describes numbness in his arms and legs. During the examination he continually flexes and extends his fingers. He also describes headaches that are both frontal and in the occipital region. . . . He has a tendency to keep his head in dystonic position where he will have side bending to the left. He is [sic] been tried on a variety of medications including anti-inflammatories, gabapentin, Lyrica, and cyclobenzaprine without significant relief of his symptoms.

(Jt. Ex. 13, p. 137) Dr. Adelman diagnosed sensory loss, cervical dystonia and muscle tension headaches. (Jt. Ex. 13, p. 139) He suspected the cervical dystonia was causing the pain and headaches. Dr. Adelman did suspect some "embellishment of symptoms." He recommended Botox treatment for the cervical dystonia. (Jt. Ex. 13, p. 139) These treatments were attempted through September 2017 to little avail. At that time, Dr. Adelman indicated he had no further treatment to offer him. (Jt. Ex. 13, p. 149)

Irving Wolfe, D.O., evaluated Mr. Rizvic on January 11, 2018. Dr. Wolfe reviewed appropriate medical records and performed a thorough physical examination. (Cl. Ex. 6, pp. 1-18) Dr. Wolfe diagnosed "Diffuse electrical injury" and opined that, as a sequela of the electrical injury, he developed a pain syndrome or disorder. (Cl. Ex. 6, pp. 20-22) He assigned an impairment rating based upon The AMA Guides, Fifth edition, of 30%-49% as a "reasonable extrapolation from Class-III impairment due to pain disorders." (Cl. Ex. 6, p. 22) He recommended that the medical restrictions from the FCE be followed. (Cl. Ex. 6, p. 24)

William Boulden, M.D., evaluated Mr. Rizvic on March 29, 2018. He opined claimant suffered no disability or impairment of any kind. (Def. Ex. G) Specifically, he diagnosed "myofascial-type pain" in the neck but added "there seems to be nonpathological issues on evaluation." (Def. Ex. G, p. 30) He did not recommend any medical restrictions or further treatment.

Mr. Rizvic testified that his job building tires was the best job he has ever held since coming to the United States. He testified he loved his job. He has a solid work history and had worked for Titan for 13 years without any significant work injuries. He testified that he has not returned to work at Titan and would be unable to perform the functions of tire builder. His wife testified that he has changed dramatically and that he is unable to do many physical activities which he could perform previously.

The key issue in this case revolves around Mr. Rizvic's credibility. There is no doubt that the claimant suffered a significant electrocution injury while working at Titan in August 2017. The question is whether this injury caused any permanent damage. The claimant contends that the injury has caused him severe pain and discomfort, rendering him incapable of performing any type of manual labor employment. He alleges he has ongoing left-sided stiffness, severe left-sided neck pain and tingling in his extremities. The diagnosis asserted by his expert is diffuse electrical injury which developed into some type of pain disorder or syndrome. The defendants contend, in essence, that Mr. Rizvic is manufacturing his symptoms. In support of this, the defendants point to a multitude of medical reports from various providers asserting that his complaints were inconsistent, magnified or otherwise not credible.

While I do not dismiss these allegations, I find the greater weight of evidence supports claimant's position that he developed a serious pain syndrome which resulted from the work injury. I find that Mr. Rizvic most likely developed a pain syndrome as a result of the electrocution based upon the medical opinion of Dr. Wolfe, combined with Mr. Rizvic's testimony and the testimony of his wife. The other key piece of evidence

relied upon herein is the functional capacity evaluation, ordered by Dr. Smith and directed by the defendants through Work Strategies in April 2017.

The first medical provider to question the consistency of Mr. Rizvic's symptoms was a physical therapist at Millennium Therapy. He merely noted that Mr. Rizvic's cervical range of motion was self-limited. Specifically, Mr. Rizvic was extremely limited with only 10 degrees on testing, whereas when distracted his cervical rotation was greater than 50 percent. (Jt. Ex. 4, 30) He also noted that the symptoms were inconsistent from day to day with the treatment provided. (Jt. Ex. 4, p. 37) While these observations are concerning and should be taken seriously from a medical treatment standpoint, they certainly do not amount to an allegation of malingering, or conscious symptom magnification. They are merely medical observations by the therapist which are not terribly uncommon, particularly in pain syndrome cases.

From October 17, 2016, through January 11, 2017, Dr. Smith evaluated Mr. Rizvic six times and did not document any signs of malingering, exaggeration, or pain behaviors. He did not really even find any inconsistencies in Mr. Rizvic's symptoms. (Jt. Ex. 5, pp. 44-69) During that time, he prescribed medications and recommended restrictions. He recommended trigger point and epidural injections, ordered diagnostic tests and assigned physical therapy. On February 1, 2017, Dr. Smith documented that he somehow learned that the physical therapist had noted inconsistencies with full participation in physical therapy. (Jt. Ex. 5, p. 72) At that point, Dr. Smith's evaluation of claimant's condition seemed to change. He reviewed Mr. Rizvic's compliance with his medications and determined that he was not taking the medications as directed. Unfortunately, it is not documented in his notes whether he discussed the matter with the claimant himself. After Mr. Rizvic then visited Dr. Smith's partner, Dr. Schmitz, who opined that claimant had evidence of symptom magnification, Dr. Smith documented "inconsistencies in examination and symptom magnification." (Jt. Ex. 5, p. 91)

In spite of his opinion that there were inconsistencies and symptom magnification, Dr. Smith ordered the FCE, which occurred in early April. The FCE was authorized by defendants. I suspect Dr. Smith suspected that the evaluation would demonstrate issues of symptom magnification and malingering, which it did not. The evaluation included numerous tools for making such an assessment such as monitoring heart rate and respiratory rate. In addition, his movement patterns were observed both "aware and unaware." The results, however, were valid. I find this to be a significant piece of evidence.

Dr. Wolfe is a neurologist. He reviewed and summarized all of the relevant records and understood the full history. His report is remarkably thorough (voluminous) and well-reasoned. He cited multiple medical sources explaining the long-term effects of electrocution injuries. (Cl. Ex. 6, pp. 20-22) While he did not specifically make a mental health diagnosis, he did discuss at length the interplay between psychological and physical symptoms. He specifically cites a 2013 paper addressing the long-term sequelae of an electrical injury.

> The difficulty with recognizing and diagnosing these long-term sequelae of electrical injury is that the complaints are often not proportional to the degree of acute injury, the electrical current or voltage, or the current's pathway through the body. Complicating this is the lack of pathophysiologic explanation for complaints that are persistent and occasionally progressive, but which are vague, nonspecific, and prevalent in the general population.

(Cl. Ex. 6, pp. 20-21) Mr. Rizvic's injury is actually quite well-documented and was an extremely significant injury resulting in hospitalization.

Moreover, after thoroughly reviewing this entire file in context, I find his symptoms have actually remained quite consistent from the day the injury occurred through the time of hearing. He has a great many symptoms and he may have focused on some more than others at various points in his treatment, but the reality is he has consistently complained of a common core of ongoing symptoms since the very day of the injury. Further, I suspect that some perceived inconsistencies in claimant's symptoms could be related to the claimant's language barrier. From observing Mr. Rizvic live at hearing, it is also noted that he does exhibit pain behaviors, meaning he is dramatic and demonstrative in his exhibition of his pain.

It is noted that no physician has actually accused the claimant of malingering or intentional symptom magnification. In fact, no physician in this record has used the word malingering at all. Malingering is commonly defined as a conscious or willful exaggeration of a condition or the effect of an injury in order to obtain a specific external gain. Symptom magnification is commonly defined as a conscious or unconscious behavioral response to pain. Importantly, symptom magnification may be either conscious or unconscious. While Dr. Schmitz stated that Mr. Rizvic "has some evidence of symptom magnification," he did not explain what he meant by this. At his final visit, Dr. Smith mentioned symptom magnification and abruptly halted treatment due to noncompliance with medications. He did not, however, accuse claimant of intentional malingering or conscious symptom magnification. After sending claimant for an FCE, Dr. Smith, confirmed permanent restrictions for him. I find this significant, as it seems unlikely to me that Dr. Smith would place permanent restrictions on a person he deemed to be malingering or consciously magnifying symptoms.

I do not find the opinions of Dr. Boulden to be helpful at all. The evidence in the file strongly suggests that Mr. Rizvic's condition is not orthopedic. To this extent, I agree with Dr. Boulden's opinion. Dr. Boulden, however, is an orthopedic surgeon who was retained on the eve of hearing to rebut Dr. Wolfe's opinion. Dr. Boulden does not appear to have any specific expertise in diagnosing, treating or evaluating pain syndromes. To this extent, Dr. Wolfe, a neurologist, is a superior expert for the evaluation of Mr. Rizvic's condition.

I find it likely that there is a psychological component to Mr. Rizvic's pain, including, possibly, symptom magnification. For these reasons, I find Dr. Wolfe's

opinion to be the most credible. Dr. Wolfe clearly factored in the likely psychological component into his analysis.

When viewing all of the evidence as a whole, the greater weight of evidence supports the finding that Mr. Rizvic does suffer from a pain disorder related to his electrocution at work.

## CONCLUSIONS OF LAW

The first question is whether the admitted August 2016, work injury is a cause of permanent disability, and if so, the extent of such disability.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

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

The expert opinions in this case are split. For the reasons set forth in the findings of fact, I find that the claimant has met his burden of proof that the stipulated

findings of fact, I find that the claimant has met his burden of proof that the stipulated work injury caused claimant to develop a pain syndrome connected to his diffuse electrical injury. I find the impairment estimate of Dr. Wolfe to be the most compelling evidence of claimant's permanent functional impairment.

In making these findings, I note that electrocution injuries causing pain syndromes are difficult to diagnose, treat and evaluate. The burden of proof for medication causation is squarely upon the claimant to prove that his injury is a cause of the disability he suffers. I find the research cited by Dr. Wolfe to be highly compelling regarding the nature of the claimant's injury. I find that the claimant has met his burden.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City 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.

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

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

I find that the claimant is permanently and totally disabled as a result of his work injury. Claimant was 42 years old as of the date of hearing. He was born in Bosnia and

his primary language is Bosnian. He has minimal English proficiency. He graduated from high school in Bosnia and has no further formal education. His work history is mostly heavy manual labor. Claimant has been a hard worker and I believe he is motivated to return to work.

The claimant suffers from a substantial permanent impairment of pain disorder. The valid FCE ordered by the treating physician established a strong basis for permanent restrictions.

The FCE placed rather significant permanent restrictions upon Mr. Rizvic.

> Bajro Rizvic demonstrated the ability to occasionally Lift up to 25 lbs, Floor to Waist, 20 lbs. Waist to Shoulder, Floor to Shoulder 15 lbs. Carry up to 25 lbs. Bajro Rizvic demonstrated Frequent sitting, Occasional standing, Occasional walking, Frequent reaching at desk level, Occasional reach floor level, Unable balancing, Occasional stooping, Occasional kneeling, Frequent object handling, Frequent fingering, Frequent simple hand grasp, Occasional firm hand grasp, Frequent fine/gross hand manipulation, Not Tested stair climbing, crouching, crawling. At this time, client would not be able to perform the repetitive job duties and material handling required on the job as a Tire Builder.

(Jt. Ex. 9, p. 127) While Dr. Smith modified these restrictions some, he did not eliminate them or recommend no restrictions. Mr. Rizvic has been a hard worker and highly motivated his entire adult life. This injury has taken that from him. Reviewing the evidence in this case in light of Mr. Rizvic's limited English proficiency or transferrable work skills, I can come to no conclusion other than permanent and total disability.

The final issue is the claimant's need for alternate medical care.

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 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with

the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

I find that alternate medical care is appropriate. Further medical care shall be directed by Dr. Barazanji.

The next issue is medical expenses.

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 (2017).

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

Claimant seeks medical expenses as set forth in Claimant's Exhibit 7. I find that the expenses are causally connected to the work injury.

## ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay permanent total disability benefits at the rate of seven hundred nineteen and 89/100 dollars ($719.89) per week commencing from the date of injury.

Defendants shall pay accrued weekly benefits in a lump sum.

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

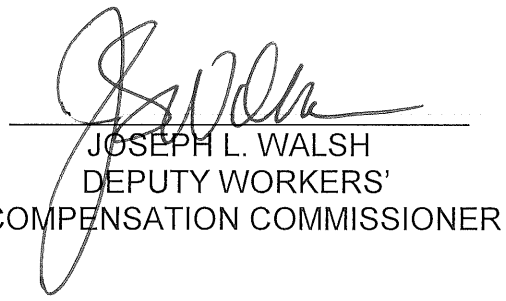
Defendants shall be given credit for the weeks previously paid.

Defendants shall authorize Dr. Barazanji for all future medical treatment.

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

Costs are taxed to defendants.

Signed and filed this 31st day of May, 2019.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Nicholas L. Shaull
Attorney at Law
2423 Ingersoll Ave.
Des Moines, IA 50312
Nick.shaull@sslawplc.com

Gene R. La Suer
Luke Draisey
Joni L. Ploeger
Attorneys at Law
215 Tenth St., Ste. 1300
Des Moines, IA 50309-3993
genelasuer@davisbrownlaw.com
lukedraisey@davisbrownlaw.com
joniploeger@davisbrownlaw.com

JLW/sam/srs

**Right to Appeal**: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.