BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
MAY 15 2018
WORKERS' COMPENSATION

CARL NORMAN, Claimant, vs. HYPRO, INC. d/b/a MARATHON ENGINE SYSTEMS, Employer, and WEST BEND MUTUAL INSURANCE CO., Insurance Carrier, Defendants.	File No. 5065613 ARBITRATION DECISION Head Notes: 1803, 1700, 3000, 3002, 4000

STATEMENT OF THE CASE

This is a proceeding in arbitration. The contested case was initiated when claimant, Carl Norman, filed his original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on March 8, 2017. Claimant alleged he sustained a work-related injury on January 26, 2015. (Original notice and petition)

For purposes of workers' compensation, HYPRO, INC, d/b/a/ Marathon Engine Systems is insured by West Bend Mutual Insurance Co. Defendants filed their answer on March 17, 2017. Defendants admitted the occurrence of a work injury. A First Report of Injury was filed on May 11, 2015.

The hearing administrator scheduled the case for hearing on February 22, 2018. The hearing took place in Waterloo, Iowa at the Iowa Workforce Development building. The undersigned appointed Ms. Cheyanna Lambert, as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified on his own behalf. Defendants called Mr. Bruce Devries, the plant manager, to testify at the hearing. Joint Exhibits 1 through 16 were admitted.

The parties also submitted their post-hearing briefs. The case was deemed fully submitted on March 27, 2018.

STIPULATIONS

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

1. There was the existence of an employer-employee relationship at the time of the alleged injury;
2. Claimant sustained injuries to his right shoulder and right upper extremity on January 26, 2015 which arose out of and in the course of his employment;
3. The injuries are a cause of both temporary and permanent disability;
4. The commencement date for any permanent partial disability benefits was April 12, 2016;
5. The parties agree claimant's gross earnings were $618.37 per week;
6. Claimant was married on the date of the work injury;
7. Defendants have waived any affirmative defenses they may have had available to them;
8. Medical benefits are not at issue;
9. Prior to the hearing, claimant was paid 35 weeks of compensation for permanent partial disability benefits at the rate of $413.54 per week; and
10. The parties agree claimant has paid the costs listed in his attachment.

ISSUES

The issues presented are:

1. Whether claimant sustained injuries to his left shoulder, spine and neck as a result of his work injury on January 26, 2015;
2. Whether the alleged injuries caused a temporary disability during a period of recovery;
3. Whether the alleged injuries caused a permanent disability;
4. If claimant is entitled to permanent partial disability benefits, to what extent is the permanency?
5. Whether claimant's weekly benefit rate should be paid at the rate for married and one exemption or married and two exemptions;

6. Whether claimant is entitled to penalty benefits; and

7. Whether defendants are entitled to a credit for benefits paid to claimant or whether there has been an underpayment, or whether there has been an overpayment.

FINDINGS OF FACT

This deputy, after listening to the testimony of claimant and Mr. Devries at hearing, and after judging the credibility of each witness, plus after reading the evidence, and the post-hearing briefs, makes the following findings of fact and conclusions of law:

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

Claimant is 58 years old and married. He is right-hand dominant. Claimant and his spouse have been married for 31 years. They reside in Waterloo, Iowa.

For the year 2015, claimant filed his U.S. Individual Income Tax Return as "Married filing separately." He only claimed himself as an exemption. Claimant listed the name and Social Security number of his spouse on the Form 1040. (Joint Exhibit 13)

When questioned why he did not file a joint income tax return in 2015, claimant testified:

> Q. Is there any reason that you didn't file a joint tax return?
>
> A. She wanted - - she didn't want to be on there because of some taxes I owe for the job we're doing separate, and she didn't want to be involved with it because she thought it would hurt her disability and didn't want her checks to stop or something, and I told her it wouldn't happen, but I just said that's fine.
>
> Q. Is there any reason you couldn't have filed jointly if you wanted to?
>
> A. No, not really, just because she didn't understand it, so I just told her, That's fine, just file separate.
>
> Q. If you filed jointly, would you have been able to claim your wife as a dependent?
>
> A. Yes.

(Transcript, pages 8-9)

Claimant graduated from high school in 1977. Claimant described himself as an average to above average student. He has an Associate of Arts degree in accounting analyst programmer from the school now known as Kaplan University. He obtained the degree in 1983.

On May 29, 2016, claimant obtained a National Career Readiness Certificate from the State of Iowa. Claimant received the "Bronze Level of Certification". The bronze level means claimant has the foundational skills for 15 percent of all the available jobs. The jobs include: home health aides, janitorial supervisors, janitors and cleaners, office and administrative support workers and sales and related workers. (Jt. Ex. 11, pp. 1-2)

Claimant commenced his employment with defendant-employer on March 28, 2011. He was hired as a basic machine operator. (Jt. Ex. 15, p. 1) The essential duties and responsibilities of the job included:

Essential Duties and Responsibilities:

- Properly and safely loads and unloads castings and raw materials in and out of machine using a lifting device such as an overhead hoist or by hand depending on part size and weight.
- Responsible for meeting standard production timeframes established for setup and cycle times.
- Responsible for minor machine offsets and tool changes.
- Performs some follow-up operations, such as deburring, polishing, grinding and prepping the part for shipping. This may include sending the part through the wash tank.
- Uses gauges and measuring instruments to meet tolerance requirements.
- Occasional use of manual or electric pallet jack.
- Documents QA inspections.

(Jt. Ex. 15, p. 1)

During direct examination, claimant described how he was injured on January 26, 2015. He testified:

Q. How did you get hurt?

A. I was coming in, and I slipped on coming in on the dock area.

Q. And why did you slip?

A. That day it had - - it had rained - - freezing rain and then snow on top, so you really didn't see it, and was slippery that day, so I came in, and I lost my footing.

Q. How did you land?

A. I landed on my back, tried to catch myself, and landed on both of my hands and wrists and tumbled to my right side.

Q. So which parts of your body do you think hit the ground?

A. All of it, except for my head. I'm lucky I caught - - that's why I reached - - you know, my reaction was to reach back and catch myself, and luckily, again, I didn't hit my head, but everything else hit ground basically.

Q. How did you feel after you fell?

A. Real stiff, which you know, that was normal because I fell, but real stiff.

Q. Did you have pain right away?

A. Yeah.

Q. Where were you having pain initially?

A. In my - - again, all in my hips and back and my arms because - - and my hands were really stinging because I landed real hard, and - - but, again, I just knew that was what was going to happen because I just fell. The following day I didn't come to work or the day after that because I called in.

Q. So did you tell anyone at work about your injury?

A. Yes, I did.

(Tr. pp.15-16)

Defendants authorized treatment at Covenant Occupational Medicine Clinic. (Jt. Ex. 1) James Haag, PA-C, examined claimant on January 28, 2015. The physician's assistant diagnosed claimant with: a back contusion, a right arm contusion, and a right shoulder strain. (Jt. Ex. 1, p. 2) Mr. Haag imposed work restrictions. Claimant was precluded from lifting more than 15 pounds with his right shoulder. He was not to engage in any overhead work, and claimant was to limit pushing and pulling to 25 pounds. (Jt. Ex. 1, pp. 2-3)

Claimant returned to the clinic on February 4, 2015. (Ex. 1, p. 4) Physical therapy was ordered. The same work restrictions were imposed. (Ex. 1, p. 5) On February 11, 2015, Mr. Haag examined claimant. He complained primarily of pain and

stiffness in the back. Claimant described the pain as constant. (Jt. Ex. 1, p. 7) The restrictions were kept in place. (Jt. Ex. 1, p. 8)

David Kirkle, D.O., examined claimant on February 19, 2015. Claimant indicated his back pain was improving with physical therapy. Claimant rated his pain level at 4 out of 10 with 10 being the most excruciating pain imaginable. (Jt. Ex. 1, p. 9) Physical therapy was continued. Claimant was returned to restricted duty. (Jt. Ex. 1, p. 10)

During his February 26, 2015 examination, claimant informed the physician's assistant, the primary problem was pain located in the back. (Jt. Ex. 1, p. 11) Claimant also complained of nagging right shoulder pain when he lifted his arm above his head. (Jt. Ex. 1, p. 11) Claimant was prohibited from lifting more than 25 pounds. He was precluded from working over his head and from pushing more than 45 pounds. (Jt. Ex. 1, p. 12)

On March 5, 2015, claimant returned to see the physician's assistant. Claimant complained of pain to the right side of his back and tingling down to the right hand. (Jt. Ex. 1, p. 13) Mr. Haag requested magnetic resonance imaging of the right shoulder. (Jt. Ex. 1, p. 14) Claimant returned to the clinic for the results of his MRI. The physician's assistant explained the test results showed: partial subscapularis tear of the right shoulder as well as a partial supraspinatus tear of the same shoulder. (Jt. Ex. 1, p. 17)

A referral to Jason Stanford, D.O., an orthopedic surgeon, was made by defendants. Dr. Stanford examined claimant for right shoulder and arm pain on April 14, 2015. (Jt. Ex. 5, p. 1) Claimant reported his pain was mostly posterior and would radiate to the elbow and occasionally into the neck. (Jt. Ex. 5, p. 1) Dr. Stanford injected the right subacromial space with 80 ml Depo-Medrol and 0.5% Marcaine. Physical therapy for a partial-thickness rotator cuff tear was ordered. (Jt. Ex. 5, p. 3)

Claimant returned to see Dr. Stanford on May 26, 2015. (Jt. Ex. 5, p. 6) Claimant indicated the injection helped very little. Dr. Stanford ordered EMG testing. (Jt. Ex. 5, p. 6)

Ivo Bekavac, M.D., conducted an EMG examination and nerve conduction studies of the right upper extremity. (Ex. 6, p. 4) The results showed:

IMPRESSION:

Extensive EMG examination and nerve conduction studies in right upper extremity discloses evidence of:

1. Median neuropathy at/or distal to the wrist, consistent with carpal tunnel syndrome, mild in degree electrically.

2. Ulnar neuropathy probably distal to the elbow, mild in degree electrically.

3. There is no EMG evidence for cervical motor radiculopathy, polyneuropathy or myopathy.

(Jt. Ex. 6, p. 4)

Dr. Stanford reviewed the results of the EMG testing with claimant on June 17, 2015. The orthopedic surgeon opined claimant had work-related carpal tunnel and cubital tunnel syndrome of the right upper extremity. Surgery was recommended. (Jt. Ex. 5, p.8)

On July 23, 2015, Dr. Stanford performed the following two surgical procedures:

1. Right cubital tunnel in-situ ulnar nerve release.

2. Right carpal tunnel release.

(Jt. Ex. 8)

Subsequent to the surgical procedures, Dr. Stanford issued the following directives:

1. The patient will be discharged home today.

2. No use of the upper extremity.

3. Keep splint clean and dry.

4. Lortab for pain control.

5. See me back in the office in 10 to 14 days.

(Jt. Ex. 8, p. 2)

Claimant participated in occupational therapy on August 12, 2015. He continued with the therapy through November 4, 2015. (Jt. Ex. 3)

Dr. Stanford removed the sutures from claimant's right arm on August 19, 2015. (Jt. Ex. 5, p. 13) The orthopedic surgeon released claimant to return to work, but he was not to use his right hand. (Jt. Ex. 5, p. 13)

On October 29, 2015, claimant visited Dr. Stanford. Not only did claimant discuss his right arm conditions but he also complained of continued right shoulder pain. Dr. Stanford discussed the possibility of arthroscopic surgery. Work restrictions for the shoulder were imposed. Claimant was precluded from lifting more than 10 pounds with his right arm. He was not to engage in any overhead activity. (Jt. Ex. 5, p. 17)

On November 6, 2015, Dr. Stanford performed a right shoulder arthroscopy with

arthroscopic rotator cuff repair, subacromial decompression, biceps tenotomy, labral debridement and modified Mumford to include 1 cm of distal clavicle and portion of the interarticular AC joint. (Jt. Ex. 8, p. 3) Claimant was in stable condition when he left the operating room. Dr. Stanford employed the following directives:

1. The patient will be discharged home today.
2. Moderate shoulder protection pathway.
3. Physical therapy protocol.
4. See me back in the office in 10 to 14 days.

(Jt. Ex. 8, p. 4)

On November 19, 2015, claimant visited with Dr. Stanford for a two-week follow up examination. (Jt. Ex. 5, p. 20) The sutures were removed from the shoulder. (Jt. Ex. 5, p. 20) The orthopedic surgeon found no laxity, instability, clicking or popping. There was reduced range of motion. (Jt. Ex. 5, p. 20)

On December 31, 2015, Dr. Stanford examined claimant's right shoulder. Claimant was cleared to begin the strengthening phase of his rehabilitation. Claimant was told not to lift, push or pull anything greater than five pounds. He was not to engage in any overhead activity. (Jt. Ex. 5, p. 22)

Claimant did not return to Dr. Stanford until March 1, 2016. The surgeon opined claimant needed to work on the strengthening phase of his rehabilitation. Work restrictions were increased to no lift, push or pull greater than 15 pounds. (Jt. Ex. 5, p. 24)

Effective April 12, 2016, Dr. Stanford opined claimant could discontinue physical therapy. However, claimant was advised to continue rehabilitating his shoulder at home. (Jt. Ex. 5, p. 25)

On April 22, 2016, Dr. Stanford issued the following opinion regarding a permanent impairment rating for the right shoulder:

> It is my medical opinion that Carl Norman has been released back to full duty. He has no permanent restrictions. He does have permanent partial impairment. Utilizing guidelines to evaluation of permanent impairment AMA 5th edition, figure 16-43 give is [sic] a 1 percent impairment due to abduction figure 16-46 his [sic] a 1 percent impairment due to external rotation. Table 16-35 gives a total 9 percent impairment rating to loss of strength. This was summarized to 11 percent upper extremity impairment rating. Table 16-3 would correlate to a 7 percent

> whole person impairment rating. Should you have any questions regarding this impairment rating please do not hesitate to contact me.

(Jt. Ex. 5, p. 26)

Claimant presented to Nagarathnamma Nadipuram, M.D., for a physical examination on January 30, 2017. Claimant complained of left shoulder pain and right-sided low back pain with right sciatica. (Jt. Ex. 7, p. 3) The physician found the back pain to be unspecified. (Jt. Ex. 7, p. 3)

On or about March 27, 2017, Dr. Stanford was asked to provide an opinion concerning permanent impairment ratings for the carpal tunnel syndrome and the cubital tunnel syndrome. The surgeon wrote:

> This letter is in followup [sic] to my previous impairment rating. I do not see any permanent partial impairment or reason for permanent work restrictions due to his previously diagnosed and treated carpal tunnel release and cubital tunnel release. Should you have any questions regarding this impairment, please do not hesitate to contact me.

(Jt. Ex. 5, p. 27)

Claimant applied for Social Security disability benefits. Shanna Elliott, D.O., conducted a disability determination examination on June 22, 2017. (Jt. Ex. 9, pp. 1-5) The doctor issued the following assessment:

> Conclusions: Patient is able to lift 20-30 pounds infrequently. Have they been adequately evaluated for this problem? Yes Has patient undergone recommended treatment? Yes Life changes pt has made because of treatments? Yes, including: back injections Patient would have no problems with speaking or hearing. Patient would have some problems with the handling of objects due to reduced sensation and strength to right hand. Patient cannot stand/sit for extended periods of time. Patient can move about for extended periods of time, but with some difficulty. Patient should not be stooping/kneeling/crawling. Patient has no restrictions to work environments regarding dust, fumes, temperatures, or other hazards. ENCLOSURES: authorized test results: no range of motion form completed: yes.

(Jt. Ex. 9, p. 3) Claimant was denied Social Security disability benefits. At the time of the arbitration hearing, the case was on appeal to the Social Security Administration.

Pursuant to Iowa Code section 85.39, claimant exercised his right to an independent medical examination. Arnold E. Delbridge, M.D., examined claimant on June 1, 2017. (Jt. Ex. 10, p. 1) Dr. Delbridge authored a report that was dated, December 26, 2017.

With respect to the right shoulder, Dr. Delbridge opined:

On my evaluation on 6-1-17, I found that Mr. Norman had virtually full range of motion in abduction and flexion. It is certainly possible he improved somewhat from April to June in regard to motion. It is also not customary to impair on the basis of weakness when there is loss of motion of the upper extremity. Since, by the time I saw him, he had essentially full range of motion except in internal rotation, I did rate him on the basis of weakness. His internal rotation had no weakness. It was 5/5, so there is no conflict with 20-degree loss of internal rotation regarding weakness because there is no measurable weakness there.

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As far as flexion weakness on Table 16-35, my impairment rating was 4%. Abduction was somewhat weak, and I determined that was a 3. Internal rotation had no weakness even though it was a little short on motion. External rotation weakness was 1% impairment. Adding up in the impairments from the weakness gives an 8% impairment of the right upper extremity. It should be noted that I did not assign any impairment as a result of the range of motion issues which were near or at normal. The impairment from the distal clavicle resection is 10% per table 16-27. Combining 10 with 8 on the Combined Values Scale yields 17% impairment of the right upper extremity.

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Continuing with right upper extremity impairment, it has been noted he has some residual thumb tingling or numbness and also at one point described some burning on the ulnar side of his hand.

According to Guides to Evaluation of Permanent Impairment, fifth edition, unless the electrical studies return to normal, there is impairment of 5% or less. There is no EMG or nerve conduction that shows his right upper extremity nerves return [sic] to normal. I assigned a 2% impairment of the right upper extremity on the basis of the residual at the cubital tunnel and 4% impairment as a residual of the carpal tunnel, giving him on that basis a 6% impairment of the right upper extremity. Converted to total person impairment, that would be 4%. Combining 4% with 10% on the Combined Values Scale is 14%. Mr. Norman has a 14% impairment of the body as a whole as a result of his right upper extremity injury in his fall.

X-rays of Mr. Norman's lumbar spine show he has five lumbar vertebrae, he has slight scoliosis to the right with apex at L2. He has residual spina bifida and incomplete spina bifida at S1, but is a bigger gap than normal. His lateral view shows fairly well-maintained disc spaces all the way up the lumbar spine, no spondylolysis, and no spondylolisthesis.

Although his lumbar spine injury is mentioned in his initial visit and also in some physical therapy notes as far as exercises and treatment being done for his spine, he complains of persistent pain in his lower back. If he stands by himself without holding on to something, it gets gradually worse. If he sits on one of the bar stools he has to get himself up after about 10-15 minutes and then pause for about 10 minutes before he can walk. On exam, he has symmetrical reflexes of his Achilles and patellar tendons and no real suggestion of numbness in the lower extremity, although at times he feels a little numbness in his right hip area. His lumbar spine has 16 degrees flexion utilizing BROM II vs. 30 degrees expected. He has 5 degrees of true extension vs. 12 degrees expected. Right and left lateral flexion are 18 degrees vs.25 degrees expected.

According to him, he did not have significant back problems prior to his fall. There is no record of him having previous impairments of his back. After reviewing the physical therapy notes and examining him, my conclusion is that he did injure his back in the fall and severely contused his right hip area and back in the fall. Since he has not had a previous impairment of previous injury, I preferred to rate him according to the DRE Categories. He would be a DRE Category II as indicated by Guides to Evaluation of Permanent Impairment, fifth edition. He does not have true radiculopathy, although he, at times, has radicular-like pain, and he has definite evidence of injury because he was noted to be tender in his back on evaluation and also over his hip area when seen in the occupational medicine clinic and in physical therapy. My conclusion is he has a 5%

impairment of the body as a whole as a DRE Category II of the lumbar spine.

There is some question about his left shoulder being injured or having it compromised by overuse while his right shoulder was injured and later operated on and rehabilitated.

X-rays of his left shoulder, internal and external rotation show he has no apparent arthritis of the shoulder joint as evidenced by plain x-ray. His AC joint is in place. His shoulder is in the socket and his axillary view confirms his shoulder is in the glenoid socket. His right shoulder likewise shows no apparent arthritis and the shoulder is in place. His AC joint is in good position; however, there is evidence of increased space between the clavicle and acromion indicating a distal clavicle resection on the right. His axillary view on the right shows his shoulder in place and is not subluxed.

There is some indication in the physical therapy notes that at times, he had a [sic] some limitation of his left shoulder motion. However, when examined on 6-1-17, he had 180 degrees in both abduction and adduction and had good internal and external rotation. He is very definitely stronger on the left arm than on the right, although he is right handed.

On further discussion of his left shoulder, he indicated that even though it hurts once in a while, he does not want it fixed. My conclusion is that while he may have had some symptoms of his left shoulder while his right shoulder was recovering as a result of overuse, he did not have any permanent impairment attributable to his left shoulder at the time of my examination on 6-1-17.

There is also mention in the physical therapy notes and his history of his cervical spine having problems. His cervical spine range of motion was measured in my office. He had some loss of range of motion. For example, left and right lateral flexion was 0 to 36. The usual is 0 to 45. He also had some decreased flexion and extension. On evaluation of his cervical spine by x-ray, AP of the cervical spine shows spinous processes pretty much in the midline; a little bit to the right in the trochlear area. His odontoid was in good position. On both AP and lateral, his odontoid was not shifted or fractured. He had reversal of curvature of his cervical spine. He had multiple degenerative discs starting at C3-4 and then going on down to C5-6, C6-7. While he had some loss of motion of his neck and thought he might have injured it in his fall, after gleaning the records and talking with him, I was unable to find much in terms of definite injury and/or impairment. My conclusion is that his cervical spine has vey marked degeneration from years of utilization and probably did not have normal motion even before the injury.

> My conclusion is that he does not have permanent impairment as a result of any neck issues he had after the fall. There is no evidence of radicular pain in either upper extremity and when Dr. Bekavac did his nerve conduction study, he did not find any evidence of radicular issues.
>
> On my examination, I found he had some decrease in motion of his right hip. As mentioned previously, he has pain in the right hip which goes down into his thigh, which could very well be radicular from his back. When placed into external rotation and abduction, his right hip has some discomfort. His left hip was normal both on motion and on stressing as far as pain was concerned. I took x-rays of his hips and found he had some sclerosis of the weightbearing portion of his hip. There are early degenerative changes apparent.
>
> I did not find that his degenerative changes had been materially aggravated by his fall and his residual problems are reflected in the impairment as far as his back is concerned.

(Jt. Ex. 10, pp. 3-6)

The record indicated claimant returned to light-duty work at HYPRO, INC. The managers assigned claimant to wash machines and to handle small parts. (Tr. p. 33) Claimant was laid off from work on April 9, 2015. (Jt. Ex. 15, p. 16) He believed he was earning $14.50 per hour on the date he was terminated. (Tr. p. 34)

Bruce Devries, Plant Manager, testified claimant was not the only person who was laid off at the same time due to a reduction in sales. There were other employees who lost their jobs at the plant on April 9, 2015. (Tr. pp. 57-58) Since the 2015 layoff, the plant has added 30 jobs. At the time of the hearing, there were job openings at the plant. Claimant did not apply for one of the positions, even though he was eligible for rehire. (Tr. p. 59)

Claimant testified he did receive unemployment insurance benefits for approximately three months following his termination from HYPRO, INC. During the time he received unemployment insurance benefits, claimant was required to apply for two jobs per week. He testified he applied for 30 to 40 jobs on the internet. He received one interview. He also signed with several temporary agencies for work. Then claimant stopped looking for work.

Claimant and his wife have a part-time job cleaning their local church. There was no discussion as to the amount of money paid for the cleaning. Claimant testified his wife and another person do most of the physical cleaning.

RATIONALE AND CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the

employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa

1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

When an expert's opinion is based upon an incomplete history it is not necessarily binding on the commissioner or the court. It is then to be weighed, together with other facts and circumstances, the ultimate conclusion being for the finder of the fact. Musselman v. Central Telephone Company, 154 N.W.2d 128, 133 (Iowa 1967); Bodish v. Fischer, Inc., 257 Iowa 521, 522, 133 N.W.2d 867 (1965).

When considering the weight of an expert opinion, the fact finder may consider whether the examination occurred shortly after the claimant was injured, or at a later date. The fact finder may also consider the compensation arrangement, the nature and extent of the examination, the expert's education, expertise, training and practice as well as all other factors which bear upon the weight and value of the expert's testimony. Rockwell Graphic Systems, Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

The weight to be given an expert opinion may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. St. Luke's Hospital v. Gray, 604 N.W.2d 646 (Iowa 2000).

Expert testimony may be buttressed by supportive lay testimony. Bradshaw v. Iowa Methodist Hospital, 251 Iowa 375, 380; 101 N.W.2d 167, 170 (1960).

The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire and Casualty Co., 526 N.W.2d 845 (Iowa 1995).

The undersigned deputy workers' compensation commissioner has determined the following conditions do not result in permanent injuries to claimant as a result of his work injury on January 26, 2015:

Left Shoulder Condition

Claimant's left shoulder claims are absent from most medical records. Claimant did not report an injury to his left shoulder immediately following the January 26, 2015 work injury. Claimant does not mention the left shoulder until he confers with Dr. Stanford on April 14, 2015. (Jt. Ex 5, p. 2) Dr. Stanford noted:

> Reasonable range of motion of the shoulder, elbow, wrist and hand noted. No significant instability, tenderness, crepitation, asymmetry, mass, abnormal tone, atrophy or tremor appreciated. No appreciable joint effusion or synovitis noted throughout.

(Jt. Ex 5, p. 2) Dr. Stanford never rated the left shoulder for a permanent impairment. He did not impose any restrictions on the left shoulder.

In February of 2018, Dr. Stanford agreed with the following prepared statement:

> During my treatment with Mr. Norman, he did not complain of any left shoulder complaints, hip complaints, neck complaints, nor low back complaints. If he had any additional complaints, they would have been noted in my treatment records and I would have either treated those myself or completed a referral. Mr. Norman did not exhibit any symptoms of left shoulder complaints related to any overuse or overcompensation and such complaints would be unusual.

(Jt. Ex. 5, p. 30)

The next mention of left shoulder pain is on January 30, 2017. Claimant is visiting with his personal physician, Dr. Nadipuram. There is no treatment for the left shoulder. (Jt. Ex. 7, p. 4)

Even claimant's own independent medical examiner, Dr. Delbridge did not find any permanent impairment attributable to the left shoulder at the time of the June 1, 2017 examination. The worst case scenario for claimant's left shoulder was he had some symptoms when claimant was recovering from his right shoulder condition. (Jt. Ex. 10, p. 5)

Right hip

Initially, claimant voiced some complaints about his right hip to the physical therapy department where he received his treatment. (Jt. Ex. 3, p. 2) Claimant indicated his pain was aggravated with pushing, pulling, lifting and reaching behind himself. (Jt. Ex. 3, p. 2) However, later during the course of claimant's treatment, he did not make mention of right hip pain. Dr. Stanford agreed in Joint Exhibit 5 page 30, claimant did not complain of any right hip problems. Dr. Delbridge found degenerative changes in the right hip. He did not causally relate the degeneration to claimant's work injury. Moreover, Dr. Delbridge opined the degenerative changes were not materially aggravated by the work injury. (Jt. Ex.10, p. 6)

Cervical Spine

Claimant mentioned to Dr. Stanford on April 20, 2015 the following statement: "He reports the pain is mostly posterior and will radiate to the elbow and occasionally into the neck." (Jt. Ex. 5, p. 1) Claimant reported a lump in his neck on March 8, 2016. (Jt. Ex. 5, p. 24) On June 2, 2015, claimant tells Dr. Stanford, "He does not feel as though he has any neck pain." (Jt. Ex. 5, p. 6) Claimant had no neck issues when he presented for his annual physical examination on January 30, 2017. (Jt. Ex. 7, p. 5) Dr. Stanford acknowledged claimant voiced no neck complaints during the course of treatment the orthopedic surgeon provided. (Jt. Ex. 5, p. 30) Even Dr. Delbridge

admitted claimant had "very marked degeneration from years of utilization and probably did not have normal motion even before the injury." (Jt. Ex. 10, p. 5) Additionally, Dr. Delbridge concluded claimant had no permanent impairment as a result of any neck issues he had after his fall at work. (Jt. Ex. 10, p. 5)

It is the determination of the undersigned deputy workers' compensation commissioner; claimant has successfully established he sustained an injury to his right shoulder, his right carpal tunnel syndrome, his right cubital tunnel syndrome and his lumbar spine, which arose out of and in the course of his employment as a result of a work injury on January 26, 2015. Claimant described the mechanism of injury in detail during the course of his arbitration hearing.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 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, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. 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).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Lumbar Spine

It is undisputed. Claimant had not been treated for a low back condition prior to his work injury. (Tr. p. 11) Claimant injured his low back and experienced symptoms immediately. (Tr. p. 16) During his first visit to the Occupational Medicine Clinic, claimant reported pain to the right side of his back, right arm and right hand. (Jt. Ex. 1, p. 1) The physician's assistant related the back condition to claimant's work injury. (Jt. Ex. 1, p. 2) Dr. Delbridge also related the back condition to claimant's work injury. (Jt. Ex. 10, p. 4)

Dr. Delbridge opined claimant had a permanent impairment resulting from the work injury. The independent medical examiner found the permanent impairment rating to be 5 percent to the body as a whole. (Jt. Ex. 10, pp. 4, 6) Defendants did not offer a contrary medical opinion. Dr. Delbridge also imposed permanent work restrictions as

detailed in his report. Defendants argued low back complaints did not appear in Dr. Stanford's records. As a consequence, claimant did not experience any low back pain. Such is not the case. There is a plethora of evidence to corroborate claimant's testimony concerning his continued low back symptoms.

Repeatedly, the records from Occupational Medicine Clinic reflect ongoing low back pain. Claimant even questioned the physician's assistant why he did not order radiographs of the lumbar spine when that was the primary problem. (Jt. Ex. 1, p. 7) Physical therapy was ordered for the back, right arm, and right shoulder. (Jt. Ex. 1, p.6) Claimant never denied he had problems with his lumbar spine. Effective March 13, 2015, claimant was still complaining of low back pain to his physical therapist. (Jt. Ex. 3, p. 6)

During his arbitration hearing, claimant testified credibly why he did not discuss his back condition with Dr. Stanford:

> Q. (By Mr. Roth) Did you ever talk to Dr. Stanford about your low back pain?
>
> A. I probably mentioned it to him, but, again, since he was - - I just thought he was just a regular surgeon for my hand and shoulder, so I didn't know if he was a back surgeon. But I did let them know, even the therapist, I made sure they knew that my back is still bothering me and my left shoulder, but since I had the surgery, I felt that I had lost so much strength that I decided that I wouldn't even try to get my left done because of that.

(Tr. pp. 20-21)

Claimant sustained a permanent disability to his lumbar spine as a result of his work injury on January 26, 2015.

Right Shoulder Right Carpal Tunnel Syndrome Right Cubital Tunnel Syndrome

When disability is found in the shoulder, a body as a whole situation may exist. Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949). In Nazarenus v. Oscar Mayer & Co., II Iowa Industrial Comm'r. Report 281 (App. 1982), a torn rotator cuff was found to cause disability to the body as a whole.

There are two impairment ratings for the right upper extremity/right shoulder. Dr. Stanford rated claimant as having a 7 percent permanent impairment to the body as a whole. The surgeon did not impose any restrictions for the right shoulder. Claimant was advised to engage in home therapy. Dr. Stanford found no impairment for the right upper extremity due to the carpal and cubital tunnel releases. Additionally, no permanent restrictions were imposed for the right hand or arm. Dr. Stanford released claimant back to full duty work effective April 12, 2016. Of course, claimant had been terminated by HYPRO, INC., for more than one year.

The other impairment rating for the right upper extremity/right shoulder was from Dr. Delbridge. His rating totaled 14 percent to the body as a whole. Dr. Delbridge correctly included a 10 percent rating into his calculation because part of claimant's surgical procedure included "a modified Mumford" procedure to include a 1 cm resection of the distal clavicle and a portion of the interarticular AC joint. (Jt. Ex. 8, p. 3) This deputy concludes the rating by Dr. Delbridge most accurately reflects claimant's permanent impairment to the right upper extremity/right shoulder.

Dr. Delbridge imposed several work restrictions. They included: 1) No standing for long periods of time; 2) No lifting and carrying objects more than 25 pounds for short distances; 3) Intermittent sitting during every 8-hour work day; 4) No repetitive lifting of objects far away from the body with the right upper extremity; 5) No repetitive reaching above the head; 6) Only occasional lifting to shoulder level or slightly above with the right upper extremity; and 7) No frequent repetitive hand gripping with the right hand. (Jt. Ex. 10, p. 6)

Claimant has a high school diploma. He also has an Associate of Arts degree in accounting analyst programmer. He holds his career readiness certificate at the bronze level. He is capable of training. Claimant is capable of operating his computer at home and using his personal notebook computer.

Claimant worked at Home Shopping which involved operating a computer. He held the position for 13 ½ years. Claimant also worked for a business machine company. Claimant installed computers and printers and occasionally installed software too. He was considered a computer technician. Claimant worked in a youth shelter with troubled teens. He also worked in quality assurance at BPI. The wages earned in those positions were comparable to the wages claimant earned at HYPRO, INC.

No physician has restricted claimant from working. Claimant did apply online for numerous jobs, but he did not describe the type of jobs for which he applied. He had one job interview. During his interview, he volunteered he had undergone several surgeries. As soon as he revealed his medical issues, he knew he would not receive a job offer. (Tr. p. 36) Claimant lost interest in applying for work. It is hard to imagine that in March of 2018 with unemployment at 2.8 percent in Iowa, claimant could not find some type of employment paying at or near the range he was earning on the date he was terminated.

After considering all of the factors involving industrial disability, it is the determination of the undersigned; claimant has a permanent partial disability in the amount of sixty-five percent (65%). Claimant is entitled to three hundred twenty-five (325) weeks of permanent partial disability benefits commencing from April 12, 2016.

The next issue is the matter of the number of exemptions to which claimant is entitled. Claimant alleges he is married and entitled to two exemptions. Defendants argue claimant is married but only allowed to claim one exemption.

Iowa Code section 85.61(6)(a) provides:

> *a.* An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under the Internal Revenue Code, and regulations pursuant thereto, as amended, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which the employee was injured.

In Elder v. Concord Hospitality Enter., File No. 5040178 (Arb. December 31, 2013), the Iowa Division of Workers' Compensation held claimant was entitled to an exemption for a spouse even though the couple had filed separate tax returns. The deputy noted, "income tax records...do not create an irrebuttable presumption". In the absence of evidence showing claimant could not claim a spouse, claimant was entitled to the benefit of the exemption in the weekly rate.

In the present case, claimant testified why he and his spouse filed married but filing separately. The couple could have filed a joint return in 2015. Claimant could have claimed his wife as a dependent. He testified he and his spouse had been married for 30 plus years and the two of them had always resided with one another. Claimant also testified his spouse was dependent on his income at the time of his injury.

Claimant has met his burden of proof. He is entitled to claim married and two exemptions. Therefore, claimant's weekly benefit rate is $413.54. Defendants are liable for any underpayments they have made.

Penalty benefits pursuant to Iowa Code section 86.13 are at issue. In Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996), and Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996), the supreme court said:

> Based on the plain language of section 86.13, we hold an employee is entitled to penalty benefits if there has been a delay in payment unless the employer proves a reasonable cause or excuse. A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits. A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable."
>
> Christensen, 554 N.W.2d at 260.
>
> The supreme court has stated:
>
> (1) If the employer has a reason for the delay and conveys that reason to the employee contemporaneously with the beginning of the delay, no penalty will be imposed if the reason is of such character that a reasonable fact-finder could conclude that it is a "reasonable or probable

cause or excuse" under Iowa Code section 86.13. In that case, we will defer to the decision of the commissioner. See Christensen, 554 N.W.2d at 260 (substantial evidence found to support commissioner's finding of legitimate reason for delay pending receipt of medical report); Robbennolt, 555 N.W.2d at 236.

(2) If no reason is given for the delay or if the "reason" is not one that a reasonable fact-finder could accept, we will hold that no such cause or excuse exists and remand to the commissioner for the sole purpose of assessing penalties under section 86.13. See Christensen, 554 N.W.2d at 261.

(3) Reasonable causes or excuses include (a) a delay for the employer to investigate the claim, Christensen, 554 N.W.2d at 260; Kiesecker v. Webster City Meats, Inc., 528 N.W.2d at 109, 111 (Iowa 1995); or (b) the employer had a reasonable basis to contest the claim—the "fairly debatable" basis for delay. See Christensen, 554 N.W.2d at 260 (holding two-month delay to obtain employer's own medical report reasonable under the circumstances).

(4) For the purpose of applying section 86.13, the benefits that are underpaid as well as late-paid benefits are subject to penalties, unless the employer establishes reasonable and probable cause or excuse. Robbennolt, 555 N.W.2d at 237 (underpayment resulting from application of wrong wage base; in absence of excuse, commissioner required to apply penalty).

> If we were to construe [section 86.13] to permit the avoidance of penalty if any amount of compensation benefits are paid, the purpose of the penalty statute would be frustrated. For these reasons, we conclude section 86.13 is applicable when payment of compensation is not timely . . . or when the full amount of compensation is not paid.

Id.

(5) For purposes of determining whether there has been a delay, payments are "made" when (a) the check addressed to a claimant is mailed (Robbennolt, 555 N.W.2d at 236; Kiesecker, 528 N.W.2d at 112), or (b) the check is delivered personally to the claimant by the employer or its workers' compensation insurer. Robbennolt, 555 N.W.2d at 235.

(6) In determining the amount of penalty, the commissioner is to consider factors such as the length of the delay, the number of delays, the information available to the employer regarding the employee's injury and

> wages, and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.
>
> (7) An employer's bare assertion that a claim is "fairly debatable" does not make it so. A fair reading of Christensen and Robbennolt, makes it clear that the employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." See Christensen, 554 N.W.2d at 260.
>
> Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

Weekly compensation payments are due at the end of the compensation week. Robbennolt, 555 N.W.2d 229, 235.

Penalty is not imposed for delayed interest payments. Davidson v. Bruce, 593 N.W.2d 833, 840 (Iowa App. 1999). Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 338 (Iowa 2008).

When an employee's claim for benefits is fairly debatable based on a good faith dispute over the employee's factual or legal entitlement to benefits, an award of penalty benefits is not appropriate under the statute. Whether the issue was fairly debatable turns on whether there was a disputed factual dispute that, if resolved in favor of the employer, would have supported the employer's denial of compensability. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

Claimant is requesting penalty benefits for the following reasons:

1. Alleged failure to commence healing period benefits in a timely fashion;
2. Alleged delay in paying benefits at the correct weekly benefit rate;
3. For defendants' alleged failure to investigate claimant's right upper extremity conditions;
4. For defendants' alleged failure to investigate claimant's lumbar spine condition; and
5. Because of the alleged number of infractions, claimant asserts a 50 percent penalty is justified.

In reply, defendants argue:

> A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits. A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable." Christensen v. Snap-on Tools Corp., 554 N.W.2d 254, 260

> (Iowa 1996); Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229, 236-237 (Iowa 1996).

(Defendants' Post Hearing Brief, page 23)

With respect to the delay in paying benefits once claimant was terminated on April 9, 2015, claimant testified as follows:

> Q. (By Mr. Roth) After you were laid off, did the insurance company start paying you weekly benefits right away?
>
> A. Not right away.
>
> Q. How long did it take before they started paying you?
>
> A. I want to say, like, six weeks.
>
> Q. Are you aware of any reason for their delay in starting those payments?
>
> A. If I remember right, the lady said she didn't know that they had terminated me, and by the time they found out - - by the time you do the paperwork, you know, I guess it got delayed that way.

(Tr. p. 35)

The facts show claimant's initial appointment with Dr. Stanford occurred on April 14, 2015. This was just five days after claimant was terminated. HYPRO, INC. did not immediately inform its insurance carrier of claimant's termination. Once the insurance carrier was informed of the termination, defendants needed a reasonable amount of time to investigate and to obtain an opinion from Dr. Stanford as to medical causation and work restrictions. Defendants did initiate weekly benefits on May 7, 2015. It is the determination of the undersigned; there was not an unreasonable delay in initiating weekly benefits to claimant after he was terminated. No penalty benefits are due for this period of time.

Claimant is requesting penalty benefits due to computing an incorrect weekly benefit rate because of the issue of exemptions. This was a fairly debatable issue throughout the course of the life of the case even up to the time of the arbitration hearing. Additionally, there was a dispute between the parties about claimant's gross weekly wages. Eventually, the parties agreed the gross weekly wages totaled $618.37. Then defendants made payment for an underpayment plus interest based upon their argument claimant was entitled to married and one exemption. Because rate was a fairly debatable issue throughout the life of the case, no penalty benefits are due.

Claimant also argues defendants failed to investigate properly claimant's claim for permanency benefits for cubital and carpal tunnel conditions, as well as failure to

investigate claimant's claim for a lumbar spine condition. Again, whether claimant had permanent conditions involving his lumbar spine, his carpal tunnel condition and cubital tunnel condition remained fairly debatable issues. Consequently, no penalty benefits are due.

The final issue is the matter of costs. Iowa Code section 86.40 states:

> **Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> **Costs.** Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

Claimant is entitled to the following costs:

$100.00 filing fee

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant three hundred twenty-five (325) weeks of permanent partial disability benefits at the weekly benefit rate of four hundred thirteen and 54/100 dollars ($413.54) and commencing from April 12, 2016.

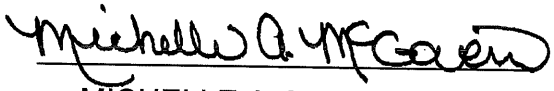
All past due benefits shall be paid in a lump sum together with interest as follows:

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten (10) percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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 (2) percent. See: Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall pay the costs as detailed in the decision.

Defendants shall file all reports as required by law.

Signed and filed this 15th day of May, 2018.



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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.