IN THE COURT OF APPEALS OF IOWA

No. 3-582 / 12-1962
Filed July 24, 2013

WHIRLPOOL CORPORATION,
Plaintiff-Appellant,

vs.

DANNY DAVIS,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Brad McCall, Judge.

Whirlpool Corporation appeals the district court's affirmance of the workers' compensation commissioner's award of permanent total disability benefits, medical expenses, and costs to Danny Davis. **AFFIRMED IN PART AND MODIFIED IN PART.**

Steven T. Durrick and Joseph M. Barron of Peddicord, Wharton, Spencer, Hoolk, Barron & Wegman, L.L.P., West Des Moines, for appellant.

Thomas M. Wertz and Daniel J. Anderson of Wertz & Drake, Cedar Rapids, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

Whirlpool Corporation appeals the district court's affirmance of the workers' compensation commissioner's award of permanent total disability benefits, medical expenses, and costs to Danny Davis. We conclude there is substantial evidence supporting the commissioner's findings that Davis's physical and mental conditions are causally related to the April 29, 2008 incident, the extent of Davis's disability; and that some of the medical expenses associated with Dr. Buresh were work-related and reasonable. The district court did not abuse its discretion in denying Whirlpool's motion to stay judgment. However, the agency erred in awarding as costs $330 for expert deposition fee, which fee is statutorily capped at $150. We adjust the costs ordered accordingly, but otherwise affirm.

I. Background Facts and Proceedings.

Danny Davis alleged he sustained a work-related injury on April 29, 2008. At that time, Davis had been employed at Whirlpool for approximately sixteen years.[1] He worked as a coding specialist in the paint department, with his main task being conducting titrations on each of the paint stages. He was required to ensure each product had the right amount of chemical at each stage. As part of that job, he had to maintain sufficient levels of chemicals in the barrels. If everything was running smoothly and no barrels were empty, Davis's job was not physically demanding.

[1] Davis also consistently did construction/carpentry work before his shift at Whirlpool during this time period.

On April 29, 2008, Davis was performing his usual tasks when he discovered that a chromium nitrate drum was empty. The drum weighed several hundred pounds, and to replace it, he needed to roll it off the wooden pallet and onto a hand cart. While he was sliding the drum off the wooden pallet, a board on the pallet broke, which caused the fifty-five-gallon drum to fall. Davis tried to hold onto it to keep it from falling, but the drum began pulling him. Davis's foot caught between two of the slats on the pallet, and when the drum pulled him, he heard a rip in his lower back.

Davis felt severe pain and dizziness. He attempted to sit at a nearby cement wall, but he could not bend to sit. Davis was able to communicate his injury to his supervisor, who called the company nurse. The nurse reported that Davis was "grimacing in pain and shaking." An ambulance arrived. Davis was strapped to a long board and taken to the Mercy Medical Center in Cedar Rapids, where he stayed until approximately midnight.

While at Mercy, Davis described his back injury and records indicate that he had "[m]oderate vertebral point tenderness over the lower lumbar spine" and "[mjoderate muscle spasm present in the lower central lumbar area." However, the physician noticed "[n]o abnormalities of the lumbar spine" and diagnosed his problem as a lumbar strain. Davis received pain medication and was told to apply ice, refrain from lifting and prolonged sitting, and follow up in two days.

Two days later, on May 1, 2008, Davis saw Timothy Momany, M.D., the company doctor for Whirlpool. Dr. Momany treated Davis for his back injury until June of 2009. Initially, Dr. Momany noted "some tenderness over low lumbar back midline to palpation" and diagnosed a low back mechanical strain. On May

5, 2008, he noted that Davis reported feeling twenty percent better, but could not stay at work for the full eight hours, and did not want to sit on the exam table. He saw Davis again on May 20, 2008, and noted "lots of muscular spasm." In June 2008, Whirlpool requested Davis undergo an MRI, which was generally unremarkable.

Davis took a leave of absence from Whirlpool between late July through August 2008 for problems associated with his COPD, a condition unrelated to his back injury. Davis asked Dr. Momany to "unrestrict" him on September 11, 2008. According to Davis, he asked Dr. Momany to do this because Whirlpool was eliminating his position, and he had to be restriction-free to bid for a new position. Because Davis represented that he was no longer having significant lower back pain, Dr. Momany concluded that Davis was at maximum medical improvement (MMI) with his back and had no impairments. Dr. Momany wrote that Davis was "back to baseline" based exclusively on Davis's statements that his back was no longer hurting.

On September 30, 2008, Davis again visited Dr. Momany and told him that while he was at work on September 26, he felt a knife-like pain in his lower back as he was going down a ladder. Dr. Momany's September 30 notation reads in part,

> He saw his LMD[2] who recommended he see Linn County PT. . . . I think it is reasonable to work with Linn County PT through his private provider. He understands that will not be covered by work

[2] Dr. Momany uses the abbreviation LMP in an October 14, 2008 notations. We are not told what either abbreviation stands for but, in the context used, we assume both refer to Davis's primary physician.

> comp.[3] I would like to see him back in 2 weeks, and I will leave him unrestricted.

On September 30, 2008, Davis began to visit his primary care physician, Wendy Buresh, M.D., for his lower back problems.[4] Davis told Dr. Buresh that his lower back had not felt better since the injury occurred, and she diagnosed a low back strain.

Dr. Momany again saw Davis on October 14, 2008. The medical notes from that visit read:

> Recheck back pain.
> S: No improvement. He was unable to get the physical therapy with Linn County as no longer in their insurance network. His job is eliminated, having to move to a different area the first of the week, but he is not sure where that will be. His LMP suggested he might be nearing MMI since he is about 6 months out. He tells me today he was never completely improved. Stairs were never something he could do readily.
> O: No re-exam today.
> A: Subacute, becoming chronic pain.
> P: I agree that he is probably approaching MMI. As such, consider FCE [functional capacity evaluation]. Reschedule for 1 week when we know his new job position. In the meantime he will remain unrestricted.

Davis underwent an FCE in October of 2008 with physical therapist Kent Reeves "to identify the client's safe maximum abilities." Reeves determined that Davis's abilities fell within the "medium work level" and recommended that Davis not exceed specified amounts of activities, such as lifting certain weights, when he returned to work. He also advised Davis to avoid ladders and stairs and to

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[3] There is no explanation why this would not be covered by worker's compensation when the incident appears to have happened at work and was work-related.

[4] Dr. Buresh saw Davis between the April 29 and September 30, 2008, but did not address lower back pain. Dr. Buresh indicated she was not aware of Davis's work injury then; "However, during that time he was quite ill with pulmonary disease and was hospitalized, so that illness would have taken priority in his visits with me." [See App 130].

minimize squatting and crouching activities. Reeves opined Davis's performance during the FCE was consistent with someone experiencing pain during testing.

In an October 31, 2008 note, Dr. Momany notes there was a question whether Davis had lung cancer and writes, "his work related back situation pales with his overall health related problem." He also noted "[c]hronic back pain status post FCE, awaiting job placement."

Mark Taylor, M.D., conducted an impairment rating evaluation on December 22, 2008. Dr. Taylor conducted a limited physical examination during which he did not personally observe any spasms. However, he noted:

> Based on his clinical history and examination, Mr. Davis has ongoing problems with guarding and muscle spasm. He did not have an acute flare of his spasm while in the clinic here today, but it sounds as if they come on very quickly and have a "charley horse" type feeling which would be consistent with a spasm. . . .
>
> Mr. Davis does have ongoing discomfort and spasms and favors that [right] side.

Dr. Taylor placed Davis at a seven percent impairment of the whole person.

Davis took two voluntary layoffs—from October 20, 2008, to January 5, 2009, and again from January 12, 2009, to March 30, 2009. Throughout that time period, he continued to see Dr. Buresh for chronic back pain, as well as his other health problems. Davis attended physical therapy at Aspen Therapy and Wellness Center in 2008 for his lower back; the physical therapist noting stiffness, tightness, and spasms in Davis's lower back.

Davis saw Dr. Gene Gessner at a pain clinic in March and April of 2009 where he received epidural steroid and facet injections, as well as a TENS unit, but Davis noticed no improvements in his pain from that treatment.

Davis worked from March 30, 2009, until June 9, 2009. Davis's chronic back pain continued to be the impetus for visits with, and calls to, Dr. Momany on May 22, 2009, June 5, June 8, and June 9, 2009. On June 9, Davis was threatening self-harm due to his pain. He took a medical leave of absence at that time because he was having suicidal thoughts as a result of his chronic pain.

Dr. Buresh continued to treat Davis for both chronic pain in his lower back problems and depression. She observed tenderness and muscle spasms in his lower back throughout 2009. Dr. Buresh's opinion was that Davis's complaints were consistent with the type of injury he sustained at Whirlpool on April 29, 2008. Moreover, she believed that he was suffering from reactive or situational depression as a result of his injury and was incapable of full-time employment.

On September 4, 2009, Davis saw Dr. John Kuhnlein for an independent medical evaluation (IME). Dr. Kuhnlein reviewed all of Davis's medical records and conducted a physical examination. During the physical examination, Dr. Kuhnlein noted that Davis exhibited "marked pain behaviors." Dr. Kuhnlein diagnosed right musculoskeletal back pain. As to the cause, he explained that "if one believes Mr. Davis, his current back pain is related to April 29, 2008." He went on to say, "[i]f one believes the record, then it appears that the [April injury] resolved by September 11, 2008, and he either re-aggravated this injury, or sustained a new injury on or about September 26, 2008." Because of this "confusion between the record and [Davis's] statements," he was "unable to state, within a reasonable degree of medical certainty, whether his current back pain [was] related to April 29, 2008, or related to a new injury." However, Dr. Kuhnlein stated that Davis's back pain "would be related to one of these incidents

he sustained while working for Whirlpool." Dr. Kuhnlein assigned to Davis a five percent whole person impairment rating, and articulated some restrictions.[5]

Davis's last day of work at Whirlpool was June 9, 2009. Because of his chronic lower back pain, Dr. Buresh has kept him on medical leave since that date. Moreover, his pain has kept him from working construction, which he used to do before his shift at Whirlpool. He continues to hunt occasionally and mow his lawn regularly, though both activities are limited by his back pain.

Davis has received Social Security Disability benefits since December of 2009.

An arbitration hearing was held on July 7, 2010. The issues presented were (1) whether the work injury of April 29, 2008, was the cause of permanent disability; (2) the extent of Davis's entitlement to permanent partial disability payments; (3) whether Davis was entitled to the payment of medical expenses related to care provided by Dr. Buresh; and (4) whether Davis was entitled to an award of penalties.

Davis testified as to the April 2008 injury and his ongoing lower back pain issues. He also acknowledged that prior to the injury he received chiropractic treatment with J.J. Meyer related to cervical neck issues.

Dr. Meyer confirmed that the treatment he had been providing Davis was "primarily for cervical pain." Some of Dr. Meyer's charts in the chiropractic

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[5] Dr. Kuhnlien noted, however,

> I think that Mr. Davis is probably more capable than this, but he has a belief that his muscles have been "ripped," and limits himself probably more than he should. I think that with exercise and other conservative treatment measures, Mr. Davis would become more capable in the workplace.

records reflect a circle around the lower back. However, Dr. Meyer agreed that if he was treating Davis for a significant low back issue from 1997 until 2007, he would have taken x-rays of the low back and filled out a form designating a change in diagnosis." Dr. Meyer also agreed he had never taken x-rays of Davis's low back, nor made a diagnosis of a low back problem prior to the work injury. Dr. Meyer felt that no permanent restrictions were appropriate and no permanent impairment existed prior to Davis's work injury. Before his stipulated work injury to his low back of April 29, 2008, Davis had not undergone a chiropractic treatment since February 19, 2007.

The deputy workers' compensation commissioner awarded Davis permanent total disability benefits, medical expenses, and costs. The deputy credited Dr. Buresh's opinions, which were summarized as follows:

> Her diagnosis is chronic low back pain, secondary to acute low back sprain, and she believes that the claimant's complaints of pain are consistent with the type of injury the claimant sustained on April 29, 2008. Further, she opines that the claimant is not capable of engaging in full time employment. She opines that the depression the claimant experienced after the injury is a reactive or situational depression, which is a direct response to the claimant's chronic pain and inability to return to work.

The deputy noted that both Dr. Kuhnlein and Dr. Taylor opined that Davis had permanent impairment.

With respect to Dr. Momany's contrary opinions, the deputy observed:

> Dr. Momany has opined, [on] July 18, 2009, that the claimant's depression and anxiety was not related to the April 29, 2008 work injury. He further opined, [on] December 7, 2009, that he was unable through his course of treatment, to identify any objective findings as it related to claimant's back injury and that he had been unaware during his course of treatment that the claimant had had a prior history of back problems dating to the 1990s and that in his medical opinion, the claimant had sustained a temporary

> aggravation of an underlying chronic condition with respect to the claimant's back injury.

The deputy gave "no weight" to Dr. Momany's opinions, however, because he arrived at his opinion "after he was told by the defense counsel that the claimant had had some prior chiropractic treatment" but "never even looked at the records from the chiropractor before he reached that opinion."

The deputy found Davis's testimony to be credible and corroborated by the record. He wrote, "The claimant also had preexisting depression, but the record establishes that that depression has been lit up and substantially aggravated by the claimant's chronic pain caused by the work injury."

On intra-agency appeal, the commissioner adopted the arbitration ruling as final. As to the extent of Davis's disability, the commissioner wrote,

> There is certainly conflicting evidence as to the extent of claimant's disability. The findings of the presiding deputy that claimant's physical condition, chronic pain, and depression have combined to preclude claimant from employment, at the present time, in the competitive labor market are supported by the greater weight of the evidence. The findings of the presiding deputy are therefore affirmed.

Whirlpool sought judicial review in the district court. Whirlpool also filed a motion to stay payment of workers' compensation benefits pending the court's decision. Ruling expert opinion evidence provided "the substantial evidence necessary to uphold the agency ruling" and "while Whirlpool has identified other physicians with contradictory opinions, these are not sufficient to predict that they will prevail on the merits on appeal." The court also was not convinced Whirlpool would suffer irreparable injury sufficient to grant the requested stay. Finding "Davis would suffer more harm from being deprived of benefits than a corporation

such as Whirlpool would suffer from having difficulty collecting or failing to collect monies paid," and noting that "public policy set out in Iowa's workers' compensation statutes which favors the payment of workers' compensation claims," the district court denied the request for stay.[6]

On September 25, 2012, in a detailed and well-reasoned ruling, the district court found there was substantial evidence supporting the agency's findings of causation and permanent total disability. The court upheld the award of medical expenses related to Davis's appointments with Dr. Buresh from September 30, 2008, to January 5, 2010, which constituted treatment for the work injury. However, the court determined two of eight visits were unrelated to Davis's low back pain or depression, and the court reversed the award of the costs associated with the October 9, 2008, and July 28, 2009 visits.

Whirlpool now appeals. Whirlpool contests the findings that Davis's physical and mental conditions are causally related to the April 29 2008 incident; contests the agency's findings as to the extent of Davis's disability; argues that Dr. Buresh was not an authorized treating physician and thus it should not be liable for charges related to Davis's visits to her; and that the commissioner erred in awarding costs in the amount of $1947. Finally, Whirlpool argues the district court erred in denying its application for stay of judgment.

[6] Whirlpool appealed the district court's decision denying a stay, which the supreme court treated as an application for interlocutory appeal. The supreme court denied the application, but noted it was without prejudice to the company's right to address the stay issue in this appeal.

II. Scope and Standard of Review.

On appeal from judicial review, the standard we apply depends on the type of error allegedly committed. *See* Iowa Code § 17A.19(10) (2011); *Jacobson Transp*. *Co*. *v*. *Harris*, 778 N.W.2d 192, 196 (Iowa 2010). Where the challenge is to the agency's factual findings, we review to determine if those findings are supported by substantial evidence in the record when reviewing the record as a whole. *See* Iowa Code § 17A.19(10)(f); *Cedar Rapids Cmty*. *Sch*. *Dist*. *v*. *Pease*, 807 N.W.2d 839, 845 (Iowa 2011).

"Substantial evidence" is statutorily defined as "the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1). When reviewing a finding of fact for substantial evidence in the record as a whole, we judge the finding "in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it." *Id.* § 17A.19(10)(f)(3).

When evaluating the assessment of costs, our review is for abuse of discretion. *Solland v*. *Second Injury Fund of Iowa*, 786 N.W.2d 248, 249 (Iowa 2010). "An abuse of discretion occurs when a court's exercise of discretion is clearly erroneous." *Id.*

We also review the denial of motion to stay judgment for an abuse of discretion. *Grinnell Coll. v*. *Osborn*, 751 N.W.2d 396, 398 (Iowa 2008).

III. Discussion.

A. Causation and extent of disability. Whirlpool asserts the agency erred in awarding Davis permanent total disability benefits as a result of the April 29, 2008 injury. It also argues Davis failed to prove that his mental conditions are the result of the April 29, 2008 work injury. The employer argues fervently that Dr. Momany's opinions should govern.

> Medical causation "is essentially within the domain of expert testimony." The commissioner, as trier of fact, has a duty to weigh the evidence and measure the credibility of witnesses. The weight given to expert testimony depends on the "accuracy of the facts relied upon by the expert and other surrounding circumstances." Also, an expert's opinion is not necessarily binding upon the commissioner if the opinion is based on an incomplete history. *Ultimately*, *however*, *the determination of whether to accept or reject an expert opinion is within the "peculiar province" of the commissioner*.

Pease, 807 N.W.2d at 845 (emphasis added) (citations omitted).

Suffice it to say that the agency's findings of causation and the extent of Davis's disability are supported by substantial evidence, which is aptly and adequately explained in the district court's opinion. We find no reason to further expound on the district court's explanation as to why the agency's findings are affirmed. *See* Iowa R. App. P. 6.1203(c), (d).

B. Medical Expenses. Section 85.27(1) provides, in part: "The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies therefore and shall allow reasonably necessary transportation expenses incurred for such services."

Whirlpool stipulated at the arbitration hearing that the treatment by Dr. Buresh "was reasonable and necessary and that the fees were reasonable." On appeal, it argues that despite this stipulation, the award of medical expenses runs afoul of Iowa Code section 85.27 because the employer has a right to choose the provider of medical services, and Dr. Buresh was not Davis's authorized physician.

There is some indication in the record that Whirlpool did argue posthearing that it did not "formally den[y] Claimant's alleged low back injury" and Davis did not express "dissatisfaction with his authorized medical care and request[ ] other medical treatment pursuant to Iowa Code § 85.27." However, the gist of its disagreement with liability for Dr. Buresh's treatment is that she was "Davis's family physician and treated him for a variety of conditions," primarily for COPD. The deputy found the treatment on the dates listed in the attachment to the hearing report[7] constituted "treatment . . . for the work injury." The district court reversed with respect to visits to Dr. Buresh on October 9, 2008,[8] and July 28, 2009,[9] which the court concluded were "completely unrelated to Davis's lower back pain or depression."

On September 11, 2008, Dr. Momany informed Davis that he had placed him on MMI and Davis's future treatment would not be covered by workers' compensation. Under such a circumstance, it is reasonable that Davis looked for

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[7] The treatment dates listed in the hearing report were September 30, 2008; October 9, 2008; July 7, 2009; July 28, 2009; August 6, 2009; October 2, 2009; November 3, 2009; and January 5, 2010.

[8] Dr. Buresh's (readable) notes from that date state, "Dan is here for his check-up. Reviewed his meds and they are as on the flow sheet." She noted the extent of his smoking.

[9] This visit was related to a "cough that's gone on for just short of a month."

treatment elsewhere. *See Bell Bros*. *Heating & Air Conditioning v*. *Gwinn*, 779 N.W.2d 193, 206 (Iowa 2010) ("[T]he duty of the employer to furnish reasonable medical care supports all claims for care by an employee that are reasonable under the totality of the circumstances, even when the employee obtains unauthorized care, upon proof by a preponderance of the evidence that such care was reasonable and beneficial. In this context, unauthorized medical care is beneficial if it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer. The allocation of this significant burden to the claimant maintains the employer's statutory right to choose the care under section 85.27(4), while permitting a claimant to obtain reimbursement for alternative medical care upon proof by a preponderance of the evidence that such care was reasonable and beneficial.").

Our review of Dr. Buresh's treatment notes for September 30, 2008, July 7, August 6, October 2, and November 3, 2009, and January 5, 2010, reveals all addressed his lower back pain or depression, which we have already found were work-related. Substantial evidence thus supports the agency's award of those medical expenses, which we now affirm.

C. Costs. The deputy taxed the costs to Whirlpool in the amount of $1947 without specification. However, an addendum to the hearing report summarizes the following under the heading "Taxation of Costs":

Filing Fee	$ 65.00
Depostion of Danny Davis	$ 71.25
Consult/Opinion Letter of Dr. Meyer	$ 250.00
Opinion Letter of Dr. Buresh	$ 937.50
Process Server/Subpoena Fees	$ 104.60
Court Reporter fee for Dr. Momany Deposition	$ 188.65

Deposition of Dr. Momany	$ 330.00
	$1947.00

Whirlpool objects to the $330 deposition fee for its physician Dr. Momany, arguing there is a $150 statutory limit for a deposition. The employer contends that the doctor's deposition fee that can be taxed as costs cannot exceed $150. It also argues the $250 fee concerning Dr. Meyer is for a consultation, not a report, which is not a proper cost.

Iowa Administrative Code rule 876-4.33 provides:

> Costs 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, (8) costs of persons reviewing health service disputes. . . . Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery.

(Emphasis added.)

Iowa Code section 622.72, in turn, provides:

> Witnesses called to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and state the result thereof,

> *shall receive additional compensation*, *to be fixed by the court*, *with reference to the value of the time employed and the degree of learning or skill required; but such additional compensation shall not exceed one hundred fifty dollars per day while so employed*.

(Emphasis added). The taxation of costs for expert discovery depositions in excess of the $150 amount permitted by section 622.72 was error. *See Weiss v. Bal*, 501 N.W.2d 478, 482 (Iowa 1993); *Coker v. Abell-Howe Co.*, 491 N.W.2d 143, 151 (Iowa 1992); *see also Pierce v. Nelson*, 509 N.W.2d 471, 473 n.2 (Iowa 1993) (noting that section 622.72 "deals only with the recovery of court costs following litigation"). We agree with the employer that the commissioner could not order as costs Dr. Momany's deposition fee in excess of $150.

As for the employer's contention that the commissioner abused its discretion in allowing the $250 fee for the Consult/Opinion Letter of Dr. Meyer, we observe the rule allows for "reasonable costs of obtaining no more than two doctors' or practitioners' reports." The record does contain Dr. Meyer's written statements related to his care and opinions concerning Davis's condition. We find no abuse of discretion in the commissioner's order in this respect.

D. Denial of Stay. The district court considered the proper factors, and we find no abuse of discretion in its denying the employer's application to stay judgment. *See Grinnell Coll.*, 751 N.W.2d at 402–03.

We affirm the district court's ruling in all respects, except we modify the order of costs. Whirlpool is ordered to pay costs in the amount of $1767, rather than $1947.

Costs of the appeal are taxed to Whirlpool.

AFFIRMED IN PART AND MODIFIED IN PART.