BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE

PABLO ALANIS-FEDERICK,	)	
	)	
Employee,	)	
	)	
v.	)	Hearing No. 1439328
	)	
ASPLUNDH TREE EXPERT CO.,	)	
	)	
	)	
Employer.	)	

DECISION ON PETITION TO DETERMINE ADDITIONAL COMPENSATION DUE

Pursuant to due notice of time and place of hearing served on all parties in interest, the above-stated cause came before a Workers' Compensation Hearing Officer of the Industrial Accident Board on October 1, 2020 via video conference pursuant to the Board's COVID-19 Emergency Order dated May 11, 2020.

PRESENT:

KIMBERLY A. WILSON
Workers' Compensation Hearing Officer, for the Board

APPEARANCES:

Brian S. Legum, Attorney for the Employee

Christopher T. Logullo, Attorney for the Employer/Carrier

NATURE AND STAGE OF THE PROCEEDINGS

On February 5, 2016, Pablo Alanis-Federick ("Claimant") suffered a compensable injury to the lumbar spine (also "low back") while working for Asplundh Tree Expert Co. (also "Asplundh" or "Employer"). Employer has accepted these injuries as compensable, and Claimant has received certain benefits as a result, including payment for his medical treatment expenses.

On March 13, 2020, Claimant filed a Petition to Determine Additional Compensation Due, seeking a finding of compensability for lumbar stem cell injections provided by Dr. Bruce Rudin on March 3, 2020. Dr. Rudin opines that this treatment was reasonable, necessary and causally related to the February 2016 work accident. Asplundh, based on the opinion of Dr. Scott Rushton, argues that the March 3, 2020 stem cell injections were not reasonable, necessary or causally related to the February 2016 work accident.

A hearing was held on Claimant's petition on October 1, 2020. This is the decision on the merits of the petition.

SUMMARY OF THE EVIDENCE

Claimant testified first. He has worked for Asplundt since 2012. Claimant injured his low back while cutting and removing a large tree in 2016. His typical job duties involve tree and branch removal and cleaning power lines.

Following the February 2016 work accident, Claimant's ability to work changed. He was in pain and could only work twenty-five to forty hours per week. He had conservative treatment but then ultimately required surgery in 2016. He then needed another lumbar fusion surgery at L4-5 in May 2018. It took a long time, but he began working full duty again. Unfortunately, that only lasted a couple of months. He then required light duty work again because his pain began to return after surgery.

About a year after the 2018 surgery, Claimant was experiencing significant low back pain again. He had tried injections, but they only helped for, at most, a month or two. He was told his pain was due to a pinched nerve. Dr. Rudin showed Claimant his MRI and told him that he could either have surgery again or have a stem cell procedure. Claimant told Dr. Rudin that he did not want to have surgery again, so he opted for the stem cell procedure. Claimant had the procedure on March 3, 3020. Afterward, he was out of work for three weeks. He was unable to walk, move or bend. After three weeks, he returned to work and worked a lot of hours. After the July 2020 tornadoes came through Delaware, Claimant worked about 16 hours per day. However, he was in so much pain, he could not make it to work at times. He was working over 85 hours per week at that point. He had additional pain, but had to work because he needs to take care of his family.

Before the stem cell treatment, Claimant was working between 30 and 60 hours, depending on weather. He performed light duty work, including flagging and traffic control. At times, he also would help out when needed to rake and pick up leaves. He worked light or medium duty between 25 to 30 hours per week.

After the March 2020 stem cell treatment, Claimant was able to work more. This treatment was more helpful than the prior injections that Claimant had. It also helped more than the 2018 surgery had. Claimant was very pleased with the outcome of the stem cell treatment. He had already had two surgeries and thinks that his results with the stem cell procedure were better than the surgeries.

Claimant saw Dr. Rudin on September 17, 2020 and was in a lot of pain. It was different pain than he had prior to the stem cell treatment. Claimant's pain was from his lower back to the buttocks and stayed in his leg. It was very different pain. This is why he went back to Dr. Rudin for a new MRI.

On cross examination, Claimant agreed that Dr. Rudin's most recent September 2020 note indicates that Claimant reported that his symptoms had gotten worse. He agreed that this was about six months after the stem cell procedure. Dr. Rudin indicated that Claimant was pointing down his right side in terms of his pain. He has pain on both sides, but sometimes it is more on the left side. Claimant had rated his pain at 8 out of 10 with a constant frequency. He described his pain as severe and aching. All activities were said to be aggravating of his condition. Dr. Rudin took Claimant out of work for one week and provided him with a Medrol Dosepak. Claimant has since returned to work.

Claimant agreed that before he had the stem cell procedure, his pain was also rated as 8 out of 10. He explained that he had long days at work at times and his pain was bad because of the type of work that he does. There are times when they work a lot and have to do a lot of lifting. Claimant admitted that he was released to full duty unrestricted work in May 2019. He further agreed that he testified that he was working light duty before the stem cell procedure; thus, he was restricted to light duty at some point after May 2019.

Claimant admitted that after the March 2020 stem cell injections he reported a pain level of 5 out of 10. He was still in pain. Dr. Rudin documented on May 21, 2020 "symptoms unchanged." Claimant had described right low back pain with bilateral leg and buttock pain. The pain was down both legs. His pain was said to be constant and aching. All activities were said to cause him pain. Claimant recalled telling Dr. Rudin all of this. This note was recorded two months after the stem cell injections.

Dr. Rudin told Claimant that the stem cell injections procedure itself is not FDA approved. It is also not listed under the Delaware Health Care Practice Guidelines

("DEHCPGs"). Claimant could not recall if Dr. Rudin told him that the treatment was experimental in nature.

On redirect examination, Claimant agreed that he has had low back pain since his work accident. His pain is currently more painful to a point where, at times, it cannot be tolerated. He did not have this kind of pain before the stem cell procedure; it was not as much in his legs, but mostly in his back. Claimant's pain is new and different now. He has pain all of the time.

Claimant was able to work ten hours per day before the stem cell procedure; however, he would have worked 16 hours per day if he could have. He worked less due to his physical restrictions.

Dr. Rudin told Claimant that some people were having stem cell injections and that they were working. Claimant did not want surgery, so he agreed on the injections. He is happy with this decision. Dr. Rudin told Claimant that he would not have to pay for the treatment if it was not approved by workers' compensation.

Claimant was questioned by the Hearing Officer as to why he is happy that he got the stem cell injections even though he seemed to have been doing poorly about two months afterward. He explained that he felt that he could work more after he got them. He was working 60 hours per week after the stem cell injections. However, after the tornadoes hit Delaware, he was working between 65 and 95 hours per week and was in a lot of pain once he got home. Claimant felt that his success from the stem cell injections lasted for about five months.

Claimant agreed that he complained of 8 out of 10 pain in May 2020. He worked long days at the time, and it was the work causing his problems. Claimant worked as many hours as he could work based on his pain; he worked 20 or 30 or 40 hours per week.

Claimant's leg pain became bad after the stem cell injections. His left leg pain is now worse and different. He had it before the stem cell injections, but it is worse now.

On further redirect examination, Claimant reiterated that he believes that the stem cell injections helped him in terms of pain reduction for about five months. He explained that his May 2020 pain was pain that came and went, especially when he had a long day at work with bending and lifting. Claimant worked well for about four or five months after the March 2020 stem cell injections. There were days with little pain and other days with higher 8 out of 10 pain.

Claimant's pain after the stem cell injections is different than it was before; sometimes he can handle it, and other times he cannot. He went to the emergency room ("ER") about a week before he saw Dr. Rudin because he was in so much pain that he could not even walk. He stayed home from work for two days. He told his boss that he could only work light duty and was advised that a letter was needed. Claimant then went to Dr. Rudin for the letter and told him that he could not even walk at times due to pain. Dr. Rudin took Claimant out of work for one week and scheduled him for a regular injection, not a stem cell injection. Claimant also asked for a new MRI study because his pain was very high and intolerable. He has never felt this level of pain before. Very strong pain in his left leg began about three weeks prior to the hearing.

On further recross examination, Claimant testified that he had days without pain when not working or when flagging or doing traffic control work. Claimant admitted that the May 21, 2020 note reflected that he told Dr. Rudin that the frequency of his pain was constant and that all activities were aggravating factors for his pain.

Bruce J. Rudin, M.D., an orthopedic surgeon, testified by deposition on behalf of Claimant.[1] Dr. Rudin is fellowship-trained in adult, regenerative and traumatic spine surgery. He wrote the DEHCPGs for the cervical spine and lumbar spine twelve years ago.

When Claimant first presented to Dr. Rudin in November 2016, he looked terrible on physical examination. He had had extensive conservative care, including lumbar injections. He had a disc herniation at L4-5 as well as a partial foot-drop, which is a significant neurologic deficit. Dr. Rudin performed an L4-5 microdiskectomy on December 12, 2016. Claimant's leg pain was gone after the surgery. Gradually, however, once he started to get back to work at a higher level, he began having issues again. Claimant had a lot of underlying degenerative disc disease at L4-5 and ultimately required a spinal fusion in May 2018. A CT scan revealed that the fusion was healed in September 2018, so Dr. Rudin released Claimant back to work.

Claimant performs long hours of heavy physical work. His care was managed into 2019 and, as he continued to work, he started to get worse and worse. Dr. Rudin has encouraged Claimant to try to work a different job, but he has always gone back to work for Asplundh. He worked eight-hour-days and then reported that he was in miserable 8 out of 10 pain by the end of the day. Claimant had a couple of nerve blocks, but they only helped him temporarily. He then had sacroiliac injections. The sacroiliac injections made him 90 percent better for a week and then his pain came back, and at a higher level. Toward the end of 2019, Claimant's pain was rated at 8 out of 10 and described as constant, severe, aching and worsened by all activities. Dr. Rudin ordered a new MRI. It showed a new degenerative problem and tear at the level next to his spinal fusion, at L3-4; notably, the prior July 2017 MRI showed L3-4 as a normal disc.

After Dr. Rudin received the MRI results showing an onset of degeneration and annular pathology at L3-4, and had considered the fact that Claimant's pain had been increasing over the

[1] Dr. Rudin's deposition was marked into evidence as Claimant's Exhibit #1.

past six months, he discussed treatment options with him. Claimant was unresponsive to conservative care. His ability to work was not great. His options were either a spinal fusion surgery or osteobiologics (also "stem cell procedure"). Dr. Rudin testified that the DEHCPGs recognize that when there is a spinal fusion, the stress is transferred to the adjacent disc. Claimant met every one of the requirements as a candidate for another spinal fusion, but he did not want to have that procedure again. He instead chose the regenerative medicine option, a stem cell injection procedure.

Regenerative medicine harnesses the body's ability to heal biologically using substances that are already circulating in the body, including stem cells. They are used in a patient with a degenerative disc as an alteration in the ability of the disc to get nourished. They are injected back into the disc to make the disc healthy.

Patients that have received this procedure are tracked in a federal registry in terms of outcome; about 75 to 80 percent of patients that have had this procedure are better within three months. The cost is less than a spinal fusion and the person walks out with Band-Aids in lieu of the typical extensive post-surgical recovery. Claimant opted for the stem cell procedure because he felt that if it did not work, he would end up with the spinal fusion operation anyway.

Claimant had the stem cell injection procedure on March 3, 2020. He followed up on May 21, 2020. At that point, he told Dr. Rudin that he was 65 percent better. He was already back to work as a tree surgeon, working 16 hours per day. He reported that his leg pain was great. His back pain was better. He was very happy. This was about two months after the procedure.

Dr. Rudin testified that the stem cell procedure is not experimental. It is a newer procedure, but not new. Stem cell procedures are not included in the DEHCPGs but Dr. Rudin noted that the guidelines have not been updated since 2008. The DEHCPGs are guidelines and

their preamble notes that they do not define the only means of caring for patients. The guidelines do not address every possible medical issue or treatment option.

Dr. Rudin opined that the March 3, 3020 stem cell injection procedure was reasonable, necessary and causally related treatment for Claimant in terms of his February 2016 low back injury. This procedure has been offered for the past 18 months at First State Orthopaedics ("FSO") and is an alternative to much more expensive spinal fusion procedures. FSO follows all of the FDA-recommended guidelines for doing the procedure, such as the use of certain equipment.

Dr. Rudin disagrees with Dr. Rushton's opinion that Claimant was not any better. Claimant reported two weeks before Dr. Rushton's June 2020 defense medical examination ("DME") that he was 65 percent better and working 16 hours per day performing heavy physical work, six to seven days per week. Dr. Rudin rates the treatment as highly successful. Claimant is a patient that was miserable before the treatment that was afterward able to work over a hundred hours per week doing heavy physical work. In comparison to everything involved with a spinal fusion, Dr. Rudin opined that the stem cell procedure is reasonable and necessary within a reasonable degree of medical probability.

On cross examination, Dr. Rudin admitted that he does have financial interest in SpineCare, the facility where Claimant's stem cell procedure was performed. It is a standalone facility that does nothing but spine procedures. There are nine partners. Dr. Rudin himself was not involved in providing the stem cell injection treatment to Claimant. Claimant's bill for the stem cell injection procedure is threefold: there is a charge for the doctor that does the procedure, a charge for the anesthesiologist that performs the sedation and a facility fee. Medicare and Medicaid do not pay for these procedures. The FDA does not approve this specific

procedure, but it falls under an exemption. It is an off-label procedure. A lot of care is off-label. Claimant's procedure consisted of a bone marrow aspiration of his mesenchymal stem cells, intradiscal injection of bone marrow and platelet rich plasma ("PRP") therapy in addition to facet and epidural injections. This sort of treatment has been tremendously helpful for leg pain and sciatica.

Dr. Rudin disagreed that the two surgeries were not successful for Claimant. L4-5 was treated successfully; what is unknown is when L3-4 was afterward injured. It is only known that at some point after his spinal fusion Claimant's L3-4 disc went bad and as it got worse, he got worse.

Dr. Rudin testified that he did not want to do a spinal fusion on Claimant, he preferred to do this procedure. He thought it was a much better procedure in terms of biologically helping the disc. Forty percent of patients having this procedure show MRI-documented improvement of what the actual disc looks like. This was preferable to putting three times the stress on the L2-3 or L5-S1 disc by performing a fusion at L3-4.

Dr. Rudin's September 2020 medical note was addressed. Dr. Rudin agreed that the note states that Claimant was currently describing right low back pain, bilateral leg pain and bilateral buttock pain. He had radiation into the bilateral buttock, bilateral post thigh, bilateral post calf, bilateral calf and bilateral dorsum of the foot. Claimant was rating his symptoms at 8 out of 10. It was also documented "the problem has worsened" and "the frequency is constant." Claimant also described the pain as "severe and aching." Aggravating factors included "all activities." Dr. Rudin clarified that this is what Claimant wrote and does not reflect the totality of the medical record. A new MRI was ordered in September 2020. Claimant was further instructed to take a Medrol Dosepak (steroids) and Ultram (pain reliever).

Claimant followed up on September 17, 2020. At that time, it was noted that he had a significant increase in his problems. Dr. Rudin added that in that past week it was the first time in six months that Claimant was bad. Claimant was also working a large number of hours per week before that.

Dr. Rushton is incorrect that there are no studies on these procedures; there are many studies, including in the *Pain Physician*, the preeminent journal in pain management. The procedure was rated by a Level 3 study that would be considered a "Fair" study. The study said it was safe. The results were said to be better than what is currently being done with epidurals and nerve blocks.

Scott Rushton, M.D., an orthopedic surgeon, testified by deposition on behalf of Asplundh.[2] Dr. Rushton evaluated Claimant in June 2020 and reviewed his pertinent medical records. Claimant provided a history of his work accident as well as his two lumbar surgical procedures. He stated that neither of the surgeries had provided him any benefit and that he wished that the surgeries had never been done. As of June 2020, Claimant had been working in a light duty status with a 25-pound lifting restriction for the past two months. He reported having had a recent lumbar spine injection.

Claimant complained of fairly significant pain in the lower back and pain in both legs at the DME. His leg pain was fairly diffuse and did not travel in any particular dermatome or nerve distribution. His back and leg pain were noted to be equal. Claimant's pain was daily in a thirty day period of time and he rated his pain at 8 to 9 out of 10 on a daily basis, on average. This can be considered to be fairly significant symptomatology.

On physical examination, Claimant had a very functional range of motion subjectively, despite having had a fusion procedure. He had no evidence of neurologic weakness. His

[2] Dr. Rushton's deposition was marked into evidence as Employer's Exhibit #1.

functional testing ability to recruit various muscles was normal and there was no sign of nerve root compression. Objectively, it was a normal exam of the lumbar spine.

Dr. Rushton reviewed an April 2019 MRI of the lumbar spine. It showed the L4-5 fusion. Notably, there was a complete absence of any significant stenosis. There was a minimal retrolisthesis of L3-4 with a mild disc bulge, new since the June 2017 MRI. There was really no significance to this, however; these are more incidental findings following a fusion. Dr. Rudin had confirmed that the fusion had taken and was solid in August 2019. There was no evidence of nerve root compression or clinically relevant structural pathology via MRI.

Dr. Rushton testified that stem cell injection treatment has recently been used by select practices around the country. However, stem cells are not really being used as there is no significant statistical data to support its application in the spine. There has been no FDA approval status on any of this regarding the spine. There is really no approved technique or valid research or science to support application in a person such as Claimant--a 27-year-old male with a failed fusion. It is experimental treatment. Dr. Rushton has not ever referred any patients for lumbar spine stem cell injections in his practice as a spine surgeon.

This is not reasonable treatment based on a number of factors. First, there is a lack of data and lack of statistically significant studies to validate the use in individuals. The lack of FDA approval and experimental nature of this procedure warrants further research and analysis before it is applied routinely. Secondly, Claimant has had no subjective benefit from any of the modalities provided to him. He has remained symptomatic with substantial pain levels, making this treatment all the more questionable.

Dr. Rushton agrees that Dr. Rudin's May 21, 2020 record indicates that Claimant was 65 percent improved with continued daily pain rated at 5 out of 10. He was working full time and

full duty without medications. However, none of this was consistent with Dr. Rushton's DME about two weeks later. Claimant provided a history that he wished he never had the surgery and had remained painful on an everyday basis, with an average pain level of 8 to 9 out of 10. Importantly, what is done in terms of treatment is not based or validated by subjective measures.

There is a dramatic difference between a peer-reviewed level 3 type of study with statistical significance compared to a simple white paper that is presented by a number of surgeons writing about two or three cases; these are typically prompted by the industry to be written. Dr. Rushton has not seen or is not aware of peer-reviewed scientific studies to support the use of stem cell injections in the lumbar spine. Stem cell therapy is used for other parts of the body such as the joints, elbows, shoulders and knees—soft tissue structures—mostly for tendinopathies. However, the same issue with not having a scientific basis still exists. The lumbar spine, however, does not have soft tissue elements. If one injects this material into the sacroiliac joint, there are really no soft tissue components within that joint to benefit from a regenerative-type of approach. The biomechanical loads and stress and strain on the lumbar spine makes the role of these technologies extraordinarily limited because they are not designed to restore biomechanics. Spines fail because of biomechanical forces and degenerative forces over time; a regenerative technology is not really going to apply any improvement to this type of architecture.

Additionally, there are complications and risks with any injection procedure, to include infection and disease transmission. Anything that is injected poses risks, to include disc space infections, epidural abscesses, spinal osteomyelitis and viral transmissions from autologous sources.

In Dr. Rushton's opinion, for these reasons, the stem cell injection procedure would not be medically reasonable or necessary for Claimant. Claimant essentially has failed back surgery

syndrome. No modalities that have been performed to date have improved him. Unfortunately, he has failed to have a sustained pain-free interval after any invasive treatment, and in such a case, the chances of any further improvement with further invasive modalities is horrifically low.

On cross examination, Dr. Rushton agreed that after the 2018 surgery, Claimant continued to rate his pain complaints between 8 and 9 out of 10. He was then referred for injections; he did receive some relief from the injections.

Dr. Rushton agreed that it is reasonable to try to avoid operating on patients when possible. He agreed that a surgery, like any invasive procedure, also provides risks, including infection. However, Dr. Rushton added that these are surgeries that have stood the test of time. Dr. Rushton agreed that there are treatments and procedures available today that were not available five, ten or fifteen years ago.

Dr. Rushton further agreed that just because a treatment is not mentioned in the DEHCPGs this does not mean that it is not reasonable; however, he clarified that, to be reasonable, there also needs to be scientific support from peer-review analyses, a level of significance required to mandate the treatment as well as FDA-approval status.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

When an employee has suffered a compensable injury, the employer is required to pay for reasonable and necessary medical "services, medicine and supplies" causally connected with that injury.[3] "Whether medical services are necessary and reasonable or whether the expenses are incurred to treat a condition causally related to an industrial accident are purely factual issues

[3] DEL. CODE ANN. tit. 19, § 2322.

within the purview of the Board."[4] Because Claimant has filed the current petition, he has the burden of proof.[5]

In this case, the dispute centers on the March 3, 2020 stem cell injection procedure recommended by Dr. Rudin, and whether that treatment was reasonable and necessary in relation to Claimant's compensable lumbar spine injury. After a thorough review of the evidence, I conclude that Claimant has not met his burden to show that the March 3, 2020 stem cell injection procedure represents reasonable and necessary treatment.

Here, I was not convinced by Dr. Rudin that the lumbar spine stem cell injection treatment was reasonable or necessary. Dr. Rudin testified that Claimant's lumbar spine condition in early 2020 called for either a spinal fusion surgery (Claimant's third lumbar surgery) or lumbar stem cell injections; and, given a choice, Claimant had opted for the injections over surgery. Claimant wanted to avoid another surgery, which is not surprising as he told Dr. Rushton that neither of his lumbar surgeries had been helpful.[6] Dr. Rudin admitted later in his testimony that he also preferred that Claimant have the lumbar stem cell injections in lieu of a third spinal surgery. Dr. Rudin further testified that Claimant had in mind that if the lumbar stem cell injections failed, he would just have the fusion surgery anyway, so he elected to try the injections first. While I accept the reasons why a third lumbar surgery might want to be avoided, I was not convinced that trying lumbar stem cell injections was a reasonable alternative treatment option.

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[4] *Bullock v. K-Mart Corporation*, No. 94A-02-002, 1995 WL 339025 at *3 (Del. Super. Ct., May 5, 1995).
[5] DEL. CODE ANN. tit. 29, § 10125(c).
[6] While it is understandable that Claimant wished to avoid a third lumbar surgery, Dr. Rushton was persuasive that the proposed fusion surgery represented a tried and true treatment whereas a stem cell injection treatment for the lumbar spine does not.

Here, I found Dr. Rushton convincing that there are a number of reasons why stem cell treatment, particularly when administered to address the lumbar spine, is not reasonable. There has been no FDA approval regarding the application of this treatment to the spine. Dr. Rushton added that there is no approved technique, valid statistical research or science to support this sort of application. Thus, it does represent experimental treatment. Dr. Rushton testified that he has treated thousands of spinal patients over the years, and has never referred a single patient for lumbar stem cell injections in his practice. He further noted that while the problem of a lack of scientific basis for the treatment still exists, stem cell treatment has been used for tendinopathies in soft tissue structures such as the joints, elbows, shoulders and knees. Dr. Rushton was convincing that there is no significant statistical data to support the use of stem cell injections in the lumbar spine. Importantly, the lumbar spine does not have these soft tissue elements within the joint to benefit from a regenerative-type of approach. Dr. Rushton testified that biomechanical loading and the normal stress and strain on the lumbar spine limits the role of this treatment because the treatment is not designed to restore biomechanics. He added that spines will fail because of biomechanical and degenerative forces over time, and such a regenerative technology will not apply any improvement to the spine's actual architecture.

Additionally, Dr. Rushton was persuasive that Claimant's failed treatment thus far also makes this treatment approach unreasonable and unnecessary. Claimant has had no significant subjective benefit from any of the modalities provided to him. He has remained highly symptomatic with substantial pain levels, making the recommendation for this treatment all the more questionable. Further, while not entirely definitive in terms of reasonableness and necessity of treatment, it is still notable that the stem cell treatment itself did not appear to have been successful here, as Dr. Rushton opined. I was not convinced that these treatments were

significantly helpful. Claimant testified that he was unable to do anything for approximately three weeks after the March 3, 2020 stem cell treatment; less than two months later, when he followed up with Dr. Rudin on May 21, 2020, he reported that his symptoms were unchanged, and that he had constant lumbar pain that was aggravated by all of his activities. While Dr. Rudin noted that there had been 65 percent improvement with the treatment, I was not convinced that Claimant was not suffering from essentially the same lumbar condition that he reported prior to this stem cell injection treatment. Claimant did repeatedly testify that he was happy that he had this treatment because he felt that he could work longer hours after the procedure. However, it appeared that before this treatment, Claimant's regular lumbar condition allowed him to at times work very long hours and a shorter number of hours other times. It also appeared that this was again the case after the stem cell injection treatment. In any case, I was not convinced that Claimant's condition improved after the stem cell injection treatment. In fact, Claimant reported that he was in essentially terrible condition as of Dr. Rudin's September 2020 visit with new significant symptoms and an inability to even walk at times due to pain. Claimant required a new MRI study, due to new and significant subjective complaints. Notably, however, instead of following up with lumbar stem cell injections, Claimant was provided with another type of lumbar injection to quiet his condition. It seems that if the March 2020 lumbar stem cell injections were very successful, the treatment perhaps would have been repeated in September 2020. For all of these reasons, I was not convinced that the treatment itself was significantly successful.

Finally, I note that Dr. Rushton's testimony also reflected that the risks associated with receiving injections in general was not worth it here, particularly given all of these factors that pointed against providing stem cell injections to the lumbar spine in the first instance.

In sum, I found Dr. Rushton's opinion more persuasive than Dr. Rudin's regarding the compensability of the March 3, 2020 lumbar spine stem cell injections. Thus, I conclude that Claimant has failed to meet his burden to prove that the treatment was reasonable or necessary. Therefore, Claimant's petition for DACD is **DENIED**.

STATEMENT OF THE DETERMINATION

Accordingly, for the reasons stated above, Claimant's petition for DACD regarding the March 3, 2020 stem cell injection procedure is **DENIED**.

IT IS SO ORDERED this 4TH DAY OF DECEMBER, 2020.

INDUSTRIAL ACCIDENT BOARD

KIMBERLY A. WILSON
Workers' Compensation Hearing Officer

Mailed Date: 12-17-2020 CR
OWC Staff