BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEBORAH KELLY, Claimant, vs. CLEANING CONNECTION, INC., Employer, and SELECTIVE INSURANCE COMPANY OF AMERICA, Insurance Carrier, Defendants.	:	File No. 5048171 ARBITRATION DECISION Head Note Nos.: 1402.60, 2501, 3300, 3302

STATEMENT OF THE CASE

This is a petition for medical benefits pursuant to Iowa Code section 85.27 and Iowa Code section 85.35(6). Claimant initially filed an original notice and petition for arbitration on December 5, 2013. Defendants answered that petition. Prior to an arbitration hearing, the parties reached an amicable settlement agreement.

The parties filed a compromise settlement agreement with this agency on December 1, 2016. As part of that settlement agreement, the parties agreed:

> With regard to medical expenses incurred after the date the settlement was agreed to by the parties (November 10, 2016), the employer and insurance carrier presently continue to cover medical care causally related to the injury at issue in this case pursuant to Iowa Code section 85.27 subject to the jurisdiction of the Iowa Workers' Compensation Commissioner. In the future, the employer and insurance carrier shall, at their option, either fund the MSA with an annuity or lump sum payment in an amount approved by CMS or continue to pay claimant's medical expenses causally related to the injury at issue pursuant to Iowa Code section 85.27 during claimant's lifetime. The employer's and insurance carriers' [*sic*] liability pursuant to Iowa Code section 85.27 shall terminate upon the funding of the MSA and accessibility of the funds to claimant is

> established. If the employer and insurance carrier elect to continue to pay claimant's medical expenses pursuant to Iowa Code section 85.27, the Iowa Workers' Compensation Commissioner retains jurisdiction of those medical issues pursuant to Iowa Code section 85.35(6).

(Claimant's Exhibit 1, page 3) The undersigned approved the foregoing compromise settlement on December 2, 2016. (Claimant's Ex. 1, p. 2)

There is no dispute between the parties about whether this agency retains jurisdiction to hear this case. Defendants ultimately elected not to fund a Medicare Set Aside fund. Instead, they consented to leave medical benefits open pursuant to Iowa Code section 85.27 and Iowa Code section 85.36(6). Accordingly, this agency retains jurisdiction over the medical benefit issues pertaining to claimant's asserted February 22, 2012 injury.

This contested case was initiated when claimant, Deborah Kelly, filed her original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on December 7, 2017. The sole claim asserted in the petition is for payment of medical benefits pursuant to Iowa Code section 85.27. (Original notice and petition)

For purposes of workers' compensation, Cleaning Connection, Inc., is insured by Selective Insurance Company of America. Defendants filed their answer on December 26, 2017. Defendants deny liability for the medical expenses claimed.

The hearing administrator scheduled the case for hearing on March 12, 2019. The hearing took place at the Division of Workers' Compensation in Des Moines, Iowa. The undersigned appointed Ms. Erin Hines of Dulaney Court Reporting as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified at hearing. The parties offered Joint Exhibits 1 through 14. Claimant offered Exhibits 1 through 6. Defendants offered Exhibits A through J. The exhibits were admitted as evidence in the case.

Post-hearing briefs were filed on April 19, 2019. The case was deemed fully submitted on that date.

STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

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

2. Claimant sustained an injury on February 22, 2012, which arose out of and in the course of her employment;

3. Temporary disability entitlement is no longer in dispute;

4. Permanent disability entitlement is no longer in dispute;

5. Defendants have waived any affirmative defenses;

6. The disputed medical expenses are causally connected to the medical conditions upon which the claim of injury is based.

ISSUES

The issues presented are:

1. Whether the fees or prices charged by the medical providers for disputed medical expenses are fair and reasonable.

2. Whether the disputed medical treatment was reasonable and necessary.

3. Whether the disputed medical treatment and corresponding charges are causally connected to the work injury.

FINDINGS OF FACT

This deputy, after listening to the testimony of claimant, after judging her credibility, and after reviewing the evidence, the transcript, and the post-hearing briefs, makes the following findings of fact and conclusions of law:

The party who would suffer loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

Claimant worked as an area supervisor at Cleaning Connection, Inc., on February 22, 2012. Claimant was a working supervisor, performing commercial cleaning services. On that date, she was taking trash out the back door of a customer's business. As she walked down some stairs, she missed the bottom step, and fell backwards onto the second step and hit her back. She experienced immediate symptoms in her low back and her right leg was numb. Claimant called her supervisor for assistance to complete her shift. (Claimant's Exhibit 3, page 16; Claimant's Ex. 4, p. 28)

The workers' compensation insurance carrier authorized and paid for all medical expenses through October 3, 2013. However, after that date, claimant was declared to be at maximum medical improvement and was terminated from her employment because she could not perform the essential functions of her job. (Claimant's Ex. 4, pp. 30-31) From that date forward, the defendants have contested liability for additional

medical expenses. Claimant asserts she has not sustained any additional back injuries since the date of injury. (Claimant's Ex. 3, p. 21)

As noted previously, the parties settled the underlying arbitration proceeding on a compromise settlement basis. All medical expenses through the date of the settlement agreement (November 10, 2016) were resolved as part of the compromise settlement. (Claimant's Ex. 1) Only medical expenses incurred since the settlement agreement was reached are at issue in this proceeding.

Nevertheless, an understanding of claimant's medical care is beneficial to comprehend the current status and claims. Following claimant's fall on February 22, 2012, she first sought medical treatment on February 24, 2012. (Joint Ex. 2, p. 21) Initial treatment records documented pain complaints in the right hip, low back, and tingling down the right leg. (Joint Ex. 2, p. 21)

Between February 24, 2012 and October 3, 2013, physicians tried medication management, light duty work, and epidural spine injections to alleviate claimant's low back and right leg symptoms. Physicians also obtained x-rays, MRI testing, as well as physiatry, pain clinic, and orthopaedic consultations for claimant's condition. Unfortunately, none of the modalities implemented or contemplated were effective in resolving claimant's symptoms.

Ultimately, four orthopaedic surgeons, a pain specialist, and two physiatrists evaluated Ms. Kelly prior to October 3, 2013. The occupational medicine physician's office referred claimant for surgical consultation through Cassim Igram, M.D., on April 20, 2012. Dr. Igram diagnosed claimant with a lumbosacral strain and recommended a physical medicine and rehabilitation consultation. Dr. Igram recommended against any surgical intervention. (Joint Ex. 8, pp. 44-47)

Defendants authorized a physiatrist and Kurt Smith, D.O. to provide physical medicine and rehabilitation services for Ms. Kelly. By February 27, 2013, Dr. Smith noted claimant was using a cane to improve her posture while ambulating. (Joint Ex. 8, p. 55) Dr. Smith regulated Ms. Kelly's medications and attempted various combinations to control her symptoms.

Dr. Smith referred claimant for a pain consultation with Thomas Klein, D.O. Dr. Klein recommended against a spinal cord stimulator. The pain specialist did not have additional treatment modalities to offer at his April 4, 2013 evaluation, and recommended another surgical consultation.

Pursuant to this recommendation, Dr. Smith referred claimant to orthopaedic surgeon Lynn Nelson, M.D. Dr. Nelson evaluated Ms. Kelly on April 16, 2013. Dr. Nelson opined claimant was not a surgical candidate, and she had achieved maximum medical improvement from a surgical standpoint. (Defendants' Ex. A) He deferred to Dr. Smith to ascertain maximum medical improvement from a nonsurgical standpoint.

(Joint Ex. 7) In reaching his conclusion and recommendation, Dr. Nelson opined, "I explained that her work injury of 2/22/12 may be responsible for the L3-4 disk protrusion. Her degenerative changes with subsequent spinal stenosis well predated her reported work injury." (Joint Ex. 7, p. 43)

Defendants obtained an independent medical evaluation, performed by Robert D. Rondinelli, M.D., on July 25, 2013. (Joint Ex. 9) Dr. Rondinelli's assessment was:

> 1. Claimant is morbidly obese with a BMI of 43.1 not causally associated with her history of work injury from 02/22/2012.
>
> 2. Claimant has diffuse lumbar spondylosis superimposed upon congenital spinal stenosis as verified on two successive MR images from 03/21/2012 and repeated on 03/06/2013. She has multilevel degenerative changes of her intervertebral disks and facet joints with hypertrophic ligamentum flavum and degenerative disk disease. This creates some element of spinal stenosis. She shows no evidence of myelopathic changes based upon her neurological examination and complaints.
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> 3. She has evidence of peripheral vascular disease with diminished peripheral pulse on her right side in conjunction with dystrophic changes typical of a dysvascular patient including loss of hair on her skin, dry dystrophic skin with dependent rubor, thickened dystrophic nails with absence of same on her right great toe. She has no evidence on Doppler studies of venous thrombosis or arterial thrombosis at this time.
>
> 4. She has a distant history of trauma to her right knee necessitating multiple surgeries and resulting arthritis.
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> 5. Superimposed upon the above, she has a history of fall work-related since 02/22/2012 in which she suffered a contusion of her right buttock and possibly sciatic nerve. Her complaints of pain and numbness are difficult to interpret against the constellation of problems listed above. If she indeed suffered a contusion of her sciatic nerve, she has no residual motor weakness, electrodiagnostic findings, or specific sensory changes in the sciatic nerve distribution to corroborate this. I would attribute her minor limb girth asymmetry to a previous history of surgery to her right knee, and her lumbosacral paravertebral pain is primarily explained by her underlying spondyloarthropathy in my opinion. Her presentation, although consistent and reliable in terms of her functional capacity

> evaluation in showing pain-induced limitations, is of questionable credibility given the variance in her performance when scrutinized and aware versus when unaware of same. She does show inconsistencies on physical examination to a mild to moderate degree, and there is evidence from surveillance that she is functionally mobile and able to do work-related activities when she is unaware that she is being observed.

(Joint Ex. 9, pp. 163-164)

Dr. Rondinelli opined claimant sustained a "soft tissue contusion to her right buttock on 02/22/2012 for which a sufficient healing period has transpired." (Joint Ex. 9, p. 164) He further opined claimant was at maximum medical improvement at that time. (Joint Ex. 9, p. 164) Defendants sought clarification of Dr. Rondinelli's opinions. As a result, he opined claimant demonstrated no objective changes or findings on MRI test results that would be caused by the work injury. (Joint Ex. 9, p. 166)

As noted, defendants denied further liability after October 2013. However, Ms. Kelly continued to seek medical care and continued to complain of ongoing symptoms. Ultimately, Dr. Smith recommended further surgical consultation. (Joint Ex. 8, p. 58) On his referral, Joseph D. Smucker, M.D., an orthopaedic surgeon at the University of Iowa Hospitals and Clinics, evaluated claimant on April 7, 2014. Dr. Smucker opined:

> At this time we do not feel that any surgical recommendation is going to improve her chief complaint of back pain concerns unfortunately. She's not describing symptoms of neurogenic claudication. We discussed consideration of the spine rehab program given her continued chronic pain . . . .
>
> She notes she would like to consider the rehab program, but she does have 3 dogs to care for and she doesn't have family locally who could care for the dogs.

(Joint Ex. 6, pp. 37-38)

Claimant sought an independent medical evaluation, performed by Sunil Bansal, M.D., on June 13, 2014. Dr. Bansal opined the mechanism of injury described by claimant is "consistent with a 'lighting up and aggravation' of her otherwise pre-existing but quiescent lumbar spondylosis." (Joint Ex. 10, p. 183) Interestingly, however, Dr. Bansal opined in June 2014 that claimant was at maximum medical improvement. (Joint Ex. 10, p. 184) Dr. Bansal did not recommend any significant further medical treatment and certainly no further surgical intervention. (Joint Ex. 10)

As claimant's symptoms continued and worsened, Dr. Smith referred her for yet another surgical consultation. On July 31, 2015, Todd R. Harbach, M.D., an orthopaedic surgeon, evaluated claimant. Dr. Harbach noted claimant was falling more frequently at the time of his evaluation and that no other treatment modalities had provided her lasting symptomatic relief. (Joint Ex. 8, p. 67)

Dr. Harbach concluded:

> The patient clinically has severe spinal stenosis with neurogenic claudication and RIGHT lower extremity radicular pain. However, her biggest problem is her back pain and she continues to use tobacco products fairly heavily. She has already failed the basic conservative program which includes core strengthening, aerobic conditioning, and medications. She has even gone a step further and has failed interventional treatment to the pain clinic. So at this point she has severe stenosis with back pain and we are looking at surgery. She also has degenerative spondylolisthesis so she will require a fusion. The plan will be to [do] either a T12 or L1 to L5 decompression and posterior instrumented fusion. . . . This will hopefully alleviate not only her back pain but also her leg pain and claudication symptoms and returr [*sic*] to a more active lifestyle.

(Joint Ex. 8, p. 68)

Defendants obtained a records review by yet another orthopaedic surgeon, William R. Boulden, M.D. Dr. Boulden authored a report dated September 21, 2015. (Joint Ex. 1, pp. 10-11) Dr. Boulden opined:

> With reference to Ms. Kelly's current diagnosis, she has acquired and [*sic*] congenital spinal stenosis at multiple levels of the lumbar spine, from L1-2 through L4-5, of varying degrees. There is evidence in the records and in the MRI reports that she may have had a small herniated disc at L3-4 to the left. It is my medical opinion that the work injury that was claimed on February 22, 2012, in no way caused any of this pathology. The pathology she has is pathology she has had longstanding and it will continue to progress over the years. That is why the MRI report states that some of the stenosis is getting worse; however, I do not have the actual MRI to confirm that.
>
> With reference to your second question, I do not feel that there is any further need for medical treatment in this case. I totally agree with Dr. Igram, Dr. Nelson, and Dr. Smucker that surgery is not reasonable or necessary. I am not sure where Dr. Harbach's recommendation came from. I think realistically to do at least a four-level decompression and fusion on this patient, which is what he has suggested, has a very low

> chance of helping her. The surgery would be based strictly on pre-existing pathology that has worsened with time and it is not work related. He is making the statement that her symptoms are related to the worker's [*sic*] compensation injury that has aggravated the pre-existing pathology; however, I do not agree with that assumption at all.

(Joint Ex. 1, p. 10)

Defendants also sought further review and clarification from Dr. Igram regarding the fusion Dr. Harbach suggested. In response to this request, Dr. Igram opined:

> Recently it is [*sic*] come to my attention that she is scheduled for T 12 to L5 decompression and fusion. This patient does have multiple comorbidities including the long history of smoking and obesity. She did have an MRI at that [*sic*] time of the original injury and has had a recent MRI scan which demonstrates progression of her underlying lumbar spondylosis. This of course is a natural progression of the degenerative process in her spine. It is in no way, shape, or form related to the original injury. Therefore, it is my opinion that the operation proposed by Dr. Harbach is related to the natural progression of the degeneration [of] her spine and is not at all related to the original injury of February 22, 2012.

(Joint Ex. 11, p. 204)

In spite of the four contrary surgical opinions, Dr. Harbach took claimant to surgery on September 22, 2015 and performed a T12 to L5 spinal fusion, as he had recommended. (Joint Ex. 8, p. 71) Claimant experienced some resolution of symptoms following the fusion surgery. However, her functional abilities to lift, stand, and perform other functions either did not improve or worsened after the surgery.

Dr. Bansal performed a second independent medical evaluation of claimant on August 5, 2016. The evaluating physician opined the multi-level spinal fusion was causally related to the initial work injury and a "logical progression that occurred with a definable timestamp to the February 22, 2012 injury." (Joint Ex. 10, p. 197) Dr. Bansal specifically opined, "The need for the multi-level fusion was a clinically appropriate decision in light of her clinical condition." (Joint Ex. 10, p. 197)

By September 22, 2017, claimant was complaining of worsening symptoms. The symptoms developed in her middle back. (Joint Ex. 8, p. 113) Dr. Smith re-evaluated claimant and his plan at the time was to get a spinal x-ray. He noted claimant's mid-back pain was "likely secondary to increase of movement at this level from a fusion of the lumbar spine (T12-L5)." (Joint Ex. 8, p. 115)

Dr. Smith ultimately referred claimant back to Dr. Harbach for consideration of a spinal cord stimulator. Dr. Smith made a referral to Dr. Klein for a spinal cord

stimulator. Dr. Klein agreed the procedure was appropriate, performed a spinal cord trial, and recommended permanent placement of a spinal cord stimulator. Dr. Smith concurred with this recommendation and permanently implanted a spinal cord stimulator in claimant's thoracic spine on August 7, 2018. (Joint Ex. 8, pp. 135-143; Joint Ex. 14)

Defendants inquired of Dr. Boulden about the spinal cord stimulator. Dr. Boulden authored a report dated January 9, 2019. He opined:

> In reviewing all these records, it seems to me that her pain varied from her upper back to the lower back. It also appears to me that she did not get any real relief with the spinal cord stimulator. The indications for a spinal cord stimulator, in my opinion and I think the literature would support this, is mainly for radicular-type symptoms or neuropathic changes. In her pain drawings when she first saw Dr. Klein, she did not have any radicular pain at all. His working diagnosis was thoracic radicular pain, which she likewise did not have according to the pain drawing that she provided; therefore, I do not believe there was any real indication for the spinal cord stimulator. I know there are pain physicians that are utilizing this, but I think these are very early on attempts at trying to control back pain, and from what I have seen and what I have seen in the literature, they have not been that promising up to this point in time.
>
> In summary, any need for the spinal cord stimulator is not based on her previous surgery by Dr. Harbach or on her initial injury of February 22, 2019 [*sic*].

(Joint Ex. 1, p. 20)

Dr. Rondinelli authored a January 13, 2019, report detailing his opinions about the spinal cord stimulator. Dr. Rondinelli opined claimant's "ongoing and evolving symptoms following her surgery along with the need for the spinal cord stimulator are not causally related to the initial work injury of February 22, 2012." (Joint Ex. 9, pp. 170-171)

Dr. Igram offered a January 21, 2019 report on the issue of the spinal cord stimulator. Dr. Igram opined:

> [T]he necessity for a spinal cord stimulator would not be related to a work injury. I certainly understand the recommendation for spinal cord stimulator after a failed lumbar spine operation, however, since the index operation was not related to work injury and was not recommended by multiple surgeons, I cannot opine within a reasonable degree of medical certainty, that the spinal cord stimulator should be placed as a result of a work injury.

(Joint Ex. 11, pp. 205-206)

Dr. Smith also offered an opinion on the spinal cord stimulator, indicating that claimant's thoracic back pain and need for the spinal cord stimulator is not causally related to the February 22, 2012 work injury. (Joint Ex. 12, p. 219) Dr. Harbach also offered an opinion. He opined on March 11, 2019:

> As far as her spinal cord stimulator, I think that was just used to treat her chronic back pain which again, I would not relate to any specific trauma or inciting incident at work, but rather to just her degenerative condition which she would have had no matter what occupation she held in life.

(Defendants' Ex. J, p. 49)

Claimant urges that Dr. Smith made a prior reference in a treatment record to the thoracic pain stemming from increased movement in the thoracic spine due to the lower spinal fusion. However, Dr. Smith ultimately changed that opinion. His most recent, most informed opinion indicates the spinal cord stimulator is not causally related to the work injury. No other physician, including Dr. Harbach, who ultimately implanted the spinal cord stimulator, opines that it is causally related to the work injury.

Having considered the various medical opinions in this record, I note that Dr. Harbach and Dr. Smith provided long-term medical care for claimant. This gives them a unique perspective on claimant's condition, the development of symptoms, and the difficulties in treating claimant's symptoms. On the other hand, the surgical recommendations of Dr. Harbach stand in contradiction to those of Dr. Boulden, Dr. Nelson, Dr. Igram, Dr. Rondinelli, and Dr. Smucker.

Ultimately, claimant did not have a good outcome following her spinal fusion. Hindsight often makes medical decisions much more clear. In this instance, it appears that Drs. Boulden, Nelson, Igram, Rondinelli, and Smucker were likely correct with respect to the spinal fusion. Claimant did not significantly benefit from the spinal fusion and actually experienced some deterioration of her functional abilities after surgery.

I acknowledge the causation opinions offered by Dr. Harbach, Dr. Smith, Dr. Klein, and Dr. Bansal. However, their medical opinions and treatment ultimately did not provide significant benefit to claimant. Instead, I find the opinions offered by Drs. Boulden, Nelson, Igram, Rondinelli and Smucker to be more convincing in this evidentiary record. Considering these combined medical opinions, I find claimant has not proven her multi-level spinal fusion is causally related to or materially aggravated by the February 22, 2012 work injury.

I further find the multi-level spinal fusion was not a reasonable and necessary medical procedure. There were numerous medical opinions recommending against the

procedure before it occurred. The fusion did not ultimately provide beneficial and lasting relief for claimant. I find the fusion was not reasonable or necessary.

With respect to the spinal cord stimulator, none of the physicians offers a current opinion that it is causally related to the work injury. Therefore, I find the spinal cord stimulator is not causally related to the February 22, 2012 work injury. In conclusion, I find the unpaid medical expenses introduced by claimant at Claimant's Exhibit 6 are not causally related to the February 22, 2012 work injury.

CONCLUSIONS OF LAW AND RATIONALE

The first issue for determination is the matter of whether the multi-level spinal fusion performed on September 22, 2015, was causally related to claimant's work injury on February 22, 2012.

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

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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

In this case, I found the medical opinions of Drs. Boulden, Nelson, Igram, Rondinelli and Smucker to be more convincing than those offered by Drs. Harbach, Smith, Klein, and Bansal. Having reached that finding, I also found claimant failed to prove the multi-level spinal fusion performed by Dr. Harbach was causally related to or materially aggravated by the February 22, 2012 work injury. Therefore, I conclude claimant has failed to prove entitlement to payment or reimbursement of the medical expenses related to the multi-level spinal fusion.

REASONABLENESS AND NECESSITY OF SPINAL FUSION

The next issue for determination is whether the multi-level spinal fusion performed on September 22, 2015 was reasonable and necessary medical treatment. For purposes of my analysis, this issue is rendered moot by the findings and conclusion that the spinal fusion is not causally related to or materially aggravated by the work injury. However, to the extent that my findings or conclusion may be appealed to a higher authority, I offer further analysis.

Specifically, I found the multi-level spinal fusion was not medically reasonable and necessary. Four surgeons and a physiatrist all recommended against the spinal fusion. Ultimately, the fusion did not provide significant relief and resulted in worsening of claimant's functional abilities. Therefore, even if it were found to be causally related to the work injury, I find the fusion was not medically reasonable and necessary. I conclude the cost of the fusion would not be awarded even if found to be causally related to the work injury. Iowa Code section 85.27.

CAUSAL CONNECTION OF SPINAL CORD STIMULATOR

The final issue for determination is whether the spinal cord stimulator, or treatment of claimant's thoracic spine symptoms, is causally related to the February 22, 2012 injury. As detailed in my findings of fact, no physician directly opines the spinal cord stimulator is causally related to the work injury. The evidentiary record details medical opinions from Drs. Boulden, Igram, Smith and Harbach, all concluding the spinal cord stimulator is not causally related to the February 22, 2012 work injury.

As noted previously, claimant bears the burden to establish causal connection of the medical treatment to recover. Claimant has failed to meet this burden of proof with

respect to the spinal cord stimulator. Therefore, I conclude claimant failed to prove this treatment was compensable.

Having reached these findings of fact and conclusions, I conclude claimant failed to prove any of the medical expenses contained in Claimant's Exhibit 6 are compensable. Rather, claimant's original notice and petition for medical benefits should be dismissed without award.

ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing in this medical benefit proceeding.

Claimant's original notice and petition for medical benefits is dismissed without an award of benefits.

Defendants remain liable for any future causally related medical expenses.

Each party shall pay her/its/their own costs to litigate this claim.

Defendants shall file all reports as required by law.

Signed and filed this ___27th___ day of November, 2019.

MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Matthew Milligan (via WCES)
Jeffrey Lanz (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 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.