BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARK SMITH, Claimant, vs. BARR-NUNN TRANSPORTATION, Employer, and ACE AMERICAN INSURANCE CO., Insurance Carrier, Defendants.	File No. 20009501.01 ARBITRATION DECISION Head Notes: 1402.40; 1803; 2501; 2505; 2701; 2907; 3002; 4000.2

STATEMENT OF THE CASE

Claimant Mark Edward Smith filed a petition in arbitration seeking worker's compensation benefits against Barr-Nunn Transportation, employer, and Ace American Insurance Company, insurer, for an accepted work injury date of May 4, 2019. The case came before the undersigned for an arbitration hearing on December 18, 2020. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via video means, using CourtCall. Accordingly, this case proceeded to a live video hearing via CourtCall with all parties and the court reporter appearing remotely. The hearing proceeded without significant difficulties.

The parties filed a hearing report prior to the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 7, Claimant's Exhibits 1 through 11, and Defendants' Exhibits A through Q, S and T.

Claimant testified on his own behalf. Patricia "Patty" Nichols also testified on behalf of claimant. Wendy Noring and John Timothy "Tim" Lehman testified on behalf of the defendants. The evidentiary record was left open after the hearing to allow for the parties to submit clarifying evidence with respect to Dr. Taylor's impairment rating. The

parties submitted post-hearing briefs on February 1, 2021, and the case was considered fully submitted on that date.

ISSUES

1. Whether claimant is entitled to alternate medical care and associated temporary disability benefits;

2. Whether claimant has reached maximum medical improvement, and if so, the extent of permanent disability to his left lower extremity;

3. The proper rate for weekly compensation benefits;

4. Whether penalty benefits should be assessed pursuant to Iowa Code section 85.13;

5. Payment of certain medical expenses; and

6. Taxation of costs.

FINDINGS OF FACT

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

Claimant's testimony was consistent as compared to the evidentiary record, and his demeanor at the time of hearing gave the undersigned no reason to doubt his veracity. Claimant is found credible.[1]

At the time of hearing, claimant was a 63-year-old person. (Tr., p. 48) He lives in Palm Harbor, Florida, with his girlfriend, Patricia "Patty" Nichols. (Defendants' Exhibit A, p. 2; Deposition Transcript, p. 3) He completed school through the 9th grade. (Tr., p. 48) Between approximately 1970 and 2009, claimant worked as a musician. (Tr., pp. 48-49) Starting in approximately 1990, claimant also began working as a truck driver. (Tr., p. 49) Claimant's answers to interrogatories list approximately 11 different companies for which he has worked as a truck driver since 1990. (Claimant's Exhibit 5, pp. 33-36) There is a gap in claimant's employment history between 1997 and 1998, when claimant was off work for a period recovering from a traumatic brain injury. (Tr., pp. 49-50)

[1] Defendants submitted claimant's deposition, dated August 31, 2020, into evidence. (Defendants' Exhibit A) There was a great deal of testimony and evidence regarding whether claimant was "coached" during his deposition, as it was conducted via Zoom and there are several instances of an "unidentified speaker" appearing on the transcript. Having considered the testimony and other evidence submitted regarding this issue, I find that the "unidentified speaker" on the deposition transcript was more likely than not an echo or other audio interference, and that claimant was not "coached" during his deposition.

In 2014, claimant began working as a truck driver for Barr-Nunn Transportation. (Cl. Ex. 5, p. 34) While driving for Barr-Nunn, claimant testified that his routes covered a large part of the country between the East Coast and the Midwest. (Tr., pp. 51-52) Typically, his job would begin in the morning with a pre-trip inspection of his vehicle, after which he would either pick up an empty or fully loaded trailer to transport to another location. (Tr., p. 54) When claimant would arrive at a Barr-Nunn terminal, he testified that he would usually wait there to find out where his next load was located. (Tr., p. 52) He described that there was often a driver's lounge at the terminal where employees could sleep, do laundry, bathe, and watch television. When claimant did not have a load right away he would stay at the lounge until the next day when a load was brought in. Sometimes he would be asked to take a tractor for detailing or other work, or to run other errands while on these stays. (Tr., pp. 52-53)

Claimant testified he felt he was in good shape physically prior to the work injury. (Tr., p. 55) He had high blood pressure and some chronic back pain, but nothing that prevented him from doing his job. (Tr., pp. 55-56)

Claimant was injured on May 4, 2019, around 11:00 p.m. (Joint Exhibit 1, p. 2) Claimant testified that he had just arrived at the terminal in Granger, Iowa, and had parked his trailer in the back. (Tr., p. 58) He "bobtailed" back around to the front with his tractor, and parked it in front because he was going to use it the next morning. Claimant's testimony is that as he was climbing out of the tractor, he grabbed the yellow tractor brake, and when he did that his foot slipped from the railing and he fell off the truck. (Tr., pp. 58-59) He landed in the parking lot, and as he was lying there the tractor rolled backwards and rolled over his left foot. (Tr., p. 59) He testified that he immediately felt like his foot was "on fire," and he started yelling. He thought he was going to lose his foot. (Tr., p. 59) He called the night dispatcher on duty to help him, and that person called an ambulance and called Wendy Noring, the workers' compensation compliance manager for Barr-Nunn. (Def. Ex. A, p. 31; Tr., p. 113)

Emergency medical services arrived and transported claimant by ambulance to MercyOne Hospital in Des Moines. (Joint Exhibits 1, 2, 3) By the time claimant arrived at the hospital, it was approximately 12:06 a.m. on May 5, 2019. (Jt. Ex. 3, p. 7) His left foot was numb, purple, and swollen, and there was no palpable pulse. (Jt. Ex. 3, p. 11) There was a concern for compartment syndrome of the foot, so claimant was admitted for evaluation. (Jt. Ex. 3, p. 13) X-rays showed no acute bony trauma or fracture, but there was soft tissue swelling over the dorsum of the foot. (Jt. Ex. 3, pp. 14; 19) He was evaluated by Kamaldeen Aderibigbe, M.D., who found no signs of compartment syndrome of the left foot. (Jt. Ex. 3, p. 21) Dr. Aderibigbe could not rule out ligamentous injury, and had claimant admitted for observation. (Jt. Ex. 3, p. 32) Claimant was discharged from the hospital on May 6, 2019, once his pain was adequately controlled and he was comfortable using crutches. (Jt. Ex. 3, pp. 33-35) He was told to follow up with his primary care provider in Florida in one week, and to remain off work until that time. (Jt. Ex. 3, p. 36)

While claimant was in the hospital in Iowa, Wendy Noring advised him that his claim would not be filed as workers' compensation. (Tr., p. 33; Cl. Ex. 10, p. 79; Dep. Tr., p. 22) Ms. Noring testified at hearing and also provided deposition testimony prior to hearing, a transcript of which is in evidence. (Tr., p. 113; Cl. Ex. 10) Ms. Noring's testimony was consistent and her demeanor at the time of hearing gave the undersigned no reason to doubt her veracity. Ms. Noring has worked for Barr-Nunn for approximately 25 years, and has been involved with handling workers' compensation claims for about 20 of those years. (Tr., pp. 124, 128; Cl. Ex. 10, p. 75; Dep. Tr., p. 7) At her deposition, Ms. Noring testified that on the night of May 4, 2019, she was on-call for emergent safety situations. (Cl. Ex. 10, p. 77; Dep. Tr., p. 15) She received a call from one of the overnight staff in Granger informing her that claimant had run over his foot with his tractor and EMS had been called. (Cl. Ex. 10, p. 77; Dep. Tr., pp. 15-16) The next morning she was advised that he had been admitted to MercyOne Hospital. (Cl. Ex. 10, p. 78; Dep. Tr., p. 20)

The next morning, May 5, 2019, Ms. Noring contacted claimant to discuss the injury, and "let him know that we're not filing it as a work comp claim at this time." (Cl. Ex. 10, p. 79; Dep. Tr., p. 22) She testified that because claimant was "logging off duty," had already parked the truck and done some things in the terminal and gotten back into the truck, she did not view it as a work injury. (Cl. Ex. 10, p. 79; Dep. Tr., p. 23) She stated that the decision to deny the claim was made "almost immediately. It would have been in the first 24 hours because I would have already known at that point that he was not under a load, he was not logging in as on duty. Everything pointed to it was his personal time." (Cl. Ex. 10, p. 79; Dep. Tr., p. 24) No additional investigation was conducted regarding compensability of the claim. (Cl. Ex. 10, p. 81; Dep. Tr., pp. 29-32) At hearing, Ms. Noring testified that claimant did not question the denial, so it was not investigated any further. (Tr., p. 129)

Claimant testified that he knew he had sustained a work injury, but was worried that he would be fired because it was "his fault" that he was injured. (Tr., pp. 61-62) As such, he continued with treatment using his personal health insurance. After he was discharged from the hospital in Iowa, he returned to his home in Florida. He was seen at Atlantis Clinic in Oldsmar, Florida, on May 13, 2019. (Jt. Ex. 4, pp. 37-38) The diagnoses were "foot contusion" and "foot cellulitis." (Jt. Ex. 4, p. 37) X-rays taken that day were negative. (Jt. Ex. 4, p. 38) He returned to the clinic on May 16, 2019, at which time FMLA paperwork was completed. (Jt. Ex. 4, pp. 39-45) The FMLA paperwork indicated that claimant was unable to ambulate on the left foot or drive. (Jt. Ex. 4, p. 43) The estimated ending date for the period of incapacity was May 27, 2019. (Jt. Ex. 4, p. 44)

Claimant testified that he asked the doctor to send him back to work, as he had no money coming in and had bills to pay. (Tr., p. 63) Claimant did return to his regular job on May 27, 2019. He testified that his pain level in his foot was at an 8 out of 10 when he returned to work, and he consistently experienced pain levels between 7 and 10 while working. (Tr., pp. 66-69) He took tramadol that was prescribed by his physician, and over-the-counter Advil. (Tr., pp. 63-64) At some point, he started to use

CBD oil, as he had heard that it might help with his pain. (Tr., p. 65) He was further under the impression that the CBD oil would not affect the results of a random drug test or otherwise jeopardize his employment. (Tr., p. 64) Unfortunately, claimant was incorrect, and was terminated from employment effective August 12, 2019, after testing positive for marijuana on a random drug test. (Def. Ex. H, p. 25) It is claimant's understanding that the CBD oil caused the positive test result. (Tr., pp. 65-66)

For a time following his termination from Barr-Nunn, claimant worked as a driver for Lyft. (Tr., p. 74) At his deposition on August 31, 2020, claimant had not taken a Lyft customer since early July. (Def. Ex. A, p. 2; Dep. Tr., p. 4) At hearing, claimant testified that he was again driving for Lyft, and that he generally does not work for more than three hours per day due to his foot pain. (Tr., p. 74) He stated that he usually starts early in the morning, and after three hours he goes home for a break. If his foot is doing good, he may go back out for a little while. (Tr., p. 74) In May of 2020, claimant applied for a job as a greeter at Walmart. (Tr., pp. 104-105) While he recognizes this job would have required standing on his feet, claimant testified that he was going to try it, because "I wouldn't know until I tried it." (Tr., p. 105) Ultimately, claimant did not get the job at Walmart. (Def. Ex. A, p. 13; Depo. Tr., p. 47)

After his termination from Barr-Nunn, claimant no longer had health insurance. (Tr., p. 76) He returned to Atlantis Clinic on August 14, 2019, for a refill of his tramadol. (Jt. Ex. 4, p. 46) The record makes no mention of foot pain, and indicates the tramadol is related to claimant's chronic low back pain. (Jt. Ex. 4, p. 46) The next time claimant saw any medical provider was December 23, 2019, at which time he saw Marcia Gainer, APRN, at Community Health Center. (See Def. Ex. E) Again, the medical record makes no mention of foot pain. (Def. Ex. E, pp. 15-21)

Claimant filed a petition for workers' compensation benefits in Florida in September of 2019. (Cl. Ex. 10, p. 81; Dep. Tr., p. 30; Ex. 3, p. 16) That petition indicated that the injury occurred in Florida and contained the incorrect date of injury, so it was denied. (Cl. Ex. 10, p. 81; Dep. Tr., pp. 30-31) Claimant then filed a petition in Iowa on November 20, 2019, which indicated the injury occurred in Dallas County on May 5, 2019. (Cl. Ex. 10, p. 81; Dep. Tr., p. 31) On December 17, 2019, defense counsel wrote to claimant's attorney and advised that the claim would be denied based on the incorrect date, as well as "inconsistencies that exist between representations in the Florida petition, the Iowa petition, and the Atlantis Clinic medical note." (Cl. Ex. 3, p. 16)

On January 20, 2020, claimant amended his petition to change the date of injury to May 4, 2019. (See Claimant's Amendment to Petition) Based on the amended petition and "further explanation provided to the employer," defendant accepted compensability of the claim on January 31, 2020. (Cl. Ex. 3, p. 19)

Ms. Noring testified at her deposition that upon receipt of the Florida petition, she did have an understanding of what she thought it was referring to, despite the incorrect date and state. (Cl. Ex. 10, p. 81; Dep. Tr., p. 31) Again, after receiving the Iowa

petition, Ms. Noring testified that she had an awareness of what incident was being referenced in the petition. (Cl. Ex. 10, p. 81; Dep. Tr., pp. 31-32) No additional investigation was conducted by the employer after receiving the petitions, but defense counsel was contacted. (Cl. Ex. 10, pp. 81-82; Dep. Tr., pp. 32-33)

After compensability was accepted, claimant's attorney made a formal request for additional medical care on February 11, 2020. (Cl. Ex. 3, p. 21) Claimant then returned to Marcia Gainer, APRN, on February 13, 2020. (Jt. Ex. 5, p. 47) Defendants argue that this visit was not authorized. Claimant reported that he continued to experience swelling and pain in the left foot, especially the great toe. APRN Gainer recommended a referral to podiatry, as well as x-rays and an MRI. (Jt. Ex. 5, p. 51)

Claimant was then sent to the authorized treating provider, Brandon Taylor, M.D., who he saw for the first time on April 2, 2020. (Jt. Ex. 6, p. 59) At that time, claimant reported pain up to level 10 of 10 on an intermittent basis since the injury occurred. He reported pain increased with weight bearing. On physical examination, Dr. Taylor noted an antalgic gait. Claimant had tenderness around the left midfoot and the 2nd and 3rd TMT joints, as well as pain with motion. Dr. Taylor noted swelling in this part of the foot. Claimant also demonstrated decreased range of motion in his left ankle compared to the right. (Jt. Ex. 6, p. 59)

Dr. Taylor obtained x-rays, which did not show any acute fracture, but did show a possible old fracture of the 3rd metatarsal. (Jt. Ex. 6, p. 60) Dr. Taylor found no displacement of the Lisfranc joint on weightbearing views. Dr. Taylor ordered an MRI in order to look at the soft tissues of the midfoot. He noted that claimant may have a chronic Lisfranc injury with scar tissue in the area. He also ordered a nerve conduction (NCV) study and EMG, as he suspected claimant may have had a crushing injury of the deep peroneal nerve and possibly the superficial peroneal nerve. He prescribed Neurontin as well, to help with claimant's nerve pain and burning in his foot. (Jt. Ex. 6, p. 60)

Claimant had an MRI of the left foot on April 9, 2020. (Jt. Ex. 7, p. 68) The MRI showed mild degenerative changes in the left foot. His nerve conduction study and EMG took place on April 10, 2020. (Jt. Ex. 7, pp. 69-70) The EMG/NCV was normal. He followed up with Dr. Taylor on April 22, 2020, to discuss the results. (Jt. Ex. 6, p. 61) There is no dictation in evidence from that date, but the handwritten notes indicate that Dr. Taylor reviewed the studies with claimant, and recommended that he give himself more time to heal, and continue with the medication to help with the nerve pain. (Jt. Ex. 6, p. 61) Dr. Taylor also indicated that claimant reached maximum medical improvement (MMI) on that date, but would need to continue the Neurontin until symptoms subside. (Jt. Ex. 6, p. 63) He was not assigned any permanent work restrictions. (Jt. Ex. 6, p. 63)

On June 24, 2020, Dr. Taylor issued an additional office note. (Def. Ex. F, p. 22) He noted that claimant did have a crush injury to his foot in May of 2019, and described numbness over his great toe at his last visit. The MRI showed mild degenerative changes around the 1st and 3rd TMT joints. The nerve conduction study did not show

evidence of compressive neuropathy. However, claimant did show improvement on Neurontin, which may be related to a nerve injury that would not be seen on the NCV or EMG if mild, and also would not show on the MRI. Dr. Taylor clarified that the prescription for Neurontin is for this problem and not any pre-existing problem. (Def. Ex. F, p. 22)

On July 15, 2020, Dr. Taylor issued a note for further clarification of claimant's injury. (Jt. Ex. 6, p. 64) He indicated that it is possible that claimant reached MMI on May 27, 2019, when he was released to return to work. However, as Dr. Taylor did not see claimant at that point, he could not confirm MMI, "but it is likely that is correct." Again, with respect to a return to driving, Dr. Taylor noted that as he did not see claimant in May of 2019, the earliest he can opine that claimant would have been able to drive would have been his last visit on April 22, 2020. Dr. Taylor then stated that "it is reasonable for him to have temporary work restriction based on the character of his injury." He did not provide any additional information regarding what type of restriction or the time period involved. With respect to permanency, he provided a 1 percent rating related to "musculoskeletal system based on the AMA Guidelines." Finally, he noted that even though a nerve conduction study may result in normal findings, at times there can still be up to 20 to 25 percent nerve damage. As such, claimant may continue to improve with Neurontin over the course of 18 to 24 months after the injury. (Jt. Ex. 6, p. 64) On July 29, 2020, Dr. Taylor issued an addendum to this note, changing the language of his impairment rating to 1 percent related to "musculoskeletal system lower extremity based on AMA Guidelines 5th Edition." (Def. Ex. F, p. 23)

Claimant returned to Dr. Taylor on September 16, 2020. (Jt. Ex. 6, p. 65) He continued to report tingling and numbness in his toes, as well as burning and throbbing pain. He had discontinued gabapentin[2] at that point, but continued to take tramadol. He had also obtained a medical marijuana card and was using that at night. Dr. Taylor's note indicated that he discussed nerve regeneration with claimant and explained that the maximum use with Neurontin is 2 years, after which any remaining nerve damage is likely permanent. He reportedly told claimant that he should feel some type of relief over the next 6 months, and continued him on Neurontin. (Jt. Ex. 6, p. 65)

Claimant's attorney arranged for claimant to have an independent medical evaluation with Mark Bornstein, D.P.M., on October 1, 2020. (Cl. Ex. 1) Dr. Bornstein notes in his report that he reviewed medical records from Atlantis Medical Clinic, FMLA Paperwork, Barr-Nunn baseline performance screen, Granger Fire and EMS Units, Mercy Trauma Services, and Dr. Brandon Taylor's medical records and DWC-25 reports. (Cl. Ex. 1, p. 2) On physical examination, Dr. Bornstein noted a "severely painful" left lower extremity with pain on ambulation. He noted a limping antalgic gait pattern, as well as moderate pain and guarding to range of motion of the left forefoot. Dr. Bornstein found a palpable bone enlargement on the dorsal left Lisfranc's area with radiating pain proximally and distally on tapping the cutaneous and deep peroneal nerves running through that area. He also found palpable painful masses in the 2nd and

[2] Gabapentin is the generic form of Neurontin.

3rd interspaces, consistent with traumatic neuromas. He noted palpable pain in the fibular sesamoid area with plantar swelling as well. Finally, Dr. Bornstein had x-rays taken in his office, and indicated they showed post-traumatic Lisfranc's joint damage with arthritis, as well as a stress fracture in the 3rd metatarsal shaft. (Cl. Ex. 1, p. 2)

Dr. Bornstein's diagnoses were 1) Traumatic Lisfranc's injury with resultant boney overgrowth and traumatic arthritis/arthrosis left mid-foot; 2) Traumatic nerve/crush injury with nerve damage to the deep peroneal and cutaneous nerves left mid and forefoot; 3) Traumatic neuromas 2nd and 3rd interspace left foot; 4) Traumatic stress fracture 3rd metatarsal left foot; and 5) Traumatic fibular sesamoid injury left foot. (Cl. Ex. 1, p. 2)

In response to questions from claimant's attorney, Dr. Bornstein further opined that claimant had not yet reached MMI, and no rating is applicable if he receives medically necessary additional care. (Cl. Ex. 1, p. 3) However, in the event claimant does not receive additional care, Dr. Bornstein provided a total combined impairment rating of 21 percent of the body as a whole, based on the 5th Edition of the AMA Guides to the Evaluation of Permanent Impairment. This rating is based on impairment of toes 2, 3, and 4, which is equal to 2 percent of the whole person; moderate impairment for traumatic arthritis of the left mid-foot, which is equal to 21 percent of the foot, 10 percent of the lower extremity, and converts to 7 percent of the whole person; severe decreased motion of the hindfoot, which is 7 percent of the foot, 5 percent of the lower extremity, and 2 percent of the whole person; and traumatic nerve damage and neuromas, which combined added up to 24 percent of the lower extremity, which is 10 percent of the whole person.[3]

Dr. Bornstein recommended that claimant continue to receive treatment with a board certified podiatrist and certified pain management specialist. He opined that claimant should be "in a no work status" since the date of the injury and into the foreseeable future. He noted that permanent restrictions without additional care would be no stand or walk continuous for more than 30 minutes and then a 30-minute elevation break; no lift or carry greater than 15 pounds; no stoop, bend, climb stairs or ladders and no pushing or pulling. He acknowledged that claimant was able to work following his injury, but stated that his conditions have "significantly worsened" over time, and any type of work now will continue to worsen his conditions. (Cl. Ex. 1, p. 3)

With respect to future treatment, Dr. Bornstein indicated that treatment should include regular office visits every month; oral and topical anti-inflammatory and pain medications, and custom molded orthotics. (Cl. Ex. 1, p. 4) He further recommended "extensive gait retraining and physical therapy." Finally, he stated that more likely than not, claimant will need to have surgical repair of the traumatic damage to his foot,

[3] Claimant's attorney contends that due to a typographical error in Dr. Bornstein's report, the portion of the rating related to traumatic arthritis of the mid-foot should actually be 15 percent of the lower extremity. Claimant's attorney also converts Dr. Bornstein's whole body rating to a combined 41 percent impairment of the left lower extremity. (Claimant's brief, p. 11) The undersigned is unable to determine how counsel reached this number, even if the alleged typographical error is considered.

including surgical fusion and removal of the bone enlargement and arthritis in the left midfoot (Lisfranc's area) as well as removal of the traumatic neuromas and extensive release of the nerve entrapments of the deep peroneal nerve and cutaneous nerves of the left foot. He will then have postoperative needs and physical therapy as well. (Cl. Ex. 1, p. 4)

Defendants sent Dr. Bornstein's report to Dr. Taylor in order to seek his opinions. Dr. Taylor reviewed the report and provided his response on December 9, 2020. (Def. Ex. Q) Dr. Taylor first noted that x-rays taken in his office did not reveal any significant arthritis, and the MRI did not show any signs of fracture in claimant's foot. (Def. Ex. Q, p. 74) He noted that while the MRI showed some mild degenerative changes to the MTP joints, he did not find any objective data to indicate claimant would need surgical fusion of his midfoot. He further did not find any signs of a large neuroma that would need surgical treatment. Dr. Taylor noted that he looked for stress fractures, and did not find any objective findings consistent with stress fracture on x-ray or throughout claimant's workup. The nerve conduction study was normal. Dr. Taylor again reiterated that some nerve conduction studies may show a false-normal test, but there is no objective data to recommend any nerve release surgery. He noted that claimant showed some subjective improvement on Neurontin and tramadol, which is why he recommended claimant continue the medication for 12 to 18 months to further stabilize his condition. (Def. Ex. Q, p. 74)

Dr. Taylor further explained that one of the "indicators" during claimant's treatment was that he was able to return to work following the injury. Dr. Taylor stated that if claimant had significant instability due to ligament damage, he would not expect him to have been able to return to work. Since instability was ruled out, he then looked for either a stress fracture or early post-traumatic arthritis. He did not find any significant arthritis or objective criteria to diagnose a fracture during his treatment. (Def. Ex. Q, p. 74) He did not find any neuromas or fractures on physical examination or the MRI. (Def. Ex. Q, p. 75) He did not see any impairment in toes 2, 3, and 4, as most of claimant's objective problems were through the midfoot. (Def. Ex. Q, p. 75)

Dr. Taylor then reiterated his 1 percent whole body impairment rating, however it appears he used the 6th Edition of the AMA Guides. (Def. Ex. Q, p. 75) In responding to a letter authored by defendants' attorney dated January 20, 2021, Dr. Taylor provided a 1 percent impairment to the left lower extremity pursuant to the 5th Edition of the AMA Guides. (Def. Ex. T, p. 83)

In reviewing the entirety of the medical evidence and considering the reports of Dr. Bornstein and Dr. Taylor, I find some flaws in both impairment ratings. It is difficult as both physicians practice in the state of Florida, which uses the 6th Edition of the AMA Guides for impairment ratings. It is clear that neither doctor was familiar with the 5th Edition, and both required assistance and prompting from counsel in order to provide a 5th Edition rating. (See Def. Ex. S and T; Cl. Ex. 11) However, the problems with Dr. Bornstein's report are more difficult to overcome. First, in his list of medical records reviewed, he makes no mention of records from Diagnostic Clinic Largo, where claimant

had both an MRI and an EMG/NCV. The fact that he did not review these studies prior to making his recommendations for medical treatment, including surgery, is highly problematic. Additionally, his diagnoses are quite different from those of Dr. Taylor, who examined claimant on several occasions and also reviewed the MRI and EMG/NCV. The same is true of his impairment rating, which is difficult to follow, and seems to contain at least one typographical error. Finally, it cannot be overlooked that Dr. Bornstein only examined claimant one time, for the purposes of litigation, while Dr. Taylor provided ongoing treatment as claimant's authorized treating physician.

Additionally, Dr. Taylor reviewed Dr. Bornstein's report, and provided explanation as to why he disagrees with Dr. Bornstein's diagnoses and treatment recommendations. (Def. Ex. Q) His opinions are based on his examinations and treatment of claimant's condition, and his review of the MRI and EMG/NCV studies that were conducted. Based on all of these factors, I find Dr. Taylor's opinions regarding claimant's diagnoses and future medical care more convincing. I also find Dr. Taylor's opinion that claimant has reached maximum medical improvement more convincing. While claimant may continue to experience some pain relief while taking Neurontin, he has reached MMI. The parties stipulated that the commencement date for permanent partial disability, if any is awarded, is July 15, 2020.

The flaw with Dr. Taylor's impairment rating is that it does not provide any information as to how he reached the rating using the 5th Edition of the AMA Guides. (Def. Ex. T, p. 83) Claimant argues that Dr. Taylor's rating cannot be trusted, as he simply changed his 1 percent rating under the 6th Edition to a 1 percent rating under the 5th Edition. I note, however, that his 6th Edition rating is for 1 percent of the body as a whole, while his 5th Edition rating is for 1 percent of the lower extremity. (Compare Def. Ex. Q, p. 75 with Def. Ex. T, p. 83) There is no evidence in the record that leads me to conclude Dr. Taylor is providing a false 5th Edition rating. While it is somewhat problematic that Dr. Taylor did not provide any basis for his 1 percent rating, his overall opinions are more reliable than those of Dr. Bornstein, as noted above. Again, this case is difficult as I am left with two flawed impairment ratings. However, Iowa law requires that the extent of permanent impairment be determined solely by utilizing the 5th Edition of the AMA Guides. See Iowa Code section 85.34(2)(x); 876 IAC 2.4. For the reasons stated above, I find Dr. Taylor's 1 percent lower extremity rating to be the most convincing. Therefore, claimant is entitled to permanent partial disability benefits equal to 1 percent of the lower extremity, which is 2.2 weeks of benefits.

Claimant is requesting alternate medical care. He testified that currently, the pain in his foot is "livable" during the day, due to the medication Dr. Taylor has prescribed. However, it gets worse the more he walks on it. (Tr., p. 81) The medications provide some relief, but the pain returns when they wear off. (Tr., pp. 81-82) Claimant further testified that he would be comfortable with transferring his care to Dr. Bornstein, as he believes he needs additional treatment. (Tr., p. 84) He is willing to do anything the doctor recommends to stop the pain. (Tr., p. 84) On a typical day, his pain is at a level 6 of 10. (Tr., p. 92) With activities, it can get up to a 9 of 10. (Tr., p. 92)

There is no indication defendants have withdrawn authorization for claimant to continue treatment with Dr. Taylor. Claimant has not proven that the defendants are failing to authorize reasonable care at this time. Dr. Taylor is providing care that is reasonably suited to treat claimant's injury. As such, claimant is not entitled to alternate care at this time.

There is also a dispute regarding the proper weekly benefit rate. Claimant has calculated the rate as $906.00, based on an average weekly wage of $1,574.63. (Cl. Ex. 7, p. 41) Defendants believe the proper rate to be $847.22, based on an average weekly wage of $1,434.57. (Def. Ex. M, p. 53) The difference in the two rate calculations stems primarily from week ending April 28, 2019, in which claimant earned $2,157.90; week ending March 31, 2019, in which claimant earned $2,285.36; and week ending March 10, 2019, in which claimant earned $2,213.77. Claimant included these three weeks in his rate calculation, while only excluding three weeks he considered to be too low. Defendants argue that these weeks do not represent claimant's "customary earnings" because they are too high. Therefore, in addition to the three low weeks, defendants seek to also exclude these three "high" weeks from the rate calculation.

In reviewing the wage records submitted into evidence and the two rate calculations, I find claimant's calculation to be a more accurate representation of his customary earnings. There is no dispute regarding the three low weeks that were excluded from the calculations, primarily because those weeks are exceptionally low. However, the three weeks defendants seek to exclude as being too high are not unusually high when compared to the remainder of the earnings history in evidence. Therefore, I accept claimant's rate calculation of $906.00 as the proper weekly benefit rate.

CONCLUSIONS OF LAW

The first issue for consideration is whether claimant is entitled to alternate medical care with an associated running award of temporary total disability benefits.

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

By challenging the employer's choice of treatment - and seeking alternate care -

claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P. 14(f)(5); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983). In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.
>
> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. See Iowa Code § 85.27(4). Thus, by challenging the employer's choice of treatment and seeking alternate care, claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P. 6.904(3)(e) ; Long, 528 N.W.2d at 124.

Additionally, the commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" than other available care requested by the employee. Long; 528 N.W.2d at 124; Pirelli-Armstrong Tire Co. v. Reynolds; 562 N.W.2d 433, 437 (Iowa 1997).

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123. In this case, I found that defendants have not withdrawn authorization of Dr. Taylor as the treating physician. Dr. Taylor is providing reasonable care, which claimant testified has helped his condition. Claimant has not met his burden to provide that the authorized care is unreasonable. As such, he is not entitled to an order of alternate medical care at this time.

As noted above, I also accepted Dr. Taylor's opinion that claimant has reached maximum medical improvement with respect to his foot injury. As such, he is not entitled to a running award of temporary benefits.

The next issue to determine is the extent of claimant's permanent partial disability. The parties have stipulated that the disability is a scheduled member disability to the left lower extremity.

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

Iowa Code section 85.34(x) states:

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

Iowa Code section 85.34 (x).

This agency has adopted The Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association for determining the extent of loss or percentage of impairment for permanent partial disabilities. See 876 IAC 2.4.

Claimant argues that he is entitled to an award equal to 41 percent loss of the lower extremity based on Dr. Bornstein's impairment rating. For the reasons stated above, I found both impairment ratings to have some flaws. Ultimately, however, I did not find Dr. Bornstein's rating to be credible. Rather, I found Dr. Taylor's 1 percent lower extremity rating to be the most convincing. Therefore, claimant is entitled to permanent partial disability benefits equal to 1 percent of the lower extremity, which is 2.2 weeks of benefits.

The next issue to be decided is the proper weekly benefit rate. Both parties calculate their respective rates utilizing Iowa Code section 85.36(6) as the applicable code section. Section 85.36(6) states, "[i]f the employee was absent from employment for reasons personal to the employee during part of the thirteen calendar weeks preceding the injury, the employee's weekly earnings shall be the amount the employee would have earned had the employee worked when work was available to other employees of the employer in a similar occupation. A week which does not fairly reflect

the employee's customary earnings shall be replaced by the closest previous week with earnings that fairly represent the employee's customary earnings."

The Iowa Supreme Court provided an in-depth analysis of what qualifies as "customary earnings" in the case of Jacobson Transp. Co. v. Harris, 778 N.W.2d 192 (Iowa 2010). Ascertainment of an employee's customary earnings does not turn on a determination of what earnings are guaranteed or fixed; rather, it asks simply what earnings are usual or typical for that employee [...] An employee need not justify the weekly variance with a particular explanation. The amount of the variance alone, by the magnitude of its departure from the usual earnings of the employee, may suffice to justify the exclusion of a week's earnings from the weekly rate calculation. (Id.).

In Jacobson, the commissioner averaged the earnings of the claimant truck driver for thirty weeks prior to the injury. The commissioner then focused on the thirteen weeks of earnings prior to the injury, throwing out three weeks in which earnings were markedly less than average. The Supreme Court of Iowa rejected the employer's argument that it was irrational to exclude the lowest weeks without also excluding the highest weeks. In that particular case, the high weeks were not unusually high when compared to the rest of the claimant's earning history.

Likewise, I found that in this case, the three "high" weeks that defendants wish to exclude from the rate calculation are not unusually high when compared to the rest of claimant's wage records in evidence. Therefore, I find that the pay periods ending April 28, 2019, March 31, 2019, and March 10, 2019, are representative of claimant's customary earnings. I find that claimant's rate calculation is reasonable and fairly reflects his earnings immediately prior to the date of injury. Therefore, I find the applicable weekly rate for benefits in this case is $906.00.

The next issue to be addressed is claimant's claim for penalty benefits. Claimant argues that he is entitled to penalty benefits due to defendants' failure to timely pay healing period benefits. Iowa Code section 86.13 governs compensation payments. Under the statute's plain language, if there is a delay in payment absent "a reasonable or probable cause or excuse," the employee is entitled to penalty benefits, of up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse. Iowa Code § 86.13(4); see also Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 260 (Iowa 1996) (citing earlier version of the statute). "The application of the penalty provision does not turn on the length of the delay in making the correct compensation payment." Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229, 236 (Iowa 1996). If a delay occurs without a reasonable excuse, the commissioner is required to award penalty benefits in some amount to the employee. Id.

The statute requires the employer or insurance company to conduct a "reasonable investigation and evaluation" into whether benefits are owed to the employee, the results of the investigation and evaluation must be the "actual basis" relied on by the employer or insurance company to deny, delay, or terminate benefits, and the employer or insurance company must contemporaneously convey the basis for

the denial, delay, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits. Iowa Code § 86.13(4). An employer may establish a "reasonable cause or excuse" if "the delay was necessary for the insurer to investigate the claim," or if "the employer had a reasonable basis to contest the employee's entitlement to benefits." Christensen, 554 N.W.2d at 260. "A 'reasonable basis' for denial of the claim exists if the claim is 'fairly debatable.'" Burton v. Hilltop Care Ctr., 813 N.W.2d 250, 267 (Iowa 2012). "Whether a claim is 'fairly debatable' can generally be determined by the court as a matter of law." Id. The issue is whether the employer had a reasonable basis to believe no benefits were owed to the claimant. Id. "If there was no reasonable basis for the employer to have denied the employee's benefits, then the court must 'determine if the defendant knew, or should have known, that the basis for denying the employee's claim was unreasonable.'" Id.

Pursuant to Iowa Code section 86.13(4)(c), the employer bears the burden to establish that the reasonable cause or excuse for the delay in benefits was preceded by a reasonable investigation, that the results of that investigation are the actual basis for denial, and that the employer contemporaneously conveyed the basis to the claimant at the time of the delay or denial.

There is no dispute that there was a delay in payment of healing period benefits. Defendants argue that a number of factors contributed to that delay, including the "reasonable investigation" the employer conducted in order to determine the facts surrounding the May 4, 2019 incident, as well as the "confusion" created by the claim initially filed in Florida, and then filed in Iowa with the incorrect date of injury. These factors do not amount to a reasonable cause or excuse for the delay in benefits.

First, the employer's "investigation" of the facts surrounding the incident lasted less than 24-hours. Ms. Noring testified that the decision to deny the claim was made "almost immediately. It would have been in the first 24 hours because I would have already known at that point that he was not under a load, he was not logging in as on duty. Everything pointed to it was his personal time." (Cl. Ex. 10, p. 79; Dep. Tr., p. 24) No additional investigation was conducted regarding compensability, or whether legally, there was a reasonable basis to deny the claim. (Cl. Ex. 10, p. 81; Dep. Tr., pp. 29-32) At hearing, Ms. Noring testified that claimant did not question the denial, so it was not investigated any further at that time. (Tr., p. 129) Additionally, upon receipt of the petitions, no additional investigation was conducted regarding the facts of the incident. (Cl. Ex. 10, p. 81; Dep. Tr., p. 32) Defendants claim the petitions were initially denied because of being filed with the incorrect date, but Ms. Noring testified that she had an understanding of what she thought each petition was referring to. (Cl. Ex. 10, p. 81; Dep. Tr., pp. 31-32) The defendants' initial investigation was not reasonable, and no renewed investigation was made upon receipt of the petitions. It is doubtful that the "confusion" regarding the petitions was the actual basis for the ongoing denial, as Ms. Noring admitted she was not confused. The claim was ultimately accepted as compensable on January 31, 2020, almost 9 months after the injury occurred. Penalty benefits are appropriate in this case.

When considering an award of penalty benefits, the commissioner considers "the length of the delay, the number of the delays, the information available to the employer regarding the employee's injuries and wages, and the prior penalties imposed against the employer under section 86.13." Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 336 (Iowa 2008). The purposes of the statute are to punish the employer and insurance company and to deter employers and insurance companies from delaying payments. Robbennolt, 555 N.W.2d at 237. In this regard, the Commissioner is given discretion to determine the amount of the penalty imposed, with a maximum penalty of 50 percent of the amount of the delayed, or denied, benefits. Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 261 (Iowa 1996). Given the lack of investigation and the length of the delay, a 50 percent penalty for the delay in payment of healing period benefits is appropriate.

The parties stipulated that claimant was entitled to healing period benefits from May 4, 2019 to May 27, 2019, which is 3.286 weeks. I found the proper weekly benefit rate to be $906.00, meaning claimant was entitled to $2,977.12 in total healing period benefits. Therefore, defendants shall pay claimant penalty benefits in the amount of $1,488.56 for the unreasonable delay in payment of healing period benefits.

The next issue to determine is payment of certain medical expenses submitted by claimant. (See Cl. Ex. 8) Claimant is not entitled to reimbursement for medical bills unless claimant shows that they were paid from his own funds. See Caylor v. Employers Mutual Casualty Co., 337 N.W.2d 890 (Iowa Ct. App. 1983). Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Where medical payments are made from a plan to which the employer did not contribute, the claimant is entitled to a direct payment. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 867-68 (Iowa 2008) ("We therefore hold that the commissioner did not err in ordering direct payment to the claimant for past medical expenses paid through insurance coverage obtained by the claimant independent of any employer contribution.") See also: Carl A. Nelson & Co. v. Sloan, (Iowa App. 2015) 873 N.W.2d 552 (Iowa App. 2015) (Table) 2015 WL 7574232 15-0323. Claimant has the burden of proving that the fees charged for such services are reasonable. Anderson v. High Rise Construction Specialists, Inc., File No. 850096 (App. July 31, 1990).

It appears from defendants' brief that the only claimed medical expenses they dispute are the costs related to claimant's treatment at Community Health Centers of Pinellas (Cl. Ex. 8, pp. 58-59), and the charges from PharmacyOne (Cl. Ex. 8, pp. 65-66) With respect to the charges from Community Health Centers, claimant has not proven that his treatment there on August 14, 2019 or December 23, 2019 was related to his work injury. There is no mention in the records from either date of claimant's foot pain. As such, defendants are not responsible for any charges associated with either of those visits.

Claimant was again seen at Community Health Centers on February 13, 2020, this time for his foot. However, that appointment was not authorized, and defendants

had accepted compensability of his injury at that time. Once an employer acknowledges that the injured employee is seeking medical care for an injury compensable under the workers' compensation statute, Iowa Code section 85.27(4) provides that an "employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care." Iowa Code § 85.27(4); Brewer-Strong v. HNI Corp., 913 N.W.2d 235, 247 (Iowa 2018). Under Iowa law, there are essentially three situations in which employees may receive alternate medical care paid for by the employer. First, employees may choose their own medical care at the employer's expense during an emergency in which the employer "cannot be reached immediately." Id.; see also Bell Bros. Heating and Air Cond. v. Gwinn, 779 N.W.2d 193, 203-04 (Iowa 2010). Second, an employee may receive alternate medical care at the employer's expense when the employee and employer consent to such an agreement. Id. Third, "the workers' compensation commissioner may order alternative care paid by the employer following a prompt, informal hearing when the employee is dissatisfied with the care furnished by the employer and establishes the care furnished by the employer was unreasonable." Id.

Outside of these situations, the employer retains the right to choose the employee's medical care. Brewer-Strong, 913 N.W.2d at 248. However, the employer's statutory right to choose medical care for the employee's compensable injuries does not prohibit the employee from seeking his or her own medical care, at his or her own expense, when the employer denies compensability for the injury or the employee "abandons the protections of section 85.27 or otherwise obtains his or her own medical care independent of the statutory scheme." Id., citing Bell Bros., 779 N.W.2d at 204. Thus, in Bell Bros., the Iowa Supreme Court held an employer's duty to furnish reasonable medical care includes those claims for care by the employee that are unauthorized if the employee can prove "by a preponderance of the evidence that such care was reasonable and beneficial" under the totality of the circumstances. Id., citing Bell Bros., 779 N.W.2d at 206. "[U]nauthorized medical care is beneficial if it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id. This burden of proof honors the employer's statutory right to choose the injured employee's medical care under Iowa Code section 85.27(4), yet provides the employee with reimbursement for unauthorized medical care when he or she can show by a preponderance of the evidence that the care was reasonable and beneficial. Id. It also aligns with the balance Iowa Code section 85.27(4) seeks to maintain between the employer's right to control medical care and the medical needs of the employee. Id., see also Ramirez-Trujillo v. Quality Egg, 878 N.W.2d 759, 770–71 (Iowa 2016).

In this case, the employer had not yet authorized any care, despite accepting liability and despite claimant's request for care. As such, it was reasonable for him to seek his own medical care at Community Health Center. The care was more beneficial than the "employer provided care" at that point, because the employer was not yet providing any care. It was not until April 2, 2020 that claimant was finally provided with authorized treatment for his injury. As such, I find defendants are responsible for the

charges associated with claimant's February 13, 2020 visit to Community Health Centers of Pinellas.

With respect to the charges from PharmacyOne, claimant has not proven that any of the prescriptions listed are related to his work injury. The records from PharmacyOne are nearly illegible, but the charges appear to be related to medications for claimant's hypertension, low back pain, and depression. (Cl. Ex. 8, pp. 65-66) The only medication claimant has been prescribed for his compensable foot injury is Neurontin, which does not appear on PharmacyOne's statement. As such, defendants are not liable for any of the PharmacyOne expenses.

The remainder of the expenses detailed in claimant's exhibit 8 are related to the work injury. Defendants are responsible to reimburse claimant for the amounts he personally paid for those bills, and to pay any outstanding charges directly to the providers.

The final issue is whether claimant is entitled to costs. Assessment of costs is a discretionary function of this agency. Iowa Code § 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. Claimant has provided a summary of costs in claimant's exhibit 9.[4] I find that claimant was generally successful in his claim, and is entitled to costs. Defendants shall reimburse claimant's costs, which include $91.00 for claimant's deposition, $6.80 for service charges, and $100.00 for the filing fee. Claimant also seeks reimbursement for Ms. Noring's deposition, but was unable to provide an invoice at the time of hearing. As such, I decline to award that cost.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant two point two (2.2) weeks of permanent partial disability benefits, commencing July 15, 2020, at the rate of nine hundred six and 00/100 dollars ($906.00).

Defendants shall be entitled to a credit for all permanent partial disability benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (Appeal April 2018).

[4] Prior to hearing, defendants agreed to pay for Dr. Bornstein's IME report, so that cost is not included in this decision.

Defendants shall pay penalty benefits in the amount of one thousand four hundred eighty-eight and 56/100 dollars ($1,488.56).

Defendants are responsible for payment of medical bills as outlined in this decision.

Defendants shall reimburse claimant's costs in the amount of one hundred ninety-seven and 80/100 dollars ($197.80).

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 7th day of October, 2021.

JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Casey Steadman (via WCES)

Chris Scheldrup (via WCES)

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