BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID LOWELL EVENSON, Claimant, vs. WINNEBAGO INDUSTRIES, INC., Employer, and SENTRY INSURANCE COMPANY, Insurance Carrier, Defendants.	:	File No. 5038367 A R B I T R A T I O N D E C I S I O N Head Note Nos.: 1803

STATEMENT OF THE CASE

David Lowell Evenson, the claimant, seeks workers' compensation benefits from defendants, Winnebago Industries, Inc., the alleged employer, and its insurer, Sentry Insurance Company, as a result of an alleged injury on May 18, 2010. Presiding in this matter is Larry P. Walshire, a deputy Iowa Workers' Compensation Commissioner. An oral evidentiary hearing commenced on July 6, 2012, but the matter was not fully submitted until the receipt of the parties' briefs and argument on July 16, 2012. Oral testimony and written exhibits received into evidence at hearing are set forth in the hearing transcript.

The caption is changed to reflect that the Second Injury Fund is no longer a party defendant to this contested case proceeding due to claimant's settlement with the Fund after hearing.

Claimant's exhibits were marked numerically. Defendants' exhibits were marked alphabetically. References in this decision to page numbers of an exhibit shall be made by citing the exhibit number or letter followed by a dash and then the page number(s). For example, a citation to claimant's exhibit 1, pages 2 through 4 will be cited as, "Ex 1-2:4." Citations to a transcript of testimony such as "Tr-4:5," either in a deposition or at hearing, shall be to the actual page number(s) of the original transcript, not to the page number of a copy of the transcript containing multiple pages.

Despite settling with the Second Injury Fund after hearing, claimant made no attempt to edit or remove from the offered exhibits his extensive number of exhibits pertaining to only the Fund claim which had no relevance to the remaining claim against Winnebago. Defendants submitted duplicates of pay and absentee records contained in claimant's exhibits. These improper exhibits unduly complicated my deliberations in this case as it will likely do in subsequent proceedings in the event of an appeal. Both attorneys are advised to be more careful in submitting exhibits in the future to avoid sanctions.

The parties agreed to the following matters in a written hearing report submitted at hearing:

1. On May 18, 2010, claimant received an injury arising out of and in the course of employment with Winnebago Industries, Inc.

2. The stipulated work injury is a cause of a permanent scheduled member disability to the left arm.

3. At the time of the alleged injury, claimant was married and entitled to two exemptions for income tax purposes.

4. Prior to hearing, defendants voluntarily paid the amounts set forth in the hearing report.

ISSUES

At hearing, the parties submitted the following issues for determination:

I. Claimant's rate of weekly compensation;

II. The extent of claimant's entitlement to additional weekly healing period, temporary partial and permanent disability benefits;

III. The extent of claimant's entitlement to additional medical benefits; and

IV. The extent of claimant's entitlement to penalty benefits for an unreasonable delay or denial of weekly benefits pursuant to Iowa Code section 86.13.

FINDINGS OF FACT

In these findings, I will refer to the claimant by his first name, David, and to the defendant employer as Winnebago.

From my observation of their demeanor at hearing including body movements, vocal characteristics, eye contact and facial mannerisms while testifying in addition to

consideration of the other evidence, I found David and his family members who testified at hearing credible.

David and his family are farmers who reside near Lake Mills, Iowa. David has scaled down his farming activity over the last several years and more so since his work injury in this case due to his left arm problems. He continues to raise and train quarter horses with his wife. He began working full-time for Winnebago in January 1987 to supplement his farm income. He states that prior to his work injury, he routinely worked overtime hours. Although he continues at Winnebago today, he states that he is not allowed by Winnebago management to work overtime due to his injury, even though there is no permanent medical restriction against overtime work.

The stipulated work injury of May 18, 2010 involves the left elbow. David denied any prior elbow problems. This is inconsistent with a report from John Kuhnlein, D.O., in which he discussed prior treatment for left elbow tendonitis in July 2006. However, the treatment was brief and was found improving at this last visit on July 19, 2006. I find that he had no permanent left elbow problems prior to the work injury in this case.

The work injury in this case occurred when David began to experience left elbow pain while stacking aluminum running boards onto pallets. The initial medical assessment by James McGuire, PA-C, was medial epicondylitis or tennis elbow from overuse. He was treated conservatively at first with medications, ice and a brace/splint. Later he was given cortisone injections. Initial restrictions included a limit to five work days a week and later on a limit to eight-hour workdays. Subsequent restrictions included no use of the left arm. In October 2010, David was evaluated by Timothy Gibbons, M.D., but he did not have much to offer except for additional injections and additional restrictions. David continued working the remainder of 2010, but had trouble with work assignments requiring activity beyond the restrictions imposed by Dr. Gibbons. At the end of January 2011, Dr. Gibbons stated he had nothing to offer and returned David back to work with no restrictions, despite no improvement in his pain or functioning.

David then returned to Physician Assistant McGuire and additional tests and studies were ordered which indicated neuropathy. In March 2011, David received his second opinion from another orthopedist, Gregory Yanish, M.D. Dr. Yanish's assessment was an entrapped ulnar nerve along with tennis elbow and he recommended release surgery. Gary was confusingly released to regular duty, but not to lift over 20 pounds with the left arm. After an MRI confirmed his assessment, Dr. Yanish recommended surgery to transpose the ulnar nerve. This was performed in April 2011. Following surgery, David states that the tingling and pain was relieved, but not his loss of strength. David was then placed into physical therapy. David was returned to work in May 2011, but to only one-handed duty. In June, David was allowed to work in the countersink department, but not to lift over ten pounds with the left arm and no repetitive pushing, pulling or lifting with the left arm. The lifting restriction was reduced to 20 pounds in August. On November 29, 2011, Dr. Yanish opined that David

suffered a four percent permanent partial impairment to the left upper extremity using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. Also, at that time, the doctor imposed a permanent activity restriction against lifting, pushing or pulling over 20 pounds with the left elbow. (Exhibit I-181:182) I find that David achieved maximum medical improvement on November 29, 2011, given the permanency views of Dr. Yanish. In December 2011, there was a workplace ergonomic assessment. The lighter duty jobs in countersink and the Komasu 35-Press were suitable, but changes to his old job in the DZ work cell were recommended. (Ex. 1-182:183) David testified that he never returned to the DZ area, the job he was performing at the time of his elbow injury. (See generally, medical records, Ex. I-1:186)

At the request of his attorney, David was evaluated by John Kuhnlein, D.O., an occupational medicine physician, in March 2012. In his extensive report dated June 8, 2012, Dr. Kuhnlein provided assessments of not only the left elbow, but in response to several questions from claimant's counsel, the doctor provided assessments for the right foot, left foot, left leg, low back, right shoulder, dermatitis, conjunctivitis, respiratory infections, obesity, cutaneous candida, diabetes, hypertension and dyslipidemia, left wrist, right elbow, right forearm, right wrist. Assessments of these other areas of the body and conditions are immaterial and unrelated to this scheduled member case. The doctor, eventually, briefly rated David's left elbow injury as consisting of a three percent permanent partial impairment to the left upper extremity. (Ex. I-187:219) Dr. Kuhnlein later on provided at the request of claimant's counsel, another assessment of bunionectomies. (Ex. I-220-222). Dr. Kuhnlein's billing for these reports are claimed to be $5,340.30. His actual billing is not contained in this record and there is no attempt to apportion out only the fee for the evaluation of the left elbow injury. This fee includes an X-ray charge for the feet and knee in the amount of $395.30. I agree with defendants in their brief that at most, only one-half of Dr. Kuhnlein's fees after deducting the X-ray charge should be assessed to defendants. Therefore, I find only $2,472.50 of Dr. Kuhnlein's fee constitutes an Iowa Code section 85.39 evaluation of the left elbow.

At hearing, David, who is right-hand dominant, did not provide a percentage of his loss of function to the left arm. Although he continues to operate farm machinery, he states that he is not able to steer with his left arm, but is able to use only his right arm given the power steering and controls now available on modern farm equipment. He states that he can no longer snowmobile or operate a 4 wheeler due to his left arm problem. He is not able to care for the horses as he once did due to lifting problems. He no longer can break or show the horses because he cannot hold onto a rope with his left hand. Most of the horse activity is now done by his wife. He has problems climbing ladders. His pain is 5 out of a scale of 10. He complains of a loss of endurance. He can no longer work overtime at Winnebago.

David's wife estimates that David has lost 60 percent of the functioning in his left arm due to loss of grip strength and ability to lift. She states that he cannot bike anymore and does only limited farm work. He can no longer tarp a semi and cannot bale hay. David's son-in-law testified David was very strong prior to his injury and

estimates the loss of strength to the arm to be 80 percent. David's father testified that David is now not as involved in the family farming operation as he was before the injury, but does help out in the busy spring and fall seasons. He agrees that he cannot tarp semis, lift bales of hay or use hand tools with his left arm.

Permanent Disability:

I find the work injury of May 18, 2010 is a cause of a 20 percent loss of use to the left arm. I could not agree with the high percentage of loss estimated by David's family members at hearing as such a loss would be akin to a partial amputation of the arm. However, I gave weight to the reduction in his actual loss of use in the activities of daily living described by these witnesses. Defendants' claim that David retains 96 or 97 percent of the use of his left arm was not as convincing. While David's witnesses certainly are interested in helping him as a beloved family member, their testimony as to what he can no longer do with his arm is largely uncontroverted.

Weekly Rate of Compensation:

There is little dispute that claimant's weekly earnings varied greatly in the weeks prior to injury for a variety of reasons. Claimant disagrees with many of defendants' rate calculations (Ex. II-38:30) on grounds that they included pay periods where there were plant shutdowns, and did not include all hours worked. Clamant also wanted to include into the calculation the weekly amounts Winnebago placed into David's 401K retirement account. First I find that plant shutdowns for brief periods of time occurred three times during the three week period prior to the injury and this was not an unusual occurrence looking as his pay records. No evidence was offered that these shutdowns were atypical. Also, clamant wanted to use the total number of hours on the bottom of the applicable pay records (Ex. II-33:35), but if you look at what was actually paid and his hourly rate of $16.15 and the overtime hourly rate of $24.225, that bottom number does not represent the number of hours paid. Also, short weeks were fairly typical as well. Most convincing was the argument in the last paragraph of page 8 in defendant's post-hearing brief, that only the week ending on February 27, 2010 should be excluded as it contained an unusually low number of work hours, 27. I wholly disagree with including the 401K contributions as will be discussed later in the conclusions of law section. Consequently, I find that claimant's gross average weekly earnings on the date of injury to be $763.52, resulting in a weekly compensation rate of $506.42.

Healing Period:

David seeks healing period benefits from September 3, 2010 through October 4, 2010 and from April 14, 2011 through June 13, 2011. There is no dispute that David was restricted to no use of the left arm on September 3, 2010. David's attorney points to an office notation of medical assistant McGuire indicating that Winnebago was unable to accommodate this restriction and he will have to be off work. (Ex. I-21) David's attorney then speculates that the supervisor forced David to take vacation pay so he

could be paid holiday pay from September 4 through September 6. There is no dispute that David was off work on and after September 7. However, the absentee records contained in Exhibit I-61:65 and duplicated in Exhibit D, indicate that David only took one hour of vacation on September 3. Also on that date there was a plant shut down for .5 hours. (Ex. D-6) He apparently worked and was paid wages from September 3 through September 5. (Ex. E-15) On September 6, David received eight hours of holiday pay.

Thereafter, David began missing work on September 7, 2010 due to the inability of Winnebago to accommodate for his restrictions. The absentee records suggest a return to work on September 11, but he was paid weekly compensation until September 19, so he apparently did not return to work until September 20. Weekly benefits for the first week off ending on September 13 were timely paid on September 14. (Ex. C-2) (I agree with claimant that the payment date should be one day later than indicated on the indemnity payment records due to the fact that they were first sent to Winnebago and then forwarded the next day to claimant). The second compensation check for the time off from September 14 through September 19, was timely paid on September 21. (Ex. C-2)

David was then off work again following surgery beginning on April 14, 2011. However, he was not paid weekly benefits for the time off from April 14 through May 4, 2011 until he received a check in the amount of $1,405.86 on May 6, 2011. (Ex. C-2) Defendants provided no reason for this delay in weekly benefits and no interest was included in this check as the amount is just three weeks of benefits at the rate they were paying at the time, $468.62. However, on May 6, David was also paid in advance for an apparent anticipated time off from May 5 through May 11, 2011. Thereafter, David was paid weekly benefits until his return to work on June 14, 2011. (Ex. C-1)

I find that claimant was timely paid his entitlement to weekly benefits prior to his surgery on September 14, 2011. Thereafter, there was a late commencement of benefits and subsequent payments were timely, but insufficient in amount due to the failure to pay interest. Consequently, there was also a denial of a portion of the weekly benefits following the surgery. Again, no excuse or reason was provided by defendants for this delay and denial of benefits.

The calculations offered by claimant in the post-hearing brief cannot be adopted as I found a different rate of compensation. However, claimant offered to make new calculations consistent with a new rate of compensation. I will therefore only make a general award and if the parties desire a specific award, they shall submit their calculations in a timely motion for rehearing.

Temporary Partial Disability:

David seeks temporary partial disability benefits for reduced income due to loss of overtime pay pursuant to doctor's orders during the following periods of time: June

10, 2010-June 25, 2010; July 13, 2010-September 2, 2010; October 5, 2010-December 15, 2010; February 15, 2010; February 17, 2010-April 13, 2011; and June 14, 2011-October 4, 2011. I agree that there is a reduction of earnings due to lost overtime according to his pay records for these periods of time. However, I cannot accept claimant's calculations for these benefits contained in his post-hearing brief as I found a different rate for gross average weekly earnings at the time of injury. There were some small payments by defendants of temporary partial disability benefits in July and August 2010 in the total amount of $253.81. These payments were late and insufficient to cover claimant's entitlement. Again, there was no excuse provided by defendants for this delay and denial of benefits.

Again, only a general award will be given and if the parties desire a more specific award, they shall submit their calculations in a timely motion for rehearing.

Medical Benefits:

According to the hearing report, David seeks reimbursement for his mileage and food expenses incurred while traveling to and from medical appointments. David also seeks lost wages to attend medical appointments in the amount of $130.00. David testified without contradiction that these were related to his treatment for his work injury. Many of these expenses include the expenses of his wife also, but David explained that she was needed to drive. However, the payment of food for his sister-in-law March 25, 2011 was not shown connected to this injury as his wife was along. The actual food expense of $66.18 for this trip should be reduced by a third to $44.12. Also there was an error in Exhibit I-170 as it should be $7.60. David's entitlement for these expenses totals $450.79.

CONCLUSIONS OF LAW

Permanent Disability:

The extent of claimant's entitlement to permanent disability benefits is determined by one of two methods. If it is found that the permanent physical impairment or loss of use is limited to a body member specifically listed in schedules set forth in one of the subsections of Iowa Code section 85.34(2)(a-t), the disability is considered a scheduled member disability and measured functionally. If it is found that the permanent physical impairment or loss of use is to the body as a whole, the disability is unscheduled and measured industrially under Iowa Code subsection 85.34(2)(u). Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983); Simbro v. DeLong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133; 106 N.W.2d 95, 98 (1960).

Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 593; 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a

mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man." Functional impairment is an element to be considered in determining industrial disability, which is the reduction of earning capacity. However, consideration must also be given to the injured worker's medical condition before the injury, immediately after the injury and presently; the situs of the injury, its severity, and the length of healing period; the work experience of the injured worker prior to the injury, after the injury, and potential for rehabilitation; the injured worker's qualifications intellectually, emotionally and physically; the worker's earnings before and after the injury; the willingness of the employer to re-employ the injured worker after the injury; the worker's age, education, and motivation; and, finally the inability because of the injury to engage in employment for which the worker is best fitted, Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 616 (Iowa 1995); McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

The parties agreed in this case that the work injury is a cause of permanent scheduled member disability to the left elbow and not an industrial disability. I found that claimant suffered a 20 percent permanent loss of use of his left arm. Based on such a finding, claimant is entitled to 50 weeks of permanent partial disability benefits under Iowa Code section 85.34(2)(m), which is 20 percent of 250 weeks, the maximum allowable weeks of disability for an injury to an arm in that subsection.

In making an assessment of the loss of use of a scheduled member, the evaluation is not limited to the use of a standardized guide such as the AMA Guides to the Evaluation of Permanent Impairment. Lay testimony and demonstrated difficulties from claimant must be considered in determining the actual loss of use so long as loss of earning capacity is not considered. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420, 421 (Iowa 1994); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936). Notwithstanding suggestions to the contrary in the AMA Guides, this agency has a long history of recognizing that the actual loss of use which is to be compensated is the loss of use of the body member in the activities of daily living, including activities of employment. Pain which limits use, loss of grip strength, fatigability, activity restrictions, and other pertinent factors may all be considered when determining scheduled disability. Bergmann v. Mercy Medical Center, File Nos. 5018613 & 5018614, (App. March 14, 2008); Moss v. United Parcel Service, File No. 881576 (App. September 26, 1994); Greenlee v. Cedar Falls Community Schools, File No. 934910 (App. December 27, 1993); Westcott-Riepma v. K-Products, Inc., File No. 1011173 (Arb. July 19, 1994); Bieghler v. Seneca Corporation, File No. 979887 (Arb. February 8, 1994); Ryland v. Rose's Wood Products, File No. 937842 (Arb. January 13, 1994); Smith v. Winnebago Industries, File No. 824666 (Arb. April 2, 1991).

Weekly Compensation Rate:

Iowa Code section 85.36 states that the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment. If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 at the earnings over the 13-week period immediately preceding the injury. In calculating gross weekly earnings over the previous 13 weeks, weeks should be excluded from the calculation which are not representative of hours typically or customarily worked during a typical or customary full week of work, not whether a particular absence from work was anticipated. When the earnings customarily fluctuate, the earnings used to determine the rate of compensation are those within the customary range of fluctuation. A week when earnings are so low that the employee is eligible for unemployment benefits is presumed to be a week with earnings that are not customary. Daniels v. T & L Cleaning Services, File No. 1283486 (App. August 7, 2003).

I found that since claimant's earnings fluctuated, the only pay period in the 13 weeks prior to the work injury that was unrepresentative was the pay period ending on February 27, 2010. Also it is improper to include into the rate calculation defendants' 401K retirement account contributions. Iowa Code section 85.60(3) excludes from the definition of gross earnings, contributions for welfare benefits. Compensation is based upon 80 percent of an employee's average spendable weekly earnings. Spendable weekly earnings are the amount remaining after payroll taxes are deducted from gross weekly earnings. 401K contributions is a fringe benefit and as such they are not to be included in the calculation of average weekly gross earnings. Stevens v. John Morrell & Co., Vol. I-1 Iowa Indus. Comm'r Dec 236 (1984). Consequently, I found that claimant's gross average weekly earnings on the date of injury to be $763.52, resulting in a weekly compensation rate of $506.42, pursuant to the Workers' Compensation Commissioner's published rate booklet for this injury.

Healing Period Benefits:

Claimant's entitlement to permanent partial disability also entitles him to weekly benefits for healing period under Iowa Code section 85.34 for his absence from work during a recovery period until claimant returns to work; until claimant is medically capable of returning to substantially similar work to the work he was performing at the time of injury; or, until it is indicated that significant improvement from the injury is not anticipated, whichever occurs first.

I found that claimant was timely paid his entitlement to healing period benefits until his surgery. Thereafter the payments were first delayed and then due to the failure to pay interest, insufficient in amount.

Pursuant to Iowa Code section 85.30 and applicable case law including Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 261-262 (Iowa 1996) and Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229, 234-236 (Iowa 1996), the first compensation payment week begins with the first day of entitlement and weekly benefits are to be paid by the end of a compensation payment week composed of seven calendar days. Robbennolt at 235. For example if the first day of the compensation week is a Monday, full payment of the weekly compensation is due the following Monday. Id. If the first day of entitlement is the injury date or is within the statutory grace period, the first compensation payment is due on the 12th day after the injury. Id. Interest is owing if payments are not made in full on the date that they are due. Id. Payments are considered made on the date of delivery to claimant or, if mailed, the date the payment was placed in the United States Mail depository. Id. at 236. Payments are applied first to unpaid interest and next upon the principal amount due. Christenson, 554 N.W.2d at 262.

As stated before, only a general award will be made at this time.

Temporary Partial Disability:

An employee is entitled to appropriate temporary partial disability benefits during those periods in which the employee is temporarily, partially disabled. An employee is temporarily, partially disabled when the employee is not capable medically of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee's disability. Temporary partial benefits are not payable upon termination of temporary disability, healing period, or permanent partial disability simply because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury. Section 85.33(2). Temporary partial disability is defined in Iowa Code section 85.33(2) as the condition of an employee for whom it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee's disability. Pursuant to Iowa Code section 85.33(4), an employer for whom an employee was working at the time of the work injury is obligated to pay temporary partial disability consisting of 66 2/3 percent of the difference between the employee's weekly earnings at the time of injury, computed under Iowa Code section 85.36, and the employee's actual gross weekly income from employment during the period of temporary partial disability.

I found claimant entitled to these weekly benefits for the time periods requested; but again, only a general award will be made awaiting more specific calculations of the parties consistent with this decision.

Penalty:

Claimant seeks additional weekly benefits under Iowa Code section 86.13(4), That provision states that if a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the industrial commissioner shall award extra weekly benefits in an amount not to exceed 50 percent of the amount of benefits that were unreasonably delayed or denied if the employee demonstrates a denial or delay in payment or termination of benefits and the employer has failed to prove a reasonable or probable cause or excuse for the denial, delay or termination of benefits. (Iowa Code section 85.13(4)(b)) A reasonable or probable cause or excuse must satisfy the following requirements:

(1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee;

(2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits;

(3) The employer or insurance carrier contemporaneously conveyed the basis of the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay or termination of benefits.

(Iowa Code section 86.13(4)(c))

I found that defendants failed to provide reasonable cause or excuse for the delay and denial of healing period and temporary partial disability benefits discussed above and certainly did not provide notice of the reason for such delays and denials. A general award will be made again awaiting more specific calculations of the parties in a manner consistent with this decision. I do not find the use of the weekly rate of compensation of $468.62 unreasonable given the considerable fluctuations in claimant's earnings each week. Also, the amount of the penalties shall be only 25 percent of the amounts delayed or denied as there was no showing of any prior violations of law by Winnebago or Sentry Insurance.

Medical Benefits:

Pursuant to Iowa Code section 85.27, claimant is entitled to mileage and food expenses along with lost wages to attend medical appointments. The amount found work related shall be awarded.

ORDER

1. Defendants shall pay to claimant fifty (50) weeks of permanent partial disability benefits at a rate of five hundred six and 42/100 dollars ($506.42) per week from November 30, 2011. Defendants shall receive credit for the permanency benefits paid prior to hearing as set forth in the hearing report.

2. Defendants shall pay to claimant additional healing period benefits from April 14, 2011 through June 14, 2011 at the rate of five hundred six and 42/100 dollars ($506.42) per week consistent with this decision. Defendants shall receive credit for the payments of healing period benefits for this time period, but payments shall be first applied to towards unpaid interest.

3. Defendants shall pay to claimant temporary partial disability benefits based on an average gross weekly rate of compensation of seven hundred sixty-three and 52/100 dollars ($763.52) at the time of injury in a manner consistent with this decision for the following time periods: June 10, 2010 through June 25, 2010; July 13, 2010 through September 2, 2010; October 5, 2010 through December 15, 2010; February 17, 2011 through April 13, 2011; and June 14, 2011 through October 4, 2011.

4. Defendants shall reimburse claimant in the amount of four hundred fifty and 79/100 dollars ($450.79) for his medical treatment related expenses.

5. Defendants shall pay interest on unpaid weekly benefits awarded herein pursuant to Iowa Code section 85.30.

6. Defendants shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33, including reimbursement to claimant for any filing fee paid in this matter.

7. Defendants shall only reimburse claimant in the amount of two thousand four hundred seventy-two and 50/100 dollars ($2,472.50) for the expenses of the disability evaluation of John Kuhnlein, D.O. The remaining fee is unrelated to this claim and not reimbursable under either Iowa Code section 85.39 or as costs.

8. If the parties desire a more specific award of healing period, temporary partial disability and penalty benefits including applicable interest, they shall submit, preferably jointly, calculations of these benefits in a manner consistent with this decision, in a timely motion for rehearing.

Signed and filed this 21st day of August, 2012.

LARRY WALSHIRE
DEPUTY WORKERS'
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