BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GARY E. CHRISTIANSEN, JR.,

Claimant,

vs.

MITAS TIRE NORTH AMERICA, INC.,

Employer,

and

GRANITE STATE INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5054051

ARBITRATION DECISION

Head Note Nos.: 1402.30, 1803

STATEMENT OF THE CASE

Gary Christiansen, Jr., claimant, filed a petition in arbitration seeking workers' compensation benefits from defendants, Mitas Tire North America, Inc., the employer and Granite State Insurance Co., the insurance carrier. The arbitration hearing was held on March 7, 2017, in Waterloo, Iowa. The parties filed post-hearing briefs on April 14, 2017, and the matter was considered fully submitted at that time.

The evidentiary record includes Joint Exhibits 1-11, Claimant's Exhibits 1-14 and Defendants' Exhibits A-G, all of which were admitted without objection. The claimant and Gerald Edgar, of Mitas Tire North America, testified at hearing.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury that arose out of and in the course of his employment on June 30, 2013, with defendant employer.

2. Whether the injury is the cause of permanent disability and if so, the extent thereof.

3. Whether claimant is entitled to payment of medical expenses as set forth in Claimant's Exhibit 10.

4. Whether claimant was credible.

5. Whether or not the defendants are entitled to any specific apportionment.

FINDINGS OF FACT

After having reviewed the evidence presented I find as follows:

At the time of the hearing, claimant was 56 years old and lived with his wife of 31 years, in Charles City, Iowa. (Transcript pages 9-10)

During high school, claimant received academic assistance from a resource room instructor to assist with his understanding and completion of school work. He testified that he had dyslexia and although he can read, he does not read well. He graduated from East High School in Des Moines, Iowa in 1979. He has no other formal education. (Tr. pp. 10-11; Exhibit 8, p. 45)

Claimant testified that he has been working steadily throughout his life without significant periods of unemployment. (Tr. p. 11) Claimant's work history is set forth in Claimant's Exhibit 8, pp. 41-43. His job history includes primarily manual labor positions, such as, working as a janitor, on an assembly line, doing maintenance work, working as a welder, and for the defendant employer. (Ex. 8, p. 41-43) His prior work also includes working as a retail stocker/customer service representative at Theisen's for two and a half years. (Ex. 8, p. 41) Claimant testified that he is not good at math and has never had a job that required calculating numbers. (Tr. p. 76)

Just prior to the work injury, claimant had been working two jobs. His primary job was for the defendant employer, and he also worked part-time at Theisen's, a retail store. (Ex. 8, p. 41) Claimant testified that he quit his job at Theisen's just a few days prior to the work injury on June 30, 2013, because the hours from both jobs had become too much, which included 12 hour days at the defendant employer. (Tr. pp. 63-64)

Before June 30, 2013, claimant had a long history of intermittent low back complaints. Claimant testified that before June 30, 2013, his low back complaints would resolve with time and/or treatment and he would be back to work with no lasting effects. (Tr. pp. 19, 26) The records indicate that in June 1994, claimant twisted and felt a pop in his lower lumbar area, which was described as a lumbar strain. (Ex. JE 1, p. 1) Then three years later, in June 1997, he again felt a pop and had pain in his low back. (Ex. JE 2, p. 31) About a year later in May 1998, he turned and had sudden, severe back pain that radiated into his legs. (Ex. JE 1, p. 3) Claimant was sent to David Beck, M.D., who stated that "[u]ndoubtedly, Gary has muscle spasm . . . I think he will get

better with time." (Ex. JE 3, p. 33) The medical evidence then appears to be silent for about ten years concerning any back complaints until claimant began treating at the Brietbach Chiropractic Office in March 2009. (Ex. JE 4, p. 38)

In December 2010, claimant fell on the job while making a delivery for his then employer, Hy-Vee, and complained of right lower back pain while treating at Charles City Family Health Center. (Ex. JE 5, p. 80) Claimant had a number of visits to Brietbach Chiropractic for low back pain from 2009 through 2013 and beyond, including seven visits in 2011, eight visits in 2012 and six visits from January through June 12, 2013. (Ex. JE 4, pp. 38-74) During the June 12, 2013 visit, claimant reported "feeling return of pain bilaterally in the lumbar area," an adjustment was administered and claimant was to "call for an appointment as needed." (Ex. JE 4, p. 74)

It is noted by the undersigned that many of his chiropractic visits over the three years prior to June 30, 2013, were separated by weeks or months and did not typically involve a scheduled follow-up appointment, but rather claimant was instructed to call as needed. I find this supports claimant's testimony that although he had back pain prior to June 30, 2013, it would occur from time to time and tended to resolve with treatment and/or the passage of time, as there was not a regular course of scheduled treatment.

On June 30, 2013, claimant testified that he was working for defendants as a Curing Worker operating a tire press as shown in Exhibit E, page 14. This job required claimant to step into/onto the tire mold and spray the mold so that the tire would release from the mold after it was formed. (Tr. p. 14) On this day, claimant testified that while stepping off of the mold onto the black step shown in the photo in Exhibit E, page 14, he testified that he slipped and reached for a railing to catch himself from falling and twisted his back. (Tr. pp. 14-15) Claimant reported the incident to his employer and he was sent home. (Tr. pp. 16-17)

On July 1, 2013, claimant went for medical care with the approval of the employer to Charles City Family Health Center. (Tr. p. 17; Ex. JE 5, p. 82) At that time, claimant told medical personnel that he "slipped and twisted and pulled his left lower back." (Ex. JE 5, p. 82) He reported pain radiating "to his buttocks and down to his mid-posterior thigh." (Ex. JE 5, p. 82)

Claimant continued with medical treatment through Charles City Family Health Center with David Schrodt, M.D., and Paul Royer, M.D. (Ex. JE 5, p. 82)

On July 22, 2013, claimant underwent an MRI of his lumbar spine at the request or Dr. Schrodt. (Ex. JE 6, p. 111) The MRI showed bulging annulus at L3-4 and L4-5, but without any neural element compression. (Ex. JE 6, p. 111)

On August 2, 2013, claimant received a cortisone injection in the left sacroiliac joint. (Ex. JE 7, p. 112)

On August 5, 2013, it is noted by Dr. Schrodt that "[t]he pain seems to be out of proportion to objective and physical findings as well as radiological findings." (Ex. JE 5, p. 89)

On August 12, 2013, claimant reported that although he did not believe the cortisone injection was helpful he was "doing better." (Ex. JE 5, p. 90) However, in the same medical record, he reported tingling in his buttock and difficulty sleeping and requested to do an additional week of physical therapy, which was granted. (Id.)

On August 19, 2013, Dr. Schrodt noted that claimant had constant low back pain that was not getting any better and reported that claimant advised that he is unsure if he can go back to work. It is noted that claimant "[c]omplains bitterly of pain," yet Dr. Schrodt noted that "[a]t this point I am at a loss as [to] what to do," and a referral was made for a neuro-surgical evaluation. (Ex. JE 5, p. 92) Dr. Schrodt also stated that "I see no reason why he cannot be at work. I did not discuss work restrictions with him. He will have to decide if he wants to change occupations." (Id.)

On September 4, 2013, claimant underwent a functional capacity evaluation (FCE) with E-3 Work Therapy Services. (Ex. JE 8, p. 114) It is noted that claimant provided consistent effort and displayed good motivation and had no overt pain behaviors. (Ex. JE 8, p. 117) Following the evaluation, the conclusion was that claimant was capable of working in medium to heavy demand jobs as defined by the Dictionary of Occupational Titles. The recommended restrictions were: lifting no more than 65 pounds from waist to floor, 50 pounds from waist to crown, bilateral carry of 50 pounds, and forward bending occasionally. (Id.)

On October 21, 2013, David Beck, M.D., of Neurosurgery of North Iowa, P.C. evaluated claimant and concluded that his condition was not surgical and recommended additional physical therapy and home exercises. (Ex. JE 3, p. 34) On the same date, Dr. Beck wrote a letter to the claim representative and advised that he believed claimant's complaints were due to the work injury on June 31, 2013, where he reported slipping and catching himself. (Ex. JE 3, p. 35) Dr. Beck also stated that claimant could do light duty, but that "[h]e cannot do his current job," and he stated that claimant had not yet reached maximum medical improvement (MMI). (Id.)

On November 12, 2013, claimant returned to see Dr. Schrodt and completed a "disability form." (Ex, JE 5, p. 93) Claimant indicated that he did not think he was going to get any better. (Id.) Dr. Schrodt stated that claimant was physically unable to work as of June 30, 2013 through December 10, 2013. He assigned restrictions of: sit, drive, kneel, and crawl 1-3 hours per day; lift and carry 0-10 pounds 1-3 hours per day; stand, walk, bend, stoop, squat, crouch, climb, do over-head work, grasp, pinch, push/pull, do fine manipulation and keyboard/type no more than 3-5 hours per day. (Ex. JE 5, p. 94)

On December 4, 2013, the above restrictions assigned on November 12, 2013, were continued by Dr. Schrodt. (Ex. JE 5, p. 101)

On December 10, 2013, it is noted that claimant had returned to work in November 2013. (Ex. JE 5, p. 98) On January 20, 2014, it is noted that claimant is "[g]oing to work." (Ex. JE, 5, p. 102) At that time his symptoms did "not radiate into his buttocks or his lower extremities," and claimant "is able to be up and walking without radicular symptoms." (Id.) Dr. Schrodt stated that he had nothing further to offer

claimant and stated that "I have no explanation for continued pain after this length of time. Would recommend consult with specialist in chronic back pain or pain clinic." (Ex. JE 5, p. 102)

Claimant had returned to work and was placed back in the same position of the Curing Worker position, operating the tire press. However, he was only in the position for about six weeks because he was covering for another employee that was off work on a short medical leave. Also, at that time, the overhead conveyor was operational and claimant was not required to push the tires on a cart to move them from one location to another. After the person that claimant was covering for returned, he was placed in a fork-truck position and continued to work in that job for about a year and a half. (Tr. pp. 21-22, 67-68)

On April 7, 2014, claimant had an independent medical evaluation (IME) with Richard Naylor, D.O. (Ex. 4, p. 25) Dr. Naylor found that claimant's current symptoms were related to his June 30, 2013 work injury and he concurred with the restrictions stated in the FCE of September 4, 2013, as permanent restrictions. (Id.) He then opined that claimant sustained an eight (8) percent whole person impairment, based on page 385, Table 15-13 of the American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA Guides). (Ex. 4, p. 26)

However, Dr. Naylor later amended this opinion on November 29, 2016. (Ex. JE 11, p. 141) He stated that when he issued his initial opinion, he had been unaware of claimant's prior complaints of low back pain and treatment at Brietbach Chiropractic from 2009 through June 2013. Based on this additional information, his previous assignment of eight (8) percent whole person impairment, was reduced to "a 4% whole person impairment and he would not have permanent restrictions." (Id.) Dr. Naylor further stated that the injury would, however, be considered "an exacerbation of a preexisting condition." (Id.) Therefore, he does not back away from his prior determination of causation.

On November 15, 2014, claimant had an MRI of his lumbar spine, ordered by Barbara Malicka-Rozek, M.D., which showed mild multilevel spine spondylitic degenerative changes with no significant central canal stenosis or significant neural foraminal narrowing. (Ex. JE 9, p. 118)

On January 30, 2015, claimant was seen at Covenant Medical Center and reported low back pain that started after he "slipped and fell at work and wrenched his back." (Ex JE 9, p. 122) The plan at that time was to schedule an injection for his sacroiliac joint. (Ex. JE 9, p. 127)

Claimant had an injection into the left sacroiliac joint on May 15, 2015. (Ex. JE 9, p. 120)

In June 2015, claimant developed heart issues that led to the need for medical treatment, including care at Mayo Clinic. Claimant was having difficulty breathing and was found to have congestive heart failure. (Ex. JE 1, p. 13; Tr. p. 20) It is noted on June 23, 2015 in a record from the Mayo Clinic that claimant "understands he will likely

not be able to return to work." (Ex. JE 10, p. 136) This statement was made in reference to his heart condition.

Claimant testified that after his heart condition, he was placed on FMLA leave. (Tr. pp. 41-42) He has applied for and received Social Security Disability benefits. He stated that Dr. Schrodt recommended applying for Social Security Disability and that his heart condition was the "primary reason for doing it," although his application also included his low back condition. (Tr. p. 47) The information contained in Exhibit D, indicates that claimant's Social Security Disability application related to an onset date of June 10, 2015, and involved his diagnosis of cardiomyopathy and the statement of his cardiologist that he will not be able to return to any type of work. (Ex. D. p. 12)

In June 2015, claimant returned to Brietbach Chiropractic with complaints of pain in his lumbar and thoracic spine. (Ex. JE 4, p. 75, 76)

On October 20, 2015, Dr. Schrodt noted that claimant had a defibrillator placed and has tolerated that well. (Ex. JE 5, p. 105)

On August 25, 2016, claimant was seen by Robin Sassman, M.D., for an IME. (Ex. 1, p. 1) Dr. Sassman was aware of claimant's prior back complaints in 1994, 1997, 1998 and 2010. (Ex. 1, p. 2) However, her report does not indicate that she was aware of claimant's treatment at Breitbach Chiropractic from March 2009 through June 12, 2013. (Id.) Dr. Sassman conducted a physical examination and made a diagnosis of "low back pain with radiculopathy" and stated that the work injury of June 30, 2013, in which claimant "slipped on a stepstool and began to fall," and "wrenched his back," is "directly and causally related to the above diagnosis." (Id.) She opined that claimant reached MMI on May 15, 2015, when he had his last injection. (Id.) She further stated that based on the AMA Guides, under the DRE method, and Table 15-3, page 384, that claimant sustained a "13% impairment of the whole person due to signs of radiculopathy." (Ex. 1, p. 9) She did not discuss the impact of the July 22, 2013 MRI results, which showed no neural element compression, with regard to her conclusion of radicular symptoms. Dr. Sassman acknowledged that claimant was off work due to his heart condition and then assigned work restrictions as follows: (1) limit lift/push/pull/carry to 10 pounds rarely from floor to waist; (2) 10 pounds rarely from waist to shoulder; (3) 10 pounds rarely above shoulder; (4) limit standing and walking to occasionally, changing positions frequently; (5) no use of ladders; (6) rarely use stairs; and, (7) sit frequently, but change positions frequently as well. (Id.)

In April, 2016, claimant sought a release to return to work from Dr. Schrodt. Dr. Schrodt initially provided a release to return to work for 4 hours per day, 4 days per week. (Ex. JE 5, p. 108) However, this was rescinded. (Id.) Dr. Schrodt, considering the work at Mitas, which involved, heavy lifting and claimant's back condition, along with the fumes, dust and extreme temperatures and claimant's heart condition, stated that "I think working at Mitas does not make any sense." (Id.) He offered that working at Theisen's would be reasonable. (Id.)

On January 24, 2017, Dr. Beck, who saw claimant one time for a surgery consultation on October 21, 2013, responded to a "sign here" letter from defendants, where he circles "yes" and signed his name and dated the response indicating his agreement that when he evaluated claimant, he was unaware of his chiropractic treatment from 2009 through June 2013. (Ex. JE 3, p. 36) He opined that in view of this information, at most, claimant sustained a temporary aggravation on June 30, 2013 that would have resolved in six to eight months and resulted in no permanent impairment and no permanent restrictions. (Id.) However, the undersigned notes that there is no statement indicating that Dr. Beck reviewed the actual chiropractic records in question.

On February 15, 2017, Dr. Schrodt signed a statement, which is presumably a "sign here" report prepared by claimant's counsel. (Ex. 3, p. 24) The opinions in the document indicate that: (1) Dr. Schrodt has been claimant's primary care physician since 1991 (this was incorrect and was corrected in his deposition to 2002 (Ex. G, p. 26)) and he is aware of his June 30, 2013 injury at work; (2) Dr. Schrodt believes that claimant sustained a permanent injury to his back, which was both a new injury and an aggravation of a pre-existing injury; (3) but for this injury, Dr. Schrodt would not have assigned the restrictions that he provided on November 12, 2013; and, (4) the treatment Dr. Schrodt provided and recommended has been "reasonable, necessary, and beneficial." (Ex. 3, p. 24) However, during Dr. Schrodt's deposition, he stated that the restrictions "may not be permanent." (Ex. G, p. 31)

On March 3, 2017, defendants took the deposition of Dr. Schrodt, in which he indicated that when he signed the above-described report dated February 15, 2017, he was unaware of the chiropractic treatment that claimant had at Breitbach Chiropractic from 2009 through June 2013. (Ex. G, pp. 15, 24, 25) Dr. Schrodt agreed that the restrictions he assigned were not based on objective findings from his examination, but on claimant's subjective complaints. (Ex. G, p. 29) He then stated that claimant should be "tested to see what he can do," and agreed that an occupational doctor or physical therapist who has seen claimant more recently would be in a better position to offer an opinion on restrictions. (Ex. G, pp. 30-31) Dr. Schrodt agreed that to his knowledge, he had not recommended injections nor discussed restrictions with claimant before June 30, 2013. He also stated that his diagnosis of musculoskeletal back pain, is of the type that can produce pain in patients. (Ex. G, pp. 35-37)

Claimant testified that has had some improvement in his condition since the incident occurred on June 30, 2013. (Tr. pp. 26-27) At the time of the hearing, his pain was still present and has remained located in his low back on the left side. Claimant described the feeling as "pins and needles." (Tr. p. 27)

Claimant stated that he has modified his activities due to the pain, such as avoiding mowing the lawn, shoveling snow, carrying laundry up from the basement, and avoiding carrying heavy things. He testified that he still helps with folding clothes, putting dishes in the dishwasher and helping his wife with her cupcake business, when the need arises, but not more than a few hours in a day. (Tr. pp. 28-31) Claimant stated that his sleep is impacted and he walks for exercise to try to help the pain. He also uses an exercise ball and weights, which also help his heart condition. (Tr. p. 30)

Concerning the Employee Injury Report, dated June 30, 2013, claimant testified that he wrote his name at the top and signed the bottom of the document, however, he did not complete the body of the report. (Tr. p. 74; Ex. 6, p. 33) Claimant testified at hearing and in his deposition that he has difficulty with reading. (Tr. p. 45; Ex. F, p. 8) The injury report states that claimant was injured "moving a cart," not from slipping and twisting his back as claimant testified at the hearing. (Ex. 6, p. 33) Gerald Edgar, the Environmental Health and Safety Manager for the employer, testified at hearing that he spoke to claimant after the incident and made handwritten notes, but that he did not fill out the actual Employee Injury Report Form, and he could not say with any certainty who did. (Tr. p. 82) Mr. Edgar testified that he believed that claimant had hurt his back from pushing a cart and that his notes would reflect the same. However, Mr. Edgar admitted that he did not provide his handwritten notes to defense counsel and the same were therefore not made available to claimant in response to discovery requests. Also Mr. Edgar did not have his notes available at the time of the hearing. (Tr. p. 89) Mr. Edgar testified that he did not compare his handwritten notes to the completed Employee Injury Report Form to see if his notes and the report reflected the same description of how the injury occurred. (Id.)

On July 9, 2013, claimant was seen by Floyd County Medical Center for physical therapy, and it is recorded that he "injured his low back when he was pushing and pulling on some green tires at Mitas where he works, roughly nine days ago on June 30, 2013." (Ex. JE 1, p. 8)

However, on July 1, 2013, the day following the work incident, when claimant was seen at Charles City Family Health Center, it is recorded that claimant "slipped and twisted and pulled his left lower back." (Ex. JE 5, p. 82)

Claimant gave a similar description of twisting his back when he saw Dr. Beck in October 2013, who recorded that claimant "fell at work at that time and twisted. Since that time he has had back pain." (Ex. JE 3, p. 34) This was more specifically described on the same day by Dr. Beck in a letter to the claim representative as "slipping and catching himself while working on a large tire." (Ex. JE 3, p. 35)

On January 30, 2015, claimant reported to Sauman A. Rafii, M.D., that he injured his back when he "slipped and fell at work and wrenched his back." (Ex. JE 9, p. 122)

On August 25, 2016, claimant reported to Dr. Sassman that he injured his back on June 30, 2013, when he slipped, started to fall backwards between the cart on the press and he grabbed a cable "and wrenched his back." (Ex. 1, p. 002)

Claimant testified at hearing that he injured his back when he slipped and twisted his back. He testified that he reached for a railing and a cart and twisted his back and felt pain. (Tr. pp. 14-15, 75) He reported in his deposition on August 1, 2016, that he slipped and caught himself before falling. (Ex. F, pp. 1, 28)

I find based on the majority of the reports to medical providers, claimant's testimony at hearing and his testimony at his deposition that the claimant's injury

occurred when he slipped and twisted his back on June 30, 2013, while performing his job duties for the defendant employer during his regular work hours.

Dr. Beck, opined that claimant, "at most . . . sustained a temporary aggravation on 6/30/13 that would have resolved within 6-8 months," and that claimant would have reached MMI on April 7, 2014, with no permanent impairment or restrictions due to the work injury. (Ex. JE 3, p. 36) On January 24, 2017, Dr. Beck responded to a letter from defendants. (Id.) However, he did not modify his underlying causation opinion of October 21, 2013 that claimant's "current complaints are due to the work related injury in June that he reported, apparently slipping and catching himself while working on a large tire on June 30, 2013." (Ex. JE 3, p. 35)

Claimant's primary care physician, Dr. Schrodt, opined that claimant sustained injury to his low back as a result of the work incident on June 30, 2013 and he assigned restrictions related thereto that he would not have assigned, but for the work injury. (Ex. 3, p. 24; Ex. G, p. 31) This opinion was tempered in his deposition by his admission that he had been unaware of the chiropractic treatment that claimant had from 2009 through June 2013, and that the restrictions may not be permanent. (Ex. G, pp. 13-14, 31) Also, Dr. Schrodt stated that he would defer to an occupational medicine doctor or therapist that saw claimant more recently, regarding restrictions. (Ex. G, p. 31) Dr. Schrodt did not withdraw his opinion concerning causation related to the June 30, 2013 work injury. (Ex. G)

As stated above, on April 7, 2014, Dr. Naylor causally related claimant's symptoms to the June 30, 2013 work injury and initially assigned permanent restrictions based on the September 4, 2013 FCE and an eight (8) percent whole person impairment. (Ex. 4, p. 25, 26) However, that was later amended after he was advised of claimant's chiropractic treatment from 2009 through June 2013. (Ex. JE 11, p. 141) Dr. Naylor then concluded that claimant sustained an aggravation of a pre-existing condition and had only a four (4) percent impairment to the whole person and no work restrictions were necessary. (Id.) Dr. Naylor opined that the injury was an exacerbation of a pre-existing condition. (Id.)

On August 25, 2016, claimant was seen by Dr. Sassman for an IME. (Ex. 1, p. 1) Dr. Sassman concluded that claimant sustained a 13 percent whole person permanent impairment and required permanent work restrictions, as a result of the June 30, 2013 incident. (Ex. 1, p. 9) Said restrictions are described above.

The weight of the expert medical opinions presented and claimant's testimony that his back pain was more significant following the work injury, such that he had more significant treatment, including injections, leads the undersigned to find that claimant sustained an aggravation of an underlying condition to his low back on June 30, 2013. Although some expert opinions may be criticized for being unaware of claimant's chiropractic treatment, none of the opinions concluded that claimant was not injured. This includes Dr. Schrodt, Dr. Beck and Dr. Naylor who were clearly later advised of the chiropractic care from 2009 through June 2013. Although they may have modified their

opinions concerning permanency, they did not change their opinion concerning causation.

I therefore find that the above-described incident in which claimant slipped and twisted his back, which I found above to have occurred on June 30, 2013, caused an aggravation of a pre-existing condition to claimant's low back that arose out of and in the course of his employment with defendant employer.

Considering the issue of permanency, I note that claimant was 56 years old at the time of the hearing. His education is limited to a high school diploma, which was obtained with assistance through a resource room instructor. (Tr. p. 11) Claimant struggles with reading and describes himself as dyslexic. His work history includes largely labor intensive positions such as roofing, janitorial work, maintenance, and assembly line work and welding. (Ex. 8, pp. 41-42; Tr. pp. 33-40) Claimant testified he did not believe he could return to these jobs due to the lifting involved. (Tr. 33-40) He has also worked with mentally challenged children but did not think it would be a good idea for him to return to that type of work, because the "kids yank on you," and he feared further injury. (Tr. p. 36) Claimant worked in a retail setting for Theisen's as a stocker and customer service assistant, but stated that he was not placed on a cash register, because he was "not good at math." (Tr. p. 25) However, Dr. Schrodt found that a return to work at Theisen's "would be reasonable." (Ex. JE 5, p. 108)

Considering the medical opinions in this case regarding permanent impairment and restrictions, I find that Dr. Beck saw claimant one time for the purpose of a surgical consultation and I therefore, give his opinion less weight. I find that Dr. Schrodt was claimant's primary care physician, but in his deposition he deferred to the opinions of occupational physicians for the assignment of ratings and restrictions. (Ex. G, p. 11) Dr. Naylor and Dr. Sassman were specifically retained for the purpose of conducting an IME and providing their opinions regarding permanent impairment and restrictions. It is not clear that Dr. Sassman was ever made aware of claimant's treatment at Brietbach Chiropractic from 2009 through June 2013. Dr. Naylor, however, was made aware of claimant's chiropractic treatment and modified his opinion on November 29, 2016 from eight (8) percent permanent impairment and assignment of the restrictions pursuant to the FCE of September 4, 2013, to four (4) percent whole person rating and no restrictions.

Concerning functional impairment, I find Dr. Naylor's opinion to be the most informed and therefore the most persuasive. I accept Dr. Naylor's assessment of a four (4) percent functional impairment.

I also find that Dr. Naylor was in the most informed position when he opined that claimant did not require any permanent restrictions. However, I also note that on April 4, 2016, Dr. Schrodt, did not allow claimant to return to his fork-truck driving position with the defendant employer, even on a part-time basis, due largely to his heart condition, but also out of concern for his back condition. (Ex. JE 5, p. 108)

Claimant testified that prior to the work injury on June 30, 2013, he had back pain, but that he would have relief from treatment and be back to his normal work activities within a week or so. After this injury, claimant did return to his former job on a temporary basis, filling in for another worker that was absent, and was later switched to forklift operator position. Claimant continued to work for the employer as a forklift operator until his heart condition arose. The evidence indicated that claimant would likely still be in this position, but for his heart condition. Claimant has been told by both the physicians at Mayo Clinic and Dr. Schrodt that he cannot work any longer due to his heart condition. Although Dr. Schrodt stated that returning to a job at Theisen's would be reasonable. (Ex. JE 5, p. 108)

Claimant applied for and received Social Security Disability benefits following the diagnosis of his heart condition.

Claimant testified that since the injury, he no longer mows grass or shovels snow, and he avoids lifting anything more than a gallon of milk. (Tr. pp. 28-31) However, he also testified that he has about three or four days per week with no pain at all in his back. (Tr. p. 27) Also, during the period of initial treatment, Dr. Schrodt found that claimant's complaints seemed to "be out of proportion to objective and physical findings as well as radiological findings." (Ex. JE 5, p. 89)

Claimant has applied for just one job since being terminated by the defendant employer. He applied at O'Reilly's Auto Parts, to be a delivery driver, but failed the portion of the test using the computer. Claimant testified that he failed due to his difficulty reading. Claimant has not sought other employment and testified that he intends to help his wife with her cupcake business and he is hoping to expand the product line to include sandwiches and increase the sales volume. (Tr. p. 31) I find that claimant has limited motivation to return to work, and that his overall ability to return to work is significantly limited by his unrelated heart condition.

Considering claimant's functional impairment, his work experience, education, age, intellectual, physical ability, his medical condition prior to and after the work injury, his work experience before and after the injury, the impact of his heart condition and its role in his employability as a cause unrelated to the work injury, and all other appropriate factors for the consideration of industrial disability, I find that claimant has sustained 20 percent industrial disability.

Considering whether claimant is entitled to payment of medical expenses as set forth in Claimant's Exhibit 10, I find that the medical services that were not paid by the defendants, include:

1) Brietbach Chiropractic: June 19, 2015; June 24, 2015; July 15, 2015; January 15, 2016; and March 21, 2016.

2) Charles City Family Health: April 4, 2016.

3) Floyd Medical Center: July 1, 2013

4) Hy-Vee Pharmacy: December 19, 2015.

These expenses were not authorized by the defendants. (Hearing Report, p. 2) Claimant testified that he has found chiropractic care to be helpful for his back following the work injury. (Tr. p. 24) The Charles City Family Health bill from April 4, 2016, involves claimant's conversations with medical providers regarding returning to work considering both his heart and back condition. (Ex. JE 5, p. 108)

The Floyd Medical Center and Hy-Vee pharmacy bills do not appear to have corresponding medical records and I am unable to determine their particular relationship to claimant's back claim. For example, the Floyd County Medical Center bill for July 1, 2013, is for labs, including a routine UA, a lipid panel, a PSA and a CBC. These would appear to be directed toward general health, and it is not clear that they are specifically directed to the low back work injury. Also, there is no indication from the July 1, 2013 medical record of Charles City Family Health Center, where claimant was treated for his back injury, that labs were requested. (Ex. JE 5, p. 82)

The Hy-Vee Pharmacy bill shows that the prescribing physician was Dr. Malicka-Rozek. (Ex. 10, p. 74) The records provided show Dr. Malicka-Rozek to be the ordering physician of an MRI of claimant's lumbar spine that occurred on November 15, 2014. (Ex. JE 9, p. 118) She does not otherwise appear in the medical records around the time frame of the Hy-Vee Pharmacy bill in question. Although it is entirely possible that Dr. Malicka-Rozek prescribed the medication in question for claimant's low back and that the same was reasonable and beneficial, I am unable to draw that conclusion from the evidence presented. I also note that claimant made no arguments in his brief in support of medical reimbursement.

I find that after consideration of claimant's testimony and the evidence provided that claimant is generally credible. I note that claimant's complaints of pain are primarily subjective. However, I also note that he underwent injections for his low back pain, which corroborates the reality of claimant's pain.

CONCLUSIONS OF LAW

The first issue is whether claimant sustained an injury that arose out of and in the course of his employment on June 30, 2013, with defendant employer.

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens

within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

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

As stated above, I have found that claimant slipped and twisted his back on June 30, 2013, while performing his job duties at the defendant employer during his regular work hours.

Based on the medical records provided and claimant's testimony, I have found that the above-described incident that occurred on June 30, 2013, caused an aggravation of a pre-existing condition to claimant's low back and that said aggravation arose out of and in the course of his employment with defendant employer.

The second issue is the extent of any permanent disability. The parties have stipulated that if permanent disability exists it is an industrial disability. (Hearing Report, p. 1)

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, 593; 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. However, consideration must also be given to the injured worker's medical condition

before the injury, immediately after the injury and presently; the situs of the injury, its severity, and the length of healing period; the work experience of the injured worker prior to the injury, after the injury, and potential for rehabilitation; the injured workers' qualifications intellectually, emotionally and physically; the worker's earning before and after the injury; the willingness of the employer to re-employ the injured worker after the injury; the worker's age, education, and motivation; and, finally the inability because of the injury to engage in employment for which the worker is best fitted. Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 616 (Iowa 1995); 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).

There are no weighting guidelines that indicate how each of the factors is to be considered. Neither does a rating of functional impairment directly correlate to a degree of industrial disability to the body as a whole. In other words, there are no formulae which can be applied and then added up to determine the degree of industrial disability. It therefore becomes necessary for the deputy or commissioner to draw upon prior experience as well as general and specialized knowledge to make the finding with regard to degree of industrial disability. See Christensen v. Hagen, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 529 (App. March 26, 1985); Peterson v. Truck Haven Cafe, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 654 (App. February 28, 1985).

Assessments of industrial disability involve a viewing of loss of earning capacity in terms of the injured workers' present ability to earn in the competitive labor market without regard to any accommodation furnished by one's present employer. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 158 (Iowa 1996); Thilges v. Snap-On Tools Corp., 528 N.W.2d 614 (Iowa 1995).

I have found above for the reasons there stated that claimant has sustained 20 percent industrial disability. I again note that, but for his heart condition, it is likely that claimant would still be working in the fork-truck position that he previously held. However, this is weighed against the permanent impairment rating assigned by Dr. Naylor, of four (4) percent specifically due to his back injury, and the fact that Dr. Schrodt included in his denial of claimant's request to return to work, his concerns about his back condition. Dr. Schrodt stated that "I think working at Mitas does not make any sense." (Ex. JE 5, p. 108) It is understood that claimant's heart condition was the greater concern, but nevertheless, claimant's back condition was included in the conversation leading to the denial.

I further conclude that concerning the issue of apportionment, raised by defendants, that Dr. Naylor was specifically asked to consider claimant's prior medical history and he then amended his prior impairment rating by reducing the same. Therefore, Dr. Naylor's impairment rating has taken into consideration claimant's prior back history such that no further apportionment is warranted. In addition, there is no indication that Dr. Naylor's assessment of impairment included consideration of

claimant's heart condition. Also, there is no evidence that claimant had a particular percent of impairment applicable to his low back prior to this work injury.

The next issue is claimant's request for payment of medical expenses contained in Claimant's Exhibit 10.

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 16, 1975).

Prudent persons customarily rely upon their physician's recommendation for medical care without expressly asking the physician if that care is reasonable. Proof of reasonableness and necessity of the treatment can be based on the injured person's testimony. Sister M. Benedict v. St. Mary's Corp., 255 Iowa 847, 124 N.W.2d 548 (1963).

It is said that "actions speak louder than words." When a licensed physician prescribes and actually provides a course of treatment, doing so manifests the physician's opinion that the treatment being provided is reasonable. A physician practices medicine under standards of professional competence and ethics. Knowingly providing unreasonable care would likely violate those standards. Actually providing care is a nonverbal manifestation that the physician considers the care actually provided to be reasonable. A verbal expression of that professional opinion is not legally mandated in a workers' compensation proceeding to support a finding that the care provided was reasonable. The success, or lack thereof, of the care provided is evidence that can be considered when deciding the issue of reasonableness of the care. A treating physician's conduct in actually providing care is a manifestation of the physician's opinion that the care provided is reasonable and creates an inference that can support a finding of reasonableness. Jones v. United Gypsum, File No. 1254118 (App. May 2002); Kleinman v. BMS Contract Services, Ltd., File No. 1019099 (App. September 1995); McClellon v. Iowa Southern Utilities, File No. 894090 (App. January 1992). This inference also applies to the reasonableness of the fees actually charged for that treatment.

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).

The Court in Bell Bros. stated:

> We do not believe the statute can be narrowly construed to foreclose all claims by an employee for unauthorized alternative medical care solely because the care was unauthorized. Instead, the duty of the employer to furnish reasonable medical care supports all claims for care by an employee that are reasonable under the totality of the circumstances, even when the employee obtains unauthorized care, upon proof by a preponderance of the evidence that such care was reasonable and beneficial. In this context, unauthorized medical care is beneficial if it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer.

Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010).

I have found above the requested expenses were not authorized by the defendants. I have also found that claimant testified that he received some benefit from the chiropractic care and that the Charles City Family Health bill from April 4, 2016, related to claimant's possible return to work. I conclude that the Brietbach Chiropractic bills and the Charles City Family Health bill contained in Exhibit 10 are reasonable and compensable and that defendants should be responsible for payment of the same.

However, concerning the Floyd Medical Center and Hy-Vee Pharmacy bills I found that there were no corresponding medical records and I was unable to determine their particular relationship to claimant's back claim based on the evidence presented. For the reasons stated above, I conclude that defendants are not responsible for these bills.

Assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. I conclude that claimant was successful in this claim and therefore exercise my discretion and assess costs against the defendants in this matter. Defendants shall pay the costs set forth in Claimant's Exhibit 12, however, said costs will specifically exclude the IME cost of Dr. Sassman, which defendants had agreed to pay at the outset of the hearing. (Tr. p. 7)

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant industrial disability benefits of one hundred (100) weeks, beginning on the stipulated commencement date of November 26, 2013, until all benefits are paid in full.

Defendants shall be entitled to a credit for all weekly benefits paid to date as stipulated in the hearing report.

All weekly benefits shall be paid at the stipulated rate of five hundred sixty-nine and 04/100 dollars ($569.04) per week.

All accrued benefits shall be paid in a lump sum.

Defendants shall pay, reimburse, and/or otherwise satisfy the medical expenses contained in Claimant's Exhibit 10 for Brietbach Chiropractic and Charles City Family Health as described above.

Defendants shall pay interest on any accrued weekly benefits pursuant to Iowa Code section 85.30.

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

Signed and filed this 12th day of September, 2017.

TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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TJG/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.