BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MERLIN SADLER,	:	
Claimant,	:	File No. 20006029.02
vs.	:	
PROGRESSIVE PROCESSING,	:	ARBITRATION DECISION
Employer,	:	
Self-Insured,	:	Headnotes: 1400; 1402.40; 1803;
Defendant.	:	1803.1; 2500; 2701

STATEMENT OF THE CASE

The claimant, Merlin Sadler, filed a petition for arbitration seeking workers' compensation benefits from self-insured employer Progressive Processing ("Progressive"). Nicholas Shaull appeared on behalf of the claimant. Abigail Wenninghoff appeared on behalf of the defendant. Also present were Bryant Engbers and Ben Westhoff.

The matter came on for hearing on September 13, 2022, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner, the hearing occurred electronically via Zoom. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-8, Claimant's Exhibits 1-12, and Defendant's Exhibits A-F. The exhibits were received into the record without objection.

The claimant testified on his own behalf. Kevin Joos testified on behalf of the defendant. Jane Fitzgerald was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted on October 14, 2022, after briefing by the parties.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

1. There was an employer-employee relationship at the time of the alleged injury.

2. The claimant sustained an injury, which arose out of, and in the course of, employment on May 24, 2020.

3. That the alleged injury is a cause of temporary disability during a period of recovery.

4. That, if the injury is found to be a cause of permanent disability, the disability is an industrial disability.

5. That the commencement date for permanent partial disability benefits, if any are awarded is October 30, 2020.

6. That, at the time of the alleged injury, the claimant's gross earnings were one thousand two hundred fifteen and 71/100 dollars ($1,215.71) per week, and that the claimant was married, and entitled to two exemptions. Based upon the foregoing, the parties believe that the weekly compensation rate is seven hundred seventy-seven and 95/100 dollars ($777.95) per week.

7. With regard to disputed medical expenses noted below:

   a. That the fees or prices charged by the providers are fair and reasonable;
   b. Although disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses, and the defendant is not offering contrary evidence.

8. That the costs listed in Claimant's Exhibit 12 have been paid.

Entitlement to temporary disability and/or healing period benefits is no longer in dispute. Whether the defendant is entitled to a credit is no longer in dispute. The defendant waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. Whether the alleged injury is a cause of permanent disability.

2. The extent of permanent disability, if any is awarded.

3. Whether the claimant is entitled to reimbursement of medical expenses as listed in Claimant's Exhibit 11.

4. With regard to the disputed medical expenses:

   a. Whether the treatment was reasonable and necessary.
   b. Whether the listed expenses are causally connected to the work injury.

c. Whether the listed expenses were causally connected to the medical condition(s) upon which the claim of injury is based.
d. Whether the requested expenses were authorized by the defendant.
e. Whether the outstanding medical bills were paid by Progressive Processing through a self-insured health insurance program.

5. Whether the claimant is entitled to reimbursement of the costs of an independent medical examination ("IME") pursuant to Iowa Code section 85.39.

6. Whether the claimant is entitled to alternate medical care pursuant to Iowa Code section 85.27.

7. Whether an assessment of costs is appropriate.

FINDINGS OF FACT

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

Merlin Sadler, the claimant, was 64 years old at the time of the hearing. (Testimony). He resides in East Dubuque, Illinois, with his spouse. (Testimony). He has been married for 37 years and has three adult children. (Testimony). He has lived in northeastern Iowa for his entire life. (Testimony). He graduated from Dubuque Wahlert High School in 1976. (Testimony).

After graduating from high school, Mr. Sadler took a job at the St. Regis Paper Company from 1976 to 1980. (Testimony). He was laid off during a recession in 1980. (Testimony). He next worked at Caterpillar Tractor Company in Davenport, Iowa, from 1980 to 1984. (Testimony). He worked as an apprentice initially in the maintenance division. (Testimony). He oiled machines, and performed other maintenance tasks at the tractor plant. (Testimony). When Caterpillar closed their plant in 1984, he earned thirteen and 00/100 dollars ($13.00) per hour. (Testimony).

Mr. Sadler returned to working in Dubuque at Econofoods grocery store as a baker. (Testimony). He worked there from 1986 to 2000. (Testimony). He progressed through an apprenticeship, which involved some additional education, to become a journeyman baker. (Testimony). Finally, Mr. Sadler became a bakery manager. (Testimony). As a bakery manager, he scheduled baking different product, and scheduled 32 employees for continued baking throughout the day. (Testimony). The bakery ran 24 hours per day. (Testimony). They produced various loaves of bread and dinner rolls for Econofoods and some restaurants. (Testimony). He did not have hiring and firing responsibilities, nor did he have any responsibilities over employee pay. (Testimony). The most physically demanding aspects of his job with Econofoods was carrying various bags of flour, sugar, and shortening, as well as formulating various doughs. (Testimony). He also had to periodically remove bulk raw dough from a mixer and portion it out for baking. (Testimony). When he left Econofoods, he earned an annual salary of thirty-six thousand and 00/100 dollars ($36,000.00). (Testimony).

Hy-Vee hired Mr. Sadler away from Econofoods for a bakery manager position. (Testimony). He worked there for about eight years as a bakery manager. (Testimony). He quit as manager because Hy-Vee began making more of their products using pre-made mixes rather than baking from scratch. (Testimony). Since leaving Hy-Vee, Mr. Sadler has remained there as a part-time handyman. (Testimony). He repairs various things around Hy-Vee as needed, such as shopping carts, replacing lights, and fixing fans. (Testimony). Since the beginning of the COVID-19 pandemic, he also performs some stocking duties. (Testimony). He continues to work in these positions today and works about 20 hours per week. (Testimony).

In 2008, Mr. Sadler started a position with Guardian Glass. (Testimony). He worked in maintenance, and worked through a three-year apprenticeship. (Testimony). He eventually obtained his craftsman's certificate which indicated he could perform welding, plumbing, maintenance, and electrical jobs. (Testimony). The most physically demanding part of this job was the heat of the plant. (Testimony). He earned eighteen and 00/100 dollars ($18.00) per hour at the time he left Guardian Glass in 2015. (Testimony). He left Guardian Glass for a job closer to his home. (Testimony).

Progressive hired Mr. Sadler in late 2015. (Testimony). He worked a 12-hour shift on an overnight maintenance crew. (Testimony). He would begin work at 5:00 p.m., and complete his shift at 6:00 a.m., the next day. (Testimony). Progressive, a subsidiary of Hormel, takes raw ingredients and makes food items, such as SPAM, ready-made chili, and ready-made spaghetti. (Testimony). The Progressive facility is quite large. (Testimony). Mr. Sadler worked in what is referred to as cook room one and fill room one. (Testimony). These areas are about the size of a football field. (Testimony). Mr. Sadler testified that he stands about 80 percent of the day to make sure that machines are running correctly. (Testimony). He performs preventive maintenance on food processing machines, as well as immediate maintenance needs while production is ongoing. (Testimony). He described the most physically demanding part of his job as the teardown at the end of the evening. (Testimony). This includes taking parts of machines apart so that they can be cleaned by a sanitation team. (Testimony). As of the time of the hearing, he earned thirty-two and 00/100 dollars ($32.00) per hour, which was more than he made at the time of his work injury. (Testimony). He indicated that he enjoys working at Progressive and plans on continuing to work there. (Testimony).

In 2019, Mr. Sadler fell on his driveway and struck his head. (Testimony). He had a concussion and a brain bleed, which necessitated a stay at the University of Iowa Hospitals. (Testimony). Mr. Sadler's medical history is also significant for a history of diabetes. (Joint Exhibit 5:110-111).

Around midnight on May 24, 2020, Mr. Sadler was working as production wound down for the day. (Testimony). He described the process whereby Progressive cleans food product out of pipes in the production line. (Testimony). This includes sending a four-inch round rubber scud through pressurized pipes. (Testimony). This clears out any debris in the pipes before they clean them. (Testimony). The pressure required to push the scud is considerable. (Testimony). Mr. Sadler testified that the sound of the scud moving through the pipes is unmistakable. (Testimony). Mr. Sadler indicated that

the scud did not complete its route on the night of May 24, 2020. (Testimony). He told his supervisor that he did not believe that the scud completed its route. (Testimony). His supervisor disagreed, so Mr. Sadler began tearing down the line for additional cleaning. (Testimony).

Mr. Sadler then began to hear what he thought was a bearing that was about to wear out. (Testimony). He climbed a ladder to locate the issue. (Testimony). He found where the issue was occurring, and noticed that a metal clamp was about to give way. (Testimony). He immediately began to climb down, but before he could move further the clamp gave way and struck him directly in the face, knocking him from the ladder onto the floor. (Testimony). He was taken to an ambulance, but his supervisor, Kevin Joos, insisted on taking him to the hospital instead. (Testimony).

Mr. Sadler was taken to the emergency room at UnityPoint due to a fall with a loss of consciousness. (JE 1:1-15). He had pain in his left ribs, left lower back, and left hip. (JE 1:1). The doctor also observed that the claimant had a superficial left eyebrow laceration and a superficial laceration anterior to his lip. (JE 1:3). He had decreased range of motion in his left hip, but no issues with his shoulders. (JE 1:4). Imaging was performed on a number of different body parts. (JE 1:6-7). A scan of his head was negative. (JE 1:6; 2:91). A CT scan of his cervical spine showed no acute fracture, but did show some irregularity of the left scapula. (JE 1:6; 2:90). The doctor opined that this was "concerning for a scapular fracture." (JE 1:6). A chest CT showed mildly displaced left posterior fourth through sixth rib fractures. (JE 1:6; 2:92). A CT of the abdomen and pelvis showed acute mildly displaced right inferior and superior pubic rami fractures, an acute mildly displaced left anterior column acetabular fracture, and an acute minimally displaced left anterior sacrum fracture. (JE 1:6). The CT of Mr. Sadler's abdomen also showed mild urinary bladder distention. (JE 2:93). Mr. Sadler was admitted to the hospital for treatment of his various injuries. (JE 1:9). Mr. Sadler also had issues with "voiding" after his admission to the hospital. (JE 1:14).

Ryan Cloos, D.O. first saw Mr. Sadler after his admission to the hospital on May 24, 2020. (JE 1:16). Mr. Sadler complained of bilateral hip pain, sacral area pain, and left rib pain. (JE 1:16). Dr. Cloos examined the claimant's bilateral scapula and found no discomfort with palpation, or pain, except to his ribs. (JE 1:17). Dr. Cloos opined that because there was no tenderness in the scapula, the irregularity seen on the CT scan in the scapula was not a fracture, but was swelling. (JE 1:18). Dr. Cloos felt that the pelvic fractures and rib fractures could be treated nonoperatively. (JE 1:18). Dr. Cloos recommended physical therapy for the claimant. (JE 1:18). Ryan Elsey, D.O. examined the claimant on May 25, 2020. (JE 1:19). Mr. Sadler told Dr. Elsey that his pain control improved, and expressed an openness to completing inpatient rehabilitation. (JE 1:19). Dr. Elsey had no additional recommendations besides placing a Foley catheter. (JE 1:21).

Mr. Sadler was evaluated for admission to inpatient rehabilitation on May 25, 2020. (JE 1:22). Some recommendations were provided for activities of daily living. (JE 1:25). He was to continue with occupational therapy to maximize his level of function. (JE 1:25). He continued therapy during his hospital stay, but was impaired due to pain. (JE 1:27).

Dr. Elsey saw Mr. Sadler again on May 26, 2020. (JE 1:29-30). Mr. Sadler complained of inadequate pain control. (JE 1:29). He requested additional pain control medication, to which Dr. Elsey agreed. (JE 1:29).

Stanley Mathew, M.D., examined Mr. Sadler at Finley Hospital on May 27, 2020. (JE 1:32-36). Mr. Sadler continued to have pain with mobility issues, along with gait, balance, coordination and low endurance. (JE 1:32). Mr. Sadler continued to complain of pain in his pelvis, hips, and left rib cage. (JE 1:35). Dr. Mathew examined Mr. Sadler and found him to have functional limitations of his range of motion in his bilateral hips and left shoulder due to pain. (JE 1:35). Dr. Mathew discussed a possible transfer to inpatient therapy. (JE 1:32).

Alex Horchak, M.D., of the urology department also examined Mr. Sadler on May 27, 2020. (JE 1:37-44). Mr. Sadler had issues with urination and had over 1000 cc of urine accumulated in his bladder. (JE 1:37). Mr. Sadler told the doctor that prior to his accident he had no issues with urination, including no urgency or hesitancy. (JE 1:37). Dr. Horchak noted the results of the previous CT scan, which included "[m]ild urinary bladder distention." (JE 1:41). Dr. Horchak prescribed Flomax and recommended that the claimant maintain his Foley catheter until his pain is "under better control." (JE 1:44). Dr. Horchak also recommended that Mr. Sadler undergo a "voiding trial." (JE 1:44).

Mr. Sadler was discharged to inpatient rehabilitation at Finley Hospital on May 27, 2020. (JE 1:45).

Dr. Mathew examined Mr. Sadler again on May 28, 2020, after his admission to the inpatient rehabilitation unit. (JE 1:50). Mr. Sadler required moderate assistance for bed mobility and transfers due to limitations from pain and his fractures. (JE 1:51). Mr. Sadler continued to experience pain in his pelvis, hips, and left rib cage. (JE 1:53). He also had pain with mobility. (JE 1:53). Dr. Mathew discussed pain management and inpatient rehabilitation goals. (JE 1:54). Mr. Sadler was to receive 180 minutes of therapy five out of seven days of the week. (JE 1:54). This included physical therapy, occupational therapy, and speech therapy. (JE 1:54). Dr. Mathew anticipated that the claimant would be in inpatient rehabilitation for two weeks before being discharged to his home with family and services. (JE 1:54-55).

On June 3, 2020, Dr. Mathew revisited Mr. Sadler's progress during his inpatient rehabilitation program. (JE 1:56-58). Mr. Sadler explained that he slept well. (JE 1:56). He continued to have passive range of motion in his hips and left shoulder within functional limits, although he had some limitation by pain. (JE 1:56).

Dr. Mathew saw Mr. Sadler again on June 10, 2020, for an additional examination. (JE 1:59-61). Mr. Sadler had a good night. (JE 1:59). Dr. Mathew indicated that Mr. Sadler would discharge to his home with home health services provided. (JE 1:61). He continued to have lesser weightbearing status, which limited his mobility. (JE 1:61). His therapeutic progress was limited due to fatigue. (JE 1:61). Mr. Sadler showed signs of progress with inpatient therapy. (JE 1:62-66). Mr. Sadler had his Foley catheter removed, and was able to urinate; however, he continued to have high residuals after urination. (JE 1:63). Mr. Sadler rated his pain 0 to 2 out of 10.

(JE 1:63). He complained of a flare up of bilateral ankle pain. (JE 1:63). At that time, he was nonweightbearing on his right side per his request. (JE 1:65). He was given a referral for a wheelchair and a walker upon discharge. (JE 1:71-74).

On June 13, 2020, Dr. Mathew re-examined Mr. Sadler. (JE 1:77-79). Mr. Sadler was to be discharged home with home health services. (JE 1:79). Dr. Mathew noted that the need for home health services was due to the claimant's numerous fractures and weightbearing status. (JE 1:79).

Mr. Sadler was discharged from the hospital on June 14, 2020. (JE 1:80-89). Alexander Johnson, M.D., performed the discharge examination. (JE 1:81). Dr. Johnson recounted Mr. Sadler's hospital stay and course of treatment. (JE 1:81). He also included the referrals for a wheelchair, a walker, a dressing stick, a wide sock aide, and a reacher. (JE 1:85-86). He also was given a referral for home health. (JE 1:88).

After he was released from the hospital, two nurses came to Mr. Sadler's house to assist him with additional physical therapy. (Testimony). He eventually progressed to walking without a walker or cane. (Testimony).

On June 23, 2020, Dr. Horchak saw Mr. Sadler again for a post-hospital follow-up visit. (JE 3:94-97). Mr. Sadler was discharged from the hospital on Flomax due to urinary retention. (JE 3:94). He was able to void urine upon discharge from the hospital, but he had "postvoid residuals" of 700 cc of urine. (JE 3:94). His ambulation and voiding improved; however, Dr. Horchak found him to have 580 cc of postvoid residual urine. (JE 3:94). Dr. Horchak opined that Mr. Sadler had incomplete bladder emptying from suspected BPH. (JE 3:97). He prescribed finasteride and recommended that the claimant continue Flomax. (JE 3:97).

Mr. Sadler visited with Dr. Cloos at his office on June 24, 2020, for his post-hospital follow-up. (JE 4:102). Mr. Sadler indicated that he was doing very well and was not having much pain. (JE 4:102). He continued to stay off his left side. (JE 4:102). Dr. Cloos checked Mr. Sadler's range of motion and found him to have no pain in his hip when Dr. Cloos flexed his hip up and when he rotated it internally and externally. (JE 4:102). Dr. Cloos found no abnormal crepitant motion; however, he did find Mr. Sadler to have decreased range of motion due to arthritis. (JE 4:102). An x-ray showed the pubic ramus fracture and the left acetabular fracture to be in good position. (JE 4:102). Dr. Cloos told Mr. Sadler that everything seemed to be healing well, and he allowed Mr. Sadler to resume weightbearing as tolerated on both of his lower extremities. (JE 4:102). Dr. Cloos also provided a work note with sedentary duty and use of an assistive device to ambulate. (JE 4:102).

Eventually, Dr. Cloos released Mr. Sadler to work light duty with restrictions of no bending, no stretching, no twisting, no crawling, and mostly sedentary work. (Testimony). At that time, the safety director at Progressive contacted him to return to work. (Testimony). When he worked light duty, he sat in a folding chair and sorted through machine parts from a decommissioned Hormel facility which were to be repurposed for work at Progressive. (Testimony). He did this for about three weeks. (Testimony). He also used a cane when he worked light duty. (Testimony).

On July 23, 2020, Mr. Sadler returned to Dr. Cloos' office for a recheck of his bilateral pelvic fractures. (JE 4:103). Mr. Sadler told Dr. Cloos that he was doing great, and that he had no pain walking in the parking lot or through the Progressive plant. (JE 4:103). He showed decreased range of motion with flexion with internal rotation, but Dr. Cloos attributed this to Mr. Sadler's arthritis. (JE 4:103). Pelvic x-rays showed that the claimant's pelvic fractures had healed well. (JE 4:103). Dr. Cloos allowed the claimant to return to regular duty, and Mr. Sadler felt that he could perform that work. (JE 4:103). Dr. Cloos recommended that the claimant return to his office in one month. (JE 4:103).

When he returned to full duty, Mr. Sadler testified that he stopped using his cane. (Testimony). He opined that Progressive would consider this a restriction, which would preclude him from working for Progressive. (Testimony).

Mr. Sadler continued his care with Dr. Cloos on August 24, 2020. (JE 4:103). Mr. Sadler returned to work with no restrictions and was tolerating it well. (JE 4:103). Mr. Sadler told Dr. Cloos that he had no pain when he worked, and that he had some arthritic stiffness once in a while. (JE 4:103). Dr. Cloos continued to find decreased range of motion in both of the claimant's hips due to arthritis; however, he noted no significant pain at the end of the range of motion. (JE 4:103). Dr. Cloos allowed Mr. Sadler to continue working at full duty. (JE 4:103).

Dr. Cloos responded to a check-box type letter from a claims representative on August 27, 2020. (Defendant's Exhibit D:43). He indicated that the claimant was not yet at MMI for his May 24, 2020, work injury. (DE D:43). He also indicated that Mr. Sadler was able to continue working full duty with no restrictions. (DE D:43).

On October 29, 2020, Dr. Cloos saw Mr. Sadler again for his bilateral pelvic fractures. (JE 4:103-104). Mr. Sadler was "doing okay and not having much pain." (JE 4:103). He complained of some soreness and stiffness after sitting in a chair for a time, but he continued working full duty. (JE 4:103). He could climb a ladder with no issues. (JE 4:103). Dr. Cloos observed that the claimant had decreased range of motion of the right hip with flexion and internal rotation when compared with the left side. (JE 4:104). This caused "mild discomfort." (JE 4:104). Dr. Cloos placed Mr. Sadler at maximum medical improvement ("MMI"). (JE 4:104). He had a 0 percent impairment rating, though Dr. Cloos indicated that the claimant was more likely to get arthritis "down the road." (JE 4:104). Dr. Cloos continued to recommend that the claimant work without restrictions. (JE 4:104).

Mr. Sadler testified that, while Dr. Cloos gave him a 0 percent impairment rating, he indicated that Mr. Sadler would eventually need a hip replacement. (Testimony). He further testified that, in the interim, Dr. Cloos would offer him a cortisone injection. (Testimony).

On November 18, 2020, Mr. Sadler returned to Dr. Horchak's office due to his history of incomplete bladder emptying from suspected BPH. (JE 3:98-101). Mr. Sadler told Dr. Horchak that he got up once per night to void his bladder. (JE 3:98). He had no other complaints. (JE 3:98). Mr. Sadler was voiding with use of Flomax and finasteride and was "very comfortable with his bladder function." (JE 3:98). After voiding his bladder, he still had 500 cc of residual urine in his bladder. (JE 3:98). Mr. Sadler

expressed a reluctance to have anything "done" to his bladder. (JE 3:98). After discussion with Dr. Horchak, Mr. Sadler opined that he was comfortable and "would prefer to continue the way he is." (JE 3:98). Dr. Horchak again opined that the claimant had asymptomatic BPH with incomplete bladder emptying. (JE 3:101). Dr. Horchak recommended that the claimant continue Flomax and "Proscar," and return in one year. (JE 3:101).

Mr. Sadler saw Angie Kutsch, A.R.N.P. on April 13, 2021, for a medication check on his hypertension and diabetes. (JE 5:112-113). He expressed concern about his toenails falling off, but he had no other complaints besides this. (JE 5:112-113).

On June 21, 2021, Ronald Iverson, M.D., examined the claimant for continued diabetes management. (JE 5:114-115). He was off work for nine weeks after battling COVID-19. (JE 5:114). He continued to have an elevated A1c. (JE 5:114). Dr. Iverson opined that Mr. Sadler's diabetes was uncontrolled at the time of the examination. (JE 5:115).

Ms. Kutsch examined Mr. Sadler again on October 14, 2021. (JE 5:116-117). He felt well overall and had no specific concerns or issues. (JE 5:116). He worked full time at Hormel (Progressive) and Hy-Vee. (JE 5:116).

Robert Rondinelli, M.D., Ph.D., C.I.M.E., examined the claimant for purposes of an IME on October 28, 2021. (Claimant's Exhibit 7:20). He issued a report outlining his findings on November 14, 2021. (CE 7:20-40). As part of his report, Dr. Rondinelli reviewed Mr. Sadler's pertinent medical records. (CE 7:20-40). He reviewed the work incident of May 24, 2020, with the claimant. (CE 7:20, 29). He also interviewed Mr. Sadler. (CE 7:29-30). Mr. Sadler told Dr. Rondinelli that he had a high level of satisfaction with Progressive, and that, at the time of the examination, he was working with no restrictions. (CE 7:29). Mr. Sadler outlined to Dr. Rondinelli that he felt that he had certain functional deficits. (CE 7:30). These included weakness in his left upper extremity, difficulty squatting or lifting off of the ground, and difficulty turning his body while looking up and raising his left upper extremity above shoulder level. (CE 7:30). He also noted difficulty with climbing ladders, balance, and walking at a fast pace. (CE 7:30). The claimant told the doctor that his left hip caused him to "walk with a gimp." (CE 7:30). Mr. Sadler recounted that his activities at home were not much of a problem, and that, while he has a cane, he "generally tends to not use this at the present time." (CE 7:30).

Mr. Sadler complained of pain "primarily in his left pelvis and over his left hip." (CE 7:30). He rated his pain 5 to 6 out of 10. (CE 7:30). He used ibuprofen to alleviate his pain in the morning and evening. (CE 7:31). This caused his pain level to drop to 2 to 3 out of 10. (CE 7:31). Mr. Sadler also noted his history of hypertension and type 2 diabetes. (CE 7:31).

When asked about his functional limitations, Mr. Sadler told the doctor that he had problems climbing stairs or curbs. (CE 7:31). He also expressed difficulties with getting into and out of a car due to left leg pain and weakness. (CE 7:31). He was able to dress and bathe himself without issue. (CE 7:31). Dr. Rondinelli also administered a "Mini-Mental Status Examination" in order to evaluate the claimant for residual cognitive

deficits associated with a traumatic brain injury or concussion. (CE 7:32). Mr. Sadler scored 26 out of 30, which was considered "within normal limits." (CE 7:32). His executive function screening showed no evidence of impulse control issues. (CE 7:32). Based upon this testing, Dr. Rondinelli opined that Mr. Sadler's overall "Global Assessment of Functioning" was 81 percent to 90 percent. (CE 7:32). Dr. Rondinelli also tested Mr. Sadler's various ranges of motion in his upper and lower limbs. (CE 7:33). Dr. Rondinelli found Mr. Sadler to have a mildly antalgic gait with a "mildly compensated Trendelenburg list to the left side." (CE 7:32). Dr. Rondinelli saw Mr. Sadler shuffle and drag his left foot while moving his left leg. (CE 7:32). He also had difficulty with heel and toe gaiting due to discomfort in his left hip. (CE 7:32).

Dr. Rondinelli next answered five questions posed by claimant's counsel. (CE 7:22-28). He began by opining that Mr. Sadler had the following diagnoses related to his May 24, 2020, injury: Head injury; pelvic trauma, specifically a left anterior column nondisplaced fracture of the acetabulum, a left anterior sacral fracture, displaced superior and inferior pubic rami fractures; posterior nondisplaced left rib fractures at the fourth, fifth and sixth rib; a nondisplaced left scapular fracture; bilateral acute ankle arthritis; and acute urinary retention with large post-void residuals. (CE 7:22).

With regard to his TBI, Mr. Sadler told Dr. Rondinelli that he had regained functioning at "or close" to his preinjury baseline. (CE 7:23). He no longer had headaches, dizziness, lightheadedness, or visual symptoms, despite "some evidence of cognitive residual dysfunction" as shown by the Mini-Mental Status Examination. (CE 7:23). Dr. Rondinelli declined to assign any permanent impairment based upon functional impairment for Mr. Sadler unless and until the claimant had a formal neuropsychological evaluation and testing. (CE 7:23).

Dr. Rondinelli observed that the claimant's "more severe physical problem" was the limitation of station and gait "directly associated with the residuals of his left acetabular fracture, anterior sacral fracture, and right superior and inferior pubic rami fractures" at the time of the evaluation. (CE 7:23). Dr. Rondinelli also observed that Mr. Sadler had a pathological gait on level surfaces along with considerable difficulty on steps and stairs. (CE 7:23). Dr. Rondinelli also observed significant atrophy of the muscles of his left proximal hip, including a 3 cm difference from his right hip. (CE 7:23). Manual muscle testing showed decreased strength in the left hip and thigh along with range of motion deficits. (CE 7:23). Dr. Rondinelli's measurements of the hips are best quoted from his IME, which notes as follows:

> Lower limb:
>
> Hip flexion right side 105, 105, and 110 degrees; left side 90 degrees x3, respectively. Extension full (180 degrees) bilaterally.
>
> Hip abduction right side 35 degrees x3, left side 25 degrees x3, respectively. Adduction right side 25 degrees x3, left side 20 degrees x3, respectively.
>
> Hip external rotation right side 50 degrees x3, left side 35 degrees x3, respectively. Internal rotation right side 25 degrees x3, left side 20 degrees x3, respectively.

. . .

(CE 7:33). Dr. Rondinelli then cites to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, in arriving at his permanent impairment ratings. (CE 7:23-24). He used Table 17-6, page 530 of the Guides and noted the 3 cm atrophy at the right thigh, which correlated to hip adductor weakness and Trendelenburg list, which amounts to a 13 percent left lower extremity impairment. (CE 7:24). This converts to a 5 percent whole person impairment. (CE 7:24). If the diagnosis-based model were elected, using Table 17-33 on page 546, Dr. Rondinelli would use range of motion measurements to account for permanent impairment. (CE 7:24). Dr. Rondinelli provided the following impairment ratings based upon the following range of motion and Table 17-9 on page 537 of the Guides:

> Left hip flexion limited 90 degrees yields 5% lower extremity impairment (LEI).
>
> Left hip extension is full which yields 0% LEI.
>
> Left hip abduction to 25 degrees also yields 5% LEI.
>
> Left hip adduction to 20 degrees yields 0% LEI.
>
> Left hip external rotation limited to 35 degrees yields 0% LEI.
>
> Left hip internal rotation limited to 20 degrees yields 5% additional impairment.

(CE 7:24). Dr. Rondinelli added the above impairment ratings together to arrive at a 15 percent lower extremity impairment rating for range of motion or diagnosis-related criteria. (CE 7:24). Dr. Rondinelli next discussed providing Mr. Sadler with an impairment rating based upon his strength deficits using Table 17-7 on page 531. (CE 7:24). The muscle testing results in a 47 percent lower extremity impairment. (CE 7:24). This converts to a 16 percent whole person impairment rating. (CE 7:24). The final "alternative estimate" is derived from Table 17-5 on page 529. (CE 7:24). This qualifies Mr. Sadler for a "mild grade C" impairment, as it includes an antalgic limp with a shortened stance phase and "documented posttraumatic arthritic changes at the hip," as well as his positive Trendelenburg sign. (CE 7:24). Based upon these results, Dr. Rondinelli recommended that Mr. Sadler use a cane in all situations, and be assigned a 15 percent whole person impairment rating. (CE 7:24). Dr. Rondinelli concludes that the claimant had a whole person impairment between 15 percent and 16 percent "when one factors in the alternative estimate based on manual muscle test estimates of strength loss in this case." (CE 7:24-25). Dr. Rondinelli opined that the disability resulting from the claimant's acute ankle arthritis was already accounted for in his gait derangement analysis. (CE 7:25). Because of the ambiguity of the diagnostic and causation elements of the ankle complaints, Dr. Rondinelli declined to provide an additional rating for the bilateral ankles. (CE 7:25).

Dr. Rondinelli concluded that Mr. Sadler was not entitled to a rating for his rib fractures, as he had healed and had no evidence of impairment to respiratory function. (CE 7:25). Dr. Rondinelli next endeavored to evaluate permanent impairment to Mr.

Sadler's left shoulder due to his scapular fracture. (CE 7:25). Dr. Rondinelli cited to Chapter 16 of the Guides, and noted Mr. Sadler's flexion to 155 degrees entitled him to a 1 percent upper extremity impairment based on Figure 16-40 on page 476. (CE 7:25). He continued by opining that Mr. Sadler's maximum extension to 40 degrees resulted in a 1 percent upper extremity impairment based upon Figure 16-43 on page 477. (CE 7:25). According to Dr. Rondinelli, Mr. Sadler's maximum abduction to 150 degrees was also "worth" 1 percent upper extremity impairment. (CE 7:25). Internal rotation to 55 degrees provides an additional 2 percent upper extremity impairment based upon Dr. Rondinelli's examination. (CE 7:25). Finally, Dr. Rondinelli found the claimant to have maximum external rotation to 80 degrees, which equated to a 0 percent upper extremity impairment. (CE 7:25). Dr. Rondinelli opined that converting the claimant's 5 percent upper extremity combined impairment to a whole person impairment was appropriate "because there is a significant measurable discrepancy between the scapulothoracic range of motion in his affected versus unaffected side. . ." (CE 7:25). The upper extremity ratings would convert to a 3 percent whole person impairment rating. (CE 7:25).

Dr. Rondinelli continued the report by evaluating Mr. Sadler's "[n]eurogenic [v]oiding [d]ysfunction [r]esiduals." (CE 7:25-26). Dr. Rondinelli opined that:

> Mr. Sadler's incomplete urinary retention is, within medical probability, a result of his acquired large bladder capacity due to his pelvic trauma directly affecting his detrusor muscle, and/or probable local neurogenic trauma to the pelvic innervation of the left portion of the detrusor from the left sacral plexus (S2-S4) which traverses the inner pelvis in the vicinity adjacent to his left sacral and anterior column fractures.

(CE 7:25-26). Dr. Rondinelli used two possible ways to provide an impairment rating for Mr. Sadler's bladder issues. (CE 7:26). The first used chapter 13 of the Guides, specifically Table 13-19 on page 341, which Dr. Rondinelli felt qualified Mr. Sadler for a Class I deficit with "some degree of voluntary control unimpaired, with large postvoid residuals." (CE 7:26). Using this portion would provide Mr. Sadler with a whole person impairment between 1 percent and 9 percent. (CE 7:26). Dr. Rondinelli provided an alternative by using chapter 7 of the Guides, and more specifically Table 7.5 on page 151. (CE 7:26). The doctor felt that Mr. Sadler's condition qualified him for a Class I rating "for symptoms and signs of a bladder disorder, which includes urinary retention, and requires intermittent ongoing treatment with Flomax . . ." (CE 7:26). The whole person impairment for this category would be between 0 and 15 percent. (CE 7:26). Dr. Rondinelli opined that the impairment would be between 5 percent and 8 percent by "either of these two methods," and that "according to the 'law of liberality' espoused" by the Guides, it would be appropriate to assign an 8 percent whole person impairment.

Dr. Rondinelli combined the 15 percent whole person impairment for gait derangement, the 8 percent whole person impairment for "probable neurogenic voiding residuals," and the 3 percent whole person impairment for losses in "mechanical inefficiency of the left shoulder and scapular-thoracic joint," to arrive at a 24 percent whole person impairment for Mr. Sadler. (CE 7:26).

Dr. Rondinelli also directly causally related Mr. Sadler's injuries to his fall on May 24, 2020, while working at Progressive. (CE 7:26-27). He placed Mr. Sadler at MMI as of the date of his IME report. (CE 7:28). However, he indicated that it was unclear as to whether Mr. Sadler suffered additional impairment, and also could not connect certain mental deficiencies to the May 24, 2020, fall rather than his 2019 brain injury. (CE 7:26-27). Dr. Rondinelli also found causal ambiguity as to Mr. Sadler's bilateral ankle issues. (CE 7:27).

Dr. Rondinelli opined that the claimant required no further medical care as it relates to the May 24, 2020, work injury. (CE 7:27). However, Dr. Rondinelli added that, he believed that "Mr. Sadler places his desire to continue working ahead of his present medical needs to some degree." (CE 7:27). To that end, Dr. Rondinelli suggested that Mr. Sadler would "benefit from the continual use of a single cane in his contralateral (right) hand during weightbearing on the left side during his gait cycle." (CE 7:27). Along with using a cane, Dr. Rondinelli recommended a refresher course of gait training, including information about safety on steps and stairs with the use of his cane. (CE 7:27). Dr. Rondinelli noted that Mr. Sadler may also benefit from using a mild rocker bottom sole placement on his shoes to reduce stress on his ankles. (CE 7:27).

Dr. Rondinelli recommended that Mr. Sadler limit his use of his left upper extremity at or above shoulder level to only an occasional basis, along with avoiding sustained or repetitive activity with his left shoulder. (CE 7:28). He also recommended that Mr. Sadler avoid steps and stairs, unless he has a straight cane. (CE 7:28). He recommended that Mr. Sadler stop using ladders and avoid unprotected heights. (CE 7:28). Dr. Rondinelli recommended that the claimant wear protective head gear "in any situation where likelihood of fall is increased…" and also recommended that the claimant avoid "moving substrates, and icy or otherwise slippery substrates altogether." (CE 7:28). Finally, Dr. Rondinelli recommended a functional capacity evaluation ("FCE"). (CE 7:28).

Mr. Sadler felt that Dr. Rondinelli was the best doctor that he had ever visited due to the thoroughness of his examination. (Testimony). Mr. Sadler testified that he felt that Dr. Rondinelli's restrictions were appropriate. (Testimony).

He noted Dr. Rondinelli's suggestion of using a cane. (Testimony). He also noted that the Progressive safety person met with him after he received restrictions from Dr. Rondinelli, and indicated that Progressive could not accommodate the restrictions. (Testimony). Mr. Sadler told Progressive, ". . . well, then we'll just lose the restrictions, won't we?" (Testimony). To which the Progressive employee allegedly responded, "that's what I wanted to hear." (Testimony).

There was some confusion as to his restrictions. (Testimony). Mr. Sadler testified that if "they" (meaning Progressive) would allow his restrictions, he would follow them. (Testimony). He admitted that he "should" be following his restrictions, but that he could "do it without" them. (Testimony). He told Hy-Vee about his restrictions and testified that they are accommodating them by not making him climb ladders and

limiting how often he climbs stairs. (Testimony). He does not use his cane at Hy-Vee, either. (Testimony).

Dr. Cloos responded to a pre-prepared letter from claimant's counsel on December 2, 2021. (CE 8:41-42). The letter was a result of a conversation between Dr. Cloos and claimant's counsel on November 12, 2021. (CE 8:41). Dr. Cloos signed the letter, which indicated that the opinions expressed therein (despite being written by claimant's attorney) accurately represented his opinions "based upon a reasonable degree of medical certainty . . ." (CE 8:41). Dr. Cloos agreed that the impact from Mr. Sadler's fall and the injury to the cartilage in his hip joint accelerated pre-existing left hip arthritis. (CE 8:41). As a result of this, Mr. Sadler would "probably" require a hip replacement in the future, "but that remains to be seen and only time will tell." (CE 8:41).

On January 13, 2022, Mr. Sadler was given a referral from Ms. Kutsch for "further evaluation and management of cognitive changes" since his May of 2020 traumatic brain injury. (JE 6:118). On January 25, 2022, Ms. Kutsch examined Mr. Sadler for complaints of "intractable chronic post-traumatic headache," vertigo, and history of a traumatic brain injury. (JE 6:119-120). Mr. Sadler told her that he had daily headaches, and a sense of the room spinning since his work injury in May of 2020. (JE 6:120). He also noted sensitivity to his ears when he experienced nasal drainage. (JE 6:120). Ms. Kutsch ordered an MRI and prescribed Depakote for a headache. (JE 6:119). She also referred the claimant for vestibular therapy. (JE 6:119).

Mr. Sadler had therapy on February 10, 2022. (JE 7:127-133). He was given vestibular therapy in order to mitigate his vertigo. (JE 7:127-133). Mr. Sadler told the therapist that he could do his job at Hy-Vee, which included bending over and looking up, without dizziness. (JE 7:133).

On February 25, 2022, Mr. Sadler had an MRI at Medical Associates Clinic, P.C. (JE 8:152). The MRI showed no acute intracranial abnormalities, diffuse cerebral volume loss without ischemic change, and BURR holes in the frontal and parietal regions bilaterally. (JE 8:152).

Mr. Sadler had more vestibular therapy on February 28, 2022, March 7, 2022, March 15, 2022, and March 24, 2022. (JE 7:134-147). There is at least one mention of Mr. Sadler falling at work and seeming impulsive at times. (JE 7:140).

Jill Miller, A.R.N.P., signed a letter drafted by claimant's counsel on March 10, 2022. (CE 9:43-44). Her signature on the letter indicated that she assented to the opinions as drafted by claimant's counsel based upon a phone conference between claimant's counsel and Ms. Miller. (CE 9:44). Ms. Miller believed that the claimant's headaches and dizziness only occurred after his May of 2020 fall, and were thus "more likely than not substantially caused or aggravated by the" May 24, 2020, work incident. (CE 9:43). Ms. Miller felt that Mr. Sadler's headaches required additional "work-up" since he continued to complain of headaches and took ibuprofen. (CE 9:44). Ms. Miller recommended a neuropsychological evaluation to explore Mr. Sadler's "severe impairment with word generation." (CE 9:44). Ms. Miller also recommended that Mr. Sadler see a physical therapist for neck pain to improve balance issues. (CE 9:44).

Mr. Sadler visited Jill Miller on March 24, 2022, for his continued head injury follow-up. (JE 6:123-126). He now complained of tightness in his right trapezius along with right occipital neuralgia. (JE 6:123). Mr. Sadler reported some memory and cognitive concerns. (JE 6:123). Ms. Miller noted that it was "unclear if [*sic*] from the first traumatic brain injury or the second injury." (JE 6:123).

On April 13, 2022, Robert Arias, Ph.D., of Arias Neuropsychology and Behavioral Medicine, P.C., conducted an independent neuropsychological evaluation of the claimant. (DE E:49-55). Dr. Arias reviewed Mr. Sadler's medical history, including his prior head injury and brain bleed. (DE E:51-55). Dr. Arias ran Mr. Sadler through a battery of tests. (DE E:52). He found Mr. Sadler to be cooperative, with a stable and appropriate affect. (DE E:52). Dr. Arias estimated Mr. Sadler to be of low average baseline intelligence. (DE E:52-53). Dr. Arias opined that Mr. Sadler's examination showed a failure on two independent performance validity measures, which indicated "at least" a 95 percent chance of non-credible performance on other measures "due to suboptimal effort/intent to perform poorly." (DE E:49). Otherwise, Dr. Arias found Mr. Sadler's cognitive performance to be intact. (DE E:49). Mr. Sadler displayed strength in memory and executive functioning. (DE E:49).

Dr. Arias continued by noting that Mr. Sadler's May 24, 2020, injury suggested a mild traumatic brain injury with a brief loss of consciousness. (DE E:49). Dr. Arias cited to a number of studies indicating that an uncomplicated mild TBI had no long-term cognitive or psychological deficits. (DE E:49). Dr. Arias noted that this was bolstered by Mr. Sadler's normal performance on cognitive assessments on May 25, 2020, and June 10, 2020. (DE E:49). An MMPI-2-RF examination revealed "over-endorsement" of Mr. Sadler's symptomatology, particularly with regard to his memory. (DE E:49). Dr. Arias opined, "[t]he results indicated an unusual combination of responses that is associated with non-credible memory complaints." (DE E:49). This provided invalid foundation from which to place any emotional or mental health difficulty as related to the May 24, 2020, incident. (DE E:49). Dr. Arias found no genuine sequelae from the traumatic brain injury. (DE E:50). Dr. Arias agreed with some of Dr. Rondinelli's findings, but disagreed that the claimant displayed, "severely impaired word generation." (DE E:50). Dr. Arias placed Mr. Sadler at MMI for his mild traumatic brain injury as of May 25, 2020. (DE E:51). He opined that the claimant suffered no permanent impairment, required no permanent restrictions, nor any future medical treatment. (DE E:51).

Claimant's counsel sent additional medical records and a letter to Dr. Rondinelli and requested an additional opinion. (CE 10:45-46). In response, Dr. Rondinelli summarized the additional records, along with an "independent neuropsychological evaluation" performed by Robert Arias, Ph.D. on April 13, 2022. (CE 10:47-48). Dr. Arias' report is quoted by Dr. Rondinelli. (CE 10:48). Specifically, Dr. Rondinelli noted disagreement with Dr. Arias' opinion that Mr. Sadler had no mental health sequelae from his May 24, 2020, work incident, and that a person with an uncomplicated mild traumatic brain injury had no long-term cognitive or psychological deficits. (CE 10:48). Dr. Rondinelli opined that the mini-mental examination that he performed showed "some

abnormalities (particularly in executive functioning & word generation)," which Dr. Arias either did not find or overlooked. (CE 10:48).

Dr. Rondinelli then answered questions from claimant's counsel. (CE 10:48-49). Dr. Rondinelli opined that Mr. Sadler suffered a mild traumatic brain injury "based upon his history of a concussion with small head laceration after suffering a blast exposure with a projectile hitting his forehead…" (CE 10:49). Dr. Rondinelli referenced Mr. Sadler's previous brain injury and noted that suffering two mild traumatic brain injuries in succession caused a potential for increased dysfunction. (CE 10:49). Despite this, Dr. Rondinelli continued to opine that a lack of objective evidence of significant neurocognitive residuals due to head trauma and Mr. Sadler's "high level of neurocognitive functioning" did not meet the threshold for an impairment pursuant to the Guides. (CE 10:49). Dr. Rondinelli also considered the claimant's recent treatment, including a neurodiagnostic evaluation, neurological imaging, and therapy, were medically necessary and appropriate to "achieving diagnostic clarification to prospectively justify the brief additional medical and therapeutic interventions undertaken in the hopes and intention of further mitigation" of Mr. Sadler's mild traumatic brain injury. (CE 10:49).

Dr. Cloos wrote a letter to the defendant's counsel, and responded to a number of questions posed by defendant's counsel. (DE D:45-48). Dr. Cloos wrote that he did not recall Mr. Sadler complaining of any head injury symptoms, nor did he observe any symptoms which he attributed to a head injury. (DE D:45). He also never evaluated Mr. Sadler's left shoulder for an impairment rating. (DE D:45). Any impairment related to the urinary issues were outside of the doctor's area of practice. (DE D:45). Dr. Cloos noted that the last time he saw Mr. Sadler in 2020, he had a 0 percent impairment, as he was "functionally doing very well." (DE D:45). Dr. Cloos noted that, at that time, Mr. Sadler climbed ladders and walked without an antalgic gait. (DE D:45). He worked full duty, and tolerated it well. (DE D:45). Dr. Cloos observed that Mr. Sadler had some signs of early arthritic changes, which "could be exacerbated by the fractures." (DE D:45). Dr. Cloos could not dispute any of Dr. Rondinelli's range of motion findings, as he had not seen Mr. Sadler since 2020. (DE D:45).

Mr. Sadler also testified that he is "gimpy" since his work injury, meaning he walks with a limp. (Testimony). This also slows him when he climbs ladders at work. (Testimony). He takes six ibuprofen in order to get comfortable lying in bed due to ongoing hip pain. (Testimony).

He testified that he continues to have issues with his bladder being distended. (Testimony). He sees a physician once per year for that issue, and has the volume of his bladder checked during these visits. (Testimony). He also takes Flomax and finasteride for his bladder issues. (Testimony). He testified that Dr. Horchak told him he would likely take these medications for the rest of his life. (Testimony). He testified that he urinates on a more frequent basis now than he did prior to his injury. (Testimony).

He testified that he has pain in his left shoulder and scapula. (Testimony). When he tries to lift certain items or weights, he feels pain. (Testimony). He testified that he has to turn his whole body to the left rather than using his left arm. (Testimony).

His average pain level was 5-6 out of 10. (Testimony). If he has to perform certain tasks while working, his pain levels may increase. (Testimony).

Mr. Sadler had a semi-visible scar in an "O" shape on his face as a result of the clamp hitting him in the face. (Testimony). This was even visible on the screen via Zoom.

Since returning to full duty work, Mr. Sadler has had no change to his job with Hy-Vee. (Testimony). The evidence shows that he has worked the same amount of hours at Hy-Vee. He continued to work about 50 to 60 hours per week between Progressive and Hy-Vee. (Testimony).

Kevin Joos testified on behalf of the defendant. (Testimony). He is a maintenance engineer at Progressive. (Testimony). He supervises Mr. Sadler's maintenance crew and observes the claimant's work on a daily basis. (Testimony). Mr. Joos indicated that Mr. Sadler is not working under any specific restrictions, but that the crew assists him when there are particularly difficult teardowns. (Testimony). He continues to climb ladders at work and continues to be as productive as he was prior to the injury. (Testimony). Mr. Joos testified that he saw Mr. Sadler walk with a bit of a limp towards the end of his shift. (Testimony). However, he did not observe any significant deterioration in Mr. Sadler's work. (Testimony).

Mr. Joos found Mr. Sadler to be a reliable employee. (Testimony). His years of experience are an asset to Progressive. (Testimony). He found that Mr. Sadler rarely complains. (Testimony).

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.904(3).

Causation

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 medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony,

even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

Iowa employers take an employee subject to any active or dormant health problems, and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is "proximate" when it is a substantial factor, or even the primary or most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

The claimant argues that his work injury was a cause of permanent disability to his left shoulder, left hip (due to his alleged gait disturbance), and urinary bladder. The defendant disputes that the claimant suffered any permanent disability.

While working for the defendant on May 24, 2020, the claimant was struck in the face by a clamp and knocked from a ladder onto the floor at the Progressive facility. Mr. Sadler suffered a mild traumatic brain injury, a scapular fracture, an acute mildly displaced right inferior and superior pubic rami fracture, an acute mildly displaced left anterior column acetabular fracture, an acute minimally displaced left anterior sacrum fracture, mildly displaced fractures of his left fourth through sixth ribs, and mild urinary bladder distention. He was admitted to the hospital, where he was inpatient for several days before being discharged to an inpatient rehabilitation unit for several weeks. He was discharged on June 14, 2020. After being discharged, he continued therapy with in-home physical therapy. He also had a referral for a wheelchair and a walker upon discharge. Of note, no doctor has opined that the claimant's head injury, or rib injury caused him permanent disability; therefore, I will not address whether these are a cause of permanent disability.

Mr. Sadler also followed up with his orthopedic physician, Dr. Cloos. He had a relatively uneventful recovery and progressed through conservative care. Upon his first visit with Dr. Cloos after his discharge from the hospital, Mr. Sadler indicated that he was doing very well and was not having much pain; however, he had some decreased range of motion in his hips. Dr. Cloos allowed Mr. Sadler to resume weightbearing as tolerated on both of his lower extremities and allowed him to return to work at sedentary duty with an assistive device.

Mr. Sadler returned to Dr. Cloos' office in July of 2020, with reports of no pain while ambulating in the parking lot of the Progressive plant. He did have some decreased range of motion with flexion and internal rotation; however, Dr. Cloos attributed this to Mr. Sadler's arthritis. At that time, Dr. Cloos allowed Mr. Sadler to return to regular duty.

In August of 2020, Dr. Cloos again saw Mr. Sadler. Mr. Sadler noted he returned to work with no restrictions and that he had no pain when he worked. He noted some arthritic soreness once in a while. He demonstrated some decreased range of motion in the hips, but Dr. Cloos attributed this to arthritis.

Dr. Cloos saw Mr. Sadler again in October of 2020, at which time Mr. Sadler reported that he was not in much pain besides soreness and stiffness after sitting in a chair for some time. Mr. Sadler demonstrated decreased range of motion in the right hip with flexion and internal rotation as compared to the left side. This range of motion included "mild discomfort." During the October 29, 2020, visit, Dr. Cloos placed Mr. Sadler at MMI, and provided him with a 0 percent impairment rating. However, Dr. Cloos noted that Mr. Sadler was more likely to get arthritis "down the road." He continued to allow Mr. Sadler to work full duty without restrictions. The claimant did not see Dr. Cloos again.

The claimant was examined by Dr. Rondinelli for an IME. Mr. Sadler outlined to Dr. Rondinelli that he felt like he had difficulties squatting or lifting off of the ground, difficulty climbing ladders, difficulty with balance, difficulty climbing stairs, and difficulty walking at a fast pace. He also reported walking with a "gimp" since the work incident. He complained of pain primarily on his left side, which he rated 5 to 6 out of 10. He took ibuprofen to alleviate his pain. While he possessed a cane, he tended not to use it at the time of his exam with Dr. Rondinelli.

Dr. Rondinelli observed that Mr. Sadler had a mildly antalgic gait with a "mildly compensated Trendelenburg list to the left side." Dr. Rondinelli also observed Mr. Sadler shuffle and drag his left foot while moving his left leg. Dr. Rondinelli opined that the claimant's most pressing problem was a limitation of station and gait, which he associated directly with the claimant's pelvic fractures. Dr. Rondinelli also observed a significant atrophy of the muscles of the left proximal hip. Dr. Rondinelli performed manual muscle testing of the left hip and thigh and found decreased strength. He also found decreased range of motion in the claimant's left hip when compared to the right hip. He opined that the claimant's pelvic fractures were a cause of permanent disability.

The defendant pointed out that Dr. Rondinelli is a physiatrist. The claimant did not include any CV for Dr. Rondinelli in their records to indicate his further qualifications. According to the American Academy of Physical Medicine and Rehabilitation, a physiatrist treats "a wide variety of medical conditions affecting the brain, spinal cord, nerves, bones, joints, ligaments, muscles, and tendons." See About AAPM&R, Online: https://www.aapmr.org/about-aapm-r, (last viewed November 4, 2022). I would note that Dr. Rondinelli is also noted to be a "C.I.M.E.," which means he is a certified independent medical examiner by the American Board of Independent Medical Examiners. See Certified Independent Medical Examiner, Online:

https://www.abime.org/wp-content/uploads/2020/01/CIME.pdf, (last viewed November 4, 2022). In order to obtain certification, a physician must meet certain standards, including continuing medical education in the performance of IMEs, and completing a competency examination covering items such as impairment and disability symptoms and the Guides. Id.

While Dr. Cloos did not examine the claimant again, he responded to a pre-prepared letter from claimant's counsel on December 2, 2021. Dr. Cloos agreed that the impact from Mr. Sadler's fall accelerated his pre-existing left hip arthritis. He also opined that, as a result of the arthritis, Mr. Sadler would "probably" need a hip replacement in the future, "but that remains to be seen and only time will tell." He also indicated that he would defer to Dr. Rondinelli's range of motion measurements since he had not seen the claimant since 2020. As to the remainder of his opinions, Dr. Cloos noted that they were based upon his observations at the time of his last examination of Mr. Sadler.

Kevin Joos agreed with Mr. Sadler's testimony that he walks with a "gimp" or limp towards the end of his shift. Mr. Sadler testified at the hearing that he had difficulty with climbing stairs and ladders since his work incident. There was some difference between Mr. Sadler's testimony at his deposition and his testimony at hearing as to these issues; however, Mr. Sadler's testimony at hearing was consistent with Dr. Rondinelli's IME report.

Based upon the foregoing, and the evidence in the record, I find that Mr. Sadler's injuries to his pelvis from May 24, 2020, were a cause of permanent disability.

For his urinary issues, Mr. Sadler saw Dr. Horchak. He started seeing him while he was in the hospital. Mr. Sadler had issues with urinary retention and had over 1000 cc of urine accumulated in his bladder. Mr. Sadler told Dr. Horchak that, prior to his accident, he had no issues with urinary urgency or hesitancy. Dr. Horchak reviewed the CT scan of the claimant's abdomen, which showed "mild urinary bladder distention." For a time, Mr. Sadler had a Foley catheter inserted in order to remove urine from his bladder. He was prescribed Flomax and was ordered to have a voiding trial prior to discharge from the hospital.

Dr. Horchak examined Mr. Sadler again after his discharge from the hospital. He could void urine upon discharge, but had some issues with "postvoid residuals." During a June of 2020 visit, Dr. Horchak observed Mr. Sadler to have 580 cc of postvoid residual urine. During this visit, Dr. Horchak opined that Mr. Sadler had incomplete bladder emptying from suspected "BPH." BPH is benign prostatic hyperplasia, also known as prostate gland enlargement. See Benign prostatic hyperplasia (BPH), Online: https://www.mayoclinic.org/diseases-conditions/benign-prostatic-hyperplasia/symptoms-causes/syc-20370087#:~:text=Benign%20prostatic%20hyperplasia%20(BPH)%20%E2%80%94,urinary%20tract%20or%20kidney%20problems (last visited November 3, 2022). According to the Mayo Clinic, "[a]n enlarged prostate gland can cause uncomfortable urinary symptoms, such as blocking the flow of urine out of the bladder. It can also

cause bladder, urinary tract or kidney problems." Id. A symptom of BPH includes "[i]nability to completely empty the bladder." Id.

In November of 2020, Dr. Horchak again saw Mr. Sadler. Mr. Sadler reported that he got up once per night to void his bladder, and that he had no other complaints. Mr. Sadler told Dr. Horchak he was "very comfortable with his bladder function." Dr. Horchak found that the claimant had 500 cc of residual urine after voiding his bladder. During this examination, Dr. Horchak performed a digital rectal prostate examination on Mr. Sadler. He opined that the digital rectal prostate exam showed "30 g prostate smooth and symmetric." Subsequent to that examination, Dr. Horchak diagnosed Mr. Sadler with "BPH" with incomplete bladder emptying, but patient is asymptomatic." He recommended at that time that Mr. Sadler continue his medications and return in one year. Mr. Sadler expressed a reluctance to have anything "done" to his bladder.

There are no other treatment records in the record regarding the claimant's urinary issues. Dr. Rondinelli examined the claimant for an IME. Dr. Rondinelli opined that the claimant suffered from acute urinary retention with large post-void residuals. He further opined that this was caused by pelvic trauma "directly affecting his detrusor muscle, and/or probable local neurogenic trauma to the pelvic innervation of the left portion of the detrusor from the left sacral plexus." He concluded that the urinary issues were caused by the claimant's work injury on May 24, 2020.

I find the opinions of Dr. Horchak to be more persuasive as to the claimant's alleged urinary retention issues. He diagnosed the claimant with benign prostatic hyperplasia, or prostate gland enlargement, as a cause of his incomplete bladder emptying. Dr. Rondinelli's diagnosis does not comport with the diagnosis of Dr. Horchak, a trained urologist. Dr. Rondinelli also does not explain why his diagnosis differs from Dr. Horchak's diagnosis. Based upon this inconsistency and Dr. Horchak's more credible explanation, I find that the claimant has not proven, by a preponderance of the evidence, that his urinary retention was caused by his fall at Progressive on May 24, 2020.

Finally, I turn to the claimant's left shoulder. Upon admission to the hospital, Mr. Sadler complained of pain in his left shoulder. A CT scan of the cervical spine showed some irregularity of the left scapula. The doctor opined that this was "concerning for a scapular fracture." Dr. Cloos examined the claimant in the hospital and found him to have no tenderness to the scapula. Based upon this, Dr. Cloos opined that the irregularity on the CT scan was not a fracture, but was swelling. Dr. Mathew examined the claimant in the hospital and found him to have functional limitations of range of motion in his left shoulder due to pain. By June 3, 2020, Dr. Mathew's examination of the claimant showed passive range of motion within functional limits in the left shoulder. However, Mr. Sadler displayed some limitation by pain.

The medical records are devoid of mention of the claimant's left shoulder until Dr. Rondinelli opined that the claimant had issues with range of motion in his left shoulder. Specifically, Dr. Rondinelli opined that the claimant had permanent impairment due to a significant measurable discrepancy between his scapulothoracic ranges of motion. Mr.

Sadler never had other imaging done of his shoulder, nor did he have any treatment for his shoulder.

Dr. Cloos later provided a letter indicating that he never evaluated Mr. Sadler's shoulder for permanent disability.

At his deposition, Mr. Sadler testified that when he turned his head to the left, or if he was reaching for something, his left shoulder pain limited him. He also testified that he tends to turn his whole body when he lifts something on the left, rather than using solely his left arm. His testimony was consistent with his deposition at the hearing.

Based upon the information in the record, and the foregoing, I find that the claimant's left shoulder injury was a cause of permanent disability.

Permanent Partial Disability

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss of use of a scheduled member under Iowa Code 85.34(2)(a)-(u) or for loss of earning capacity under Iowa Code 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in Iowa Code 85.34(a) – (u) are applied. An injury to the hip is considered an injury to the body as a whole. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

Iowa Code section 85.34(2)(v) states, in relevant part:

> If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity.

In determining whether the above provision of Iowa Code section 85.34(2)(v) applies, there is a comparison between the pre- and post-injury wages and earnings. McCoy v. Menard, Inc., File No. 1651840.01 (App. April 9, 2021). A claimant's hourly wage must be considered in tandem with the actual hours worked by that claimant or offered by the employer. Id.

Compensation for an injury to the body as a whole is based upon 500 weeks. See Iowa Code section 85.34(2)(v).

Iowa Code section 85.34(2)(w) allows for compensation to be paid on a proportional basis to the scheduled maximum compensation based upon the impairment suffered by the claimant.

Iowa Code section 85.34(2)(x) states:

> In all cases of permanent partial disability less than that specifically described in the schedule described in paragraphs 'a' through 'u', or paragraph 'v' when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs 'a' through 'u', or paragraph 'v' when determining functional disability and not loss of earning capacity.

I am bound by statute to only consider the functional disability ratings issued by the various medical providers.

The evidence indicates that the claimant returned to work at Hy-Vee working the same hours at an increased rate of pay. He also returned to work full duty at Progressive, and earned the same or increased pay from the time of the work incident. Therefore, the claimant shall be compensated for functional disability only based upon Iowa Code section 85.34(2)(v).

The next question is which impairment ratings are most persuasive. Dr. Cloos opined that the claimant suffered a 0 percent permanent impairment. His rating occurred well before the hearing. He also deferred to Dr. Rondinelli's findings when it came to range of motion findings.

Dr. Rondinelli's impairment rating findings are relatively difficult to follow. He provides "estimates" as to different measurements of permanent impairment. Dr. Rondinelli measured various elements of Mr. Sadler's range of motion in his left hip. He provided the claimant with a 15 percent lower extremity impairment based upon the range of motion deficits in the left lower extremity. Based upon muscle testing, Dr. Rondinelli opined that the claimant had a 47 percent lower extremity impairment. Finally, Dr. Rondinelli used Table 17-5 for a mild grade C impairment. Dr. Rondinelli concluded that the claimant had a 15 percent whole person impairment based upon his examination.

I adopt Dr. Rondinelli's impairment analysis and 15 percent whole person impairment rating regarding Mr. Sadler's left hip and gait issues.

With regard to the left shoulder issues, Dr. Rondinelli opined that the claimant had a 5 percent upper extremity impairment rating. This was based upon range of

motion measurements during the IME. This is consistent with Mr. Sadler's testimony. Dr. Rondinelli converted the upper extremity impairment rating to a 3 percent whole person impairment.

Dr. Rondinelli then provided an impairment rating for the claimant's bladder issues. I previously decided that the claimant did not prove, by a preponderance of the evidence, that his work injury was a cause of permanent disability. Therefore, the claimant is not entitled to compensation for permanent disability for his alleged bladder condition.

Using the Combined Values Chart on page 604 of the Guides, I combined the 15 percent whole person impairment rating for the left hip and left lower extremity with the 3 percent whole person impairment rating provided for the left upper extremity. The result is an 18 percent whole person impairment. Therefore, I award the claimant 90 weeks of permanent partial disability benefits. (500 weeks x 0.18 = 90 weeks).

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

Pursuant to Iowa Code 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Claimant is entitled to an order of reimbursement if he/she has paid those expenses. 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).

In cases where the employer's medical plan covers the medical expenses, claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, the defendants are ordered to make payments directly to the provider. See Krohn, 420 N.W.2d at 463. 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, 873 N.W.2d 552 (Iowa App. 2015)(Table) 2015 WL 7574232 15-0323.

The employee has the burden of proof to show medical charges are reasonable and necessary, and must produce evidence to that effect. Poindexter v. Grant's Carpet Service, I Iowa Industrial Commissioner Decisions, No. 1, at 195 (1984); McClellan v. Iowa S. Util., 91-92, IAWC, 266-272 (App. 1992).

The employee has the burden of proof in showing that treatment is related to the injury. Auxier v. Woodward State Hospital School, 266 N.W.2d 139 (Iowa 1978), Watson v. Hanes Border Company , No. 1 Industrial Comm'r report 356, 358 (1980) (claimant failed to prove medical charges were related to the injury where medical records contained nothing related to that injury) See also Bass v Veith Construction Corp., File No 5044438 (App. May 27, 2016) (Claimant failed to prove causal connection between injury and claimed medical expenses); Becirevic v. Trinity Health, File No. 5063498 (Arb. December 28, 2018) (Claimant failed to recover on unsupported medical bills)

Nothing in Iowa Code section 85.27 prohibits an injured employee from selecting his or her own medical care at his or her own expense following an injury. Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 205 (Iowa 2010). In order to recover the reasonable expenses of the care, the employee must still prove by a preponderance of the evidence that unauthorized care was reasonable and beneficial. Id. The Court in Bell Bros. concluded that 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." Id.

The claimant requests reimbursement for medical billing incurred for additional evaluation of his mild traumatic brain injury incurred following his IME with Dr. Rondinelli. The defendant argues that the claimant is not owed this as it was not authorized, nor was it reasonable and beneficial. The defendant argues that they are self-insured for their health insurance plan and therefore, the claimant is not entitled to reimbursement for the portions paid by the health plan. Unfortunately for the defendant, they did not provide any evidence to back up this claim. Therefore, I find that they have not shown proof of entitlement to any sort of credit for payments made by a health insurer.

The claimant sustained a head injury as a result of his work injury in May of 2020. He did not complain to any physician about vestibular issues, memory issues, headaches, or any head issues until after his IME with Dr. Rondinelli. Additionally, Dr. Rondinelli could not connect certain mental deficiencies to the May 24, 2020, incident rather than Mr. Sadler's 2019 fall and subsequent brain bleed. Based upon the foregoing, I find that the claimant has not proven entitlement to reimbursement for the requested medical care.

Alternate Medical Care

Iowa Code 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.

Iowa Code 85.27(4).

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975). An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision, June 17, 1986).

By challenging the employer's choice of treatment - and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See e.g. Iowa R. App. P. 14(f)(5); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

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 care was unduly inconvenient for the claimant. Id. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id. Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgement of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision, June 17, 1986).

The claimant requests alternate medical care via an order of the defendant to pay for treatment with Dr. Horchak and any necessary medications, including Flomax and finasteride. The claimant argues that, because he did not have urinary symptoms prior to the May 24, 2020, incident, and now does, he is entitled to the same. I previously found that the claimant failed to prove, by a preponderance of the evidence that the claimant suffered a permanent disability as a result of his bladder issue. I noted that Dr. Horchak's diagnosis did not indicate that this was an acute issue. He diagnosed Mr. Sadler with BPH with incomplete bladder emptying. There is not adequate information in the record to indicate that the bladder issue is work related. While the claimant may desire this additional treatment, there is no indication that it is

connected to the work injury of May 24, 2020. The claim for alternate medical care is denied.

IME Reimbursement

Iowa Code 85.39(2) states:

> If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination.
>
> . . .
>
> An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

Iowa Code section 85.39(2).

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). An opinion finding a lack of causation is tantamount to a zero percent impairment rating. Kern v. Fenchel, Doster & Buck, P.L.C., 2021 WL 3890603 (Iowa App. 2021).

The claimant seeks reimbursement for the IME of Dr. Rondinelli. On October 29, 2020, Dr. Cloos, the claimant's treating physician, opined that the claimant suffered no disability as a result of his pelvic and/or hip issues. The claimant then retained Dr. Rondinelli to provide an IME. Dr. Rondinelli charged five thousand two hundred fifty and 00/100 dollars ($5,250.00) for the IME. Considering the breadth and depth of the IME provided by Dr. Rondinelli, it is appropriate for the defendant to reimburse the claimant for the costs of Dr. Rondinelli's IME.

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 12. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See

876 Iowa Administrative Code 4.33; Iowa Code 86.40. 876 Iowa Administrative Code 4.33(6) provides:

> [c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

Pursuant to the holding in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), only the report of an IME physician, and not the examination itself, can be taxed as a cost according to 876 IAC 4.33(6). The Iowa Supreme Court reasoned, "a physician's report becomes a cost incurred in a hearing because it is used as evidence in lieu of the doctor's testimony," while "[t]he underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." Id. (Noting additionally that "[i]n the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition.") The commissioner has found this rationale applicable to expenses incurred by vocational experts. See Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App. Dec., December 17, 2018); Voshell v. Compass Group, USA, Inc., File No. 5056857 (App. Dec., September 27, 2019).

The claimant requests reimbursement for the following items:

Filing Fee	$100.00
Deposition Court Reporting	$110.00
Report of Jill Miller, A.R.N.P.	$250.00
Supplemental Report of Dr. Rondinelli	$750.00

I have omitted the costs for Dr. Rondinelli's IME since I previously awarded that pursuant to Iowa Code section 85.39. Based upon my discretion, I award the claimant the filing fee, the deposition reporting/transcription costs, and the costs for the supplemental report of Dr. Rondinelli. I decline to award costs for Ms. Miller's report because I did not find it useful or relevant to the matter.

Accordingly, the defendant shall reimburse the claimant nine hundred sixty and 00/100 dollars ($960.00) for costs.

ORDER

THEREFORE, IT IS ORDERED:

That the defendant shall pay the claimant ninety weeks of permanent partial disability benefits at the agreed upon rate of seven hundred seventy-seven and 95/100 dollars ($777.95) per week commencing on October 30, 2020.

That the claimant's request for alternate medical care is denied.

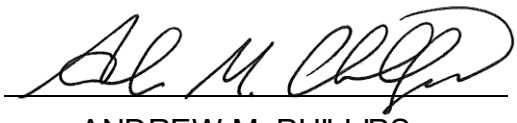
That the defendant shall reimburse the claimant five thousand two hundred fifty and 00/100 dollars ($5,250.00) for the IME expenses of Dr. Rondinelli.

That the defendant shall reimburse the claimant nine hundred sixty and 00/100 dollars ($960.00) for costs incurred.

That the defendant shall pay accrued weekly benefits in a lump sum together with interest. All interest on past due weekly compensation benefits 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).

That the defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to 876 Iowa Administrative Code 3.1(2) and 876 Iowa Administrative Code 11.7.

Signed and filed this 6th day of December, 2022.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Benjamin Roth (via WCES)

Stephanie Techau (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.