BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES BUCHANAN, Claimant, vs. MENARD, INC./MIDWEST MANUFACTURING, Employer, and XL INSURANCE AMERICA, Insurance Carrier, Defendants.	:	File No. 5068353 ARBITRATION DECISION Head Note Nos.: 1402.30, 1402.40, 1403.30, 1802, 1803, 2501, 2803, 2907

STATEMENT OF THE CASE

James Buchanan, claimant, filed a petition for arbitration against Menard, Inc./Midwest Manufacturing ("Midwest Manufacturing"), as the employer and XL Insurance America as the insurance carrier. Mr. Buchanan passed away before the date of the trial and his surviving spouse, Tina Buchanan, pursued his claim. This case came before the undersigned for an arbitration hearing on May 27, 2020.

Pursuant to an order from the Iowa Workers' Compensation Commissioner, all in-person hearings were precluded as of the date of this hearing due to the pandemic currently affecting the state of Iowa. Accordingly, this case was heard via videoconference using CourtCall. Claimant appeared remotely from his attorney's office. Each of the other participants for the hearing appeared remotely via CourtCall, including the court reporter.

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 4, Claimant's Exhibits 1 through 12, and Defendants' Exhibits A through K. It should be noted that an objection

was raised to Claimant's Exhibit 1, pages 3 and 4 as untimely produced. After discussion with counsel at the commencement and end of the hearing, the undersigned ultimately sustained the defendants' objection in part. Claimant's Exhibit 1 was received, while the second paragraph after the first sentence and the third paragraph on page three were excluded from the evidentiary record. All other exhibits were received without objection.

Claimant called Michael Buchanan and Tina Buchanan to testify. Defendants called Michael Wise, Adam Molander, and Jordan Tingley to testify. The evidentiary record closed at the conclusion of the evidentiary hearing on May 27, 2020.

However, counsel for the parties requested an opportunity to file post-hearing briefs. This request was granted and both parties filed briefs simultaneously on June 12, 2020. The case was considered fully submitted to the undersigned on that date.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether James Buchanan sustained an injury, which arose out of and in the course of his employment on February 5, 2019.

2. Whether this claim is barred for claimant's failure to give timely notice of the injury.

3. Whether claimant is entitled to an award of temporary total disability, or healing period, benefits from March 22, 2019 through May 14, 2019.

4. Whether the alleged injury caused permanent disability.

5. Whether the alleged permanent disability should be compensated as a scheduled member disability to the right foot or a scheduled member disability to a toe other than the great toe.

6. The extent of claimant's entitlement to permanent partial disability, if any.

7. Whether claimant is entitled to payment, reimbursement, or repayment of a third-party for past medical expenses associated with the alleged February 5, 2019 injury.

8. Whether claimant is entitled to reimbursement of his independent medical evaluation fees.

9. Whether costs should be assessed against either party.

FINDINGS OF FACT

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

James Buchanan worked for Midwest Manufacturing in the winter of 2018-2019. In his position with Midwest Manufacturing, claimant drove a forklift and worked outside. Claimant alleges Mr. Buchanan sustained a frostbite injury to his right foot while working outside on February 5, 2019. Mr. Buchanan worked second shift in the evening and into the early morning hours of the next day. Wage records confirm that Mr. Buchanan was working on the evening of February 5, 2019 and into the morning of February 6, 2019.

Both parties put weather data into evidence. Neither party produced expert evidence to explain their weather data or to clearly determine whether the weather data has significant relevance to the alleged injury. Nevertheless, I gather that it was a relatively cold day in Iowa on February 5, 2019 with high temperatures that day at 21.9 degrees Fahrenheit and the low temperature on the morning of February 6, 2019 of 19.9 degrees Fahrenheit. (Claimant's Exhibit 10, pages 1-3)

Claimant primarily operated a Hyster 80 lift when he worked for Midwest Manufacturing. His son, Michael Buchanan, testified that the lift claimant used was missing a rubber floor mat that was supposed to cover the bottom floor of the cab on the lift. Mike Wise, claimant's supervisor for Midwest Manufacturing, confirmed that the rubber floor mat was missing from the lift during the time period of the alleged injury. (Transcript, p. 78)

Michael Buchanan testified that the floor of the lift had holes in it to permit drainage. However, without the rubber floor mat installed, the holes allowed cold air to come into the cab of the lift and made it more difficult for the driver to keep his/her feet warm. Defendants neither confirmed nor rebutted the idea that cold air came into the cab through holes in the bottom of the lift floor without the rubber floor mat installed.

Prior to the February 5, 2019 shift, James Buchanan had some difficulties and sought medical treatment for his right foot. His wife, Tina Buchanan, confirmed that claimant sought emergency medical care on January 19, 2019, after a dog jumped on his right foot. She confirmed that he had to ice his right foot after the incident. However, there was no ongoing treatment after that injury and claimant apparently returned to work.

Michael Buchanan also testified to an encounter between James Buchanan and Adam Molander at the end of claimant's shift in the very early morning hours of February 6, 2019. Michael Buchanan testified that his father inquired of Adam Molander about the symptoms of frostbite after his shift on February 5, 2019. Michael Buchanan testified that he was present for this encounter and testified that his father, James Buchanan, asked Mr. Molander what the signs of frostbite were. (Tr., p. 20) Michael Buchanan also testified that Adam Molander conceded, "[T]here's no doubt in my mind

you have frostbite and do what you have to do." (Tr., p. 21) Mr. Molander denies this conversation occurred. However, Mr. Molander conceded at trial that an operator's feet would get cold when operating a lift outside in the cold. (Tr., pp. 80-81)

Michael Buchanan testified that, after speaking with Mr. Molander, claimant went to the supervisor's desk and spoke with Mike Wise. Michael Buchanan testified that an injury report was started at that time, but that Mr. Wise made claimant feel like a burden asking for treatment in the early morning hours of February 6, 2019. Michael Buchanan testified that his father agreed to forego emergency treatment given the late hour. Instead, Michael Buchanan testified, Mr. Wise told claimant they would "figure out a later date." (Tr., p. 23) Once again, Mr. Wise denies that an injury report was started or completed for this alleged injury. Mr. Wise denies that the alleged conversation occurred with James Buchanan.

After the conversation with Mr. Wise, Michael Buchanan testified that his father again spoke with Adam Molander. During this conversation, Michael Buchanan testifies that Mr. Molander uttered the phrase that he had no doubt in his mind that claimant sustained frostbite. (Tr., p. 24) Again, Mr. Molander denies this conversation occurred.

James Buchanan did seek medical attention for his right foot prior to the alleged injury date. Specifically, claimant sought medical care at the emergency room for his right foot on January 19, 2019. At that appointment, bruising was noted on the right foot, including the right fifth toe. (Joint Ex. 1, p. 1) Claimant's wife testified that there were no complaints, suspicions, or treatment for frostbite of the right foot or toe on January 19, 2019. Instead, claimant complained that the family dog jumped on his foot. X-rays were taken of the foot to ensure that no fractures were present and claimant was allowed to return to work. (Joint Ex. 1, pp. 2-4)

Following the alleged February 5, 2019 injury date, claimant again sought medical care. Specifically, he reported to the emergency room on February 10, 2019. At that time, he complained of a skin rash and tenderness on the dorsum of his right foot and at the fifth toe. (Joint Ex. 1, p. 7) Emergency room personnel diagnosed claimant with cellulitis on February 10, 2019. (Joint Ex. 1, p. 8)

The emergency room personnel prescribed Augmentin for the cellulitis and referred claimant to a podiatrist, Matthew McKnight, DPM. Unfortunately, it took some time to get an appointment with Dr. McKnight. Dr. McKnight first evaluated claimant's right foot on March 5, 2019. (Joint Ex. 2, p. 1)

Claimant's supervisor, Mike Wise, made certain concessions at trial. While he denied that claimant ever mentioned frostbite to him or that he completed an injury report for claimant, Mr. Wise acknowledged that claimant complained about having cold feet while working outside and that he told claimant to take breaks inside if he got cold. (Tr., pp. 80-81, 90) Mr. Wise also testified, "He just always said his feet were cold, which obviously would be understandable, because it is really cold outside." (Tr., p. 92)

Mr. Wise also offered claimant foot warmers and told him, "just wiggle those toes, Jim. Feet are getting cold, that's what you do." (Tr., p. 93)

The employer denies timely notice of the alleged injury. However, Mr. Wise's testimony makes it clear that the employer knew it was cold outside, knew that a worker's feet could get cold working outside, that the employer offered tips to Mr. Buchanan about keeping his feet warm, and that the employer knew claimant complained of cold feet when working outside. The employer also knew that the floor mat in claimant's lift was missing during the winter of 2018-2019.

Adam Molander, the assistant plant manager for second shift, also acknowledged he knew about claimant's foot complaints. He noted claimant had a profound limp and discussed his foot issues with Mr. Buchanan once a week. Mr. Molander indicated that he encouraged claimant to stay warm.

Ultimately, I find the testimony of Michael Buchanan to be convincing on issues related to notice. The employer, through its supervisory personnel, acknowledged knowing it was cold outside, that workers could get cold feet operating lifts outside, that Mr. Buchanan complained of cold feet, that they offered him breaks to warm up, that the supervisory staff offered claimant tips to keep his feet warm, and that the lift claimant used was missing a rubber floor mat. Yet, in spite of its knowledge and claimant's complaints, somehow the employer proclaims it had no idea that Mr. Buchanan may have been exposed to cold on his feet or sustained frostbite at work. In this sense, the testimony and position taken by the employer is not credible or convincing.

Michael Buchanan's version of events seems more likely and credible. Therefore, I find that the employer knew claimant was exposed to cold and that he had foot complaints after working in the cold. I also find that James Buchanan inquired about the symptoms of frostbite and specifically talked with the employer and gave notice of his injury during the early morning hours of February 6, 2019. I find that the employer had actual and reported notice on February 6, 2019.

Three medical experts have offered opinions about claimant's condition and its causal connection to his work at Midwest Manufacturing. The first to offer an opinion is claimant's treating podiatrist, Matthew C. McKnight, DPM. Dr. McKnight's initial medical records are not entirely clear that he believes the frostbite was work-related. However, Dr. McKnight provided written clarification in a subsequent office note. On April 30, 2019, Dr. McKnight noted:

> They stated that the insurance company is considering this is a diabetic complication initially with the 5th digit. I believe my first words before talking to James about his foot at the first office visit was how did you frostbite your 5th toe. This has been a clear-cut from the beginning that this was a frostbite injury to the right forefoot the patient states he sustained at work due to alterations in his skid loader that allowed cold air to blow in on the foot.

(Joint Ex. 2, p. 10)

Unfortunately, James Buchanan died of an unrelated medical condition in September 2019. Therefore, no other physician was able to evaluate claimant's foot. Defendants instead obtained a records review and medical opinion from Charles D. Mooney, M.D. Dr. Mooney authored a report dated April 26, 2020. Dr. Mooney opines that there was no evidence of a thermal injury (frostbite) at claimant's initial emergency room visit on February 10, 2019.

Dr. Mooney notes that the treating medical professional at the emergency room diagnosed claimant with cellulitis in the right foot. Dr. Mooney opined that, if claimant had frostbite as of February 10, 2019, his foot would have demonstrated blistering at the emergency room visit. Instead, Dr. Mooney opines that claimant's right foot injury and issues are the result of personal risk factors and cannot be proved to be related to frostbite occurring on February 5, 2019 at work. (Defendants' Ex. A)

Claimant responded to Dr. Mooney's report by seeking a record review and opinion from Sunil Bansal, M.D. Dr. Bansal did not provide any significant analysis of the diagnosis of frostbite, whether the mechanism of injury alleged by claimant is consistent with the alleged injury, or other analysis to provide significant credible evidence to support either that claimant did sustain or did not sustain frostbite at work on February 5, 2019. While Dr. Bansal appears to assume, or accept claimant's version of events in his causation opinion, I find Dr. Bansal's opinion to be less thorough in the review of frostbite, its symptoms, and causal connection to claimant's work duties. I do not find Dr. Bansal's report to be helpful or convincing on the issue of causation.

Defendants produce payroll, or attendance, records to demonstrate that Mr. Buchanan worked only sporadically due to a pre-existing health condition that prevented him from working full-time. Defendants contend that claimant's initially alleged injury date was a date that he did not work. Defendants urge a finding that claimant cannot prove the actual date of injury, if any, due to the confusion and modification of the injury date after James Buchanan's death. Michael Buchanan urges that he identified February 5, 2019 as the proper injury date after reviewing claimant's attendance records and medical records during the discovery process.

Ultimately, I acknowledge the defendants' arguments. It is somewhat troubling that claimant could not identify the specific date that his frostbite occurred. On the other hand, it is apparent from the medical records that the frostbite likely was not present on January 19, 2019 and likely was present on February 10, 2019.

I find the opinions of Dr. McKnight to be convincing and find that claimant sustained frostbite. According to Michael Buchanan, claimant did not perform outside chores at home and was not exposed to significant cold other than at work. At work, James Buchanan worked outside. Even his supervisor acknowledged that an operator's feet could get cold operating a lift outside.

Dr. Mooney's opinion seems to ignore that claimant worked outside in the winter, his complaints of cold feet, and instead blames the injury on his underlying personal issues. While I believe claimant's underlying health issues, such as diabetes, may have had a significant contributing effect on his development of frostbite, the frostbite did not occur unless and until claimant worked outdoors in the cold.

Claimant was not going to develop frostbite due to diabetes or other health conditions while sitting inside a warm office. He developed frostbite on his right foot because he worked outside at Midwest Manufacturing. The most likely explanation for James Buchanan's frostbite injury and resulting medical treatment is his work at Midwest Manufacturing. Therefore, I find that claimant proved by a preponderance of the evidence that he sustained a frostbite injury as a result of his work activities on February 5, 2019.

Dr. McKnight describes the surgery he performed as an amputation of the right fifth digit at the metatarsophalangeal (MPJ) joint. (Joint Ex. 2, p. 16) There does not appear to be any permanent functional impairment to any other part of Mr. Buchanan's right foot. There is no medical evidence in this record to decipher specifically where the amputation occurred, whether solely on the toe side of the joint or the foot side of the joint. Therefore, I find that claimant has proven only injury to the right fifth toe.

This record is also limited in the permanent functional impairment ratings to be assigned for this injury. Dr. Bansal opines that Mr. Buchanan sustained a seven percent impairment of the right foot as a result of this work injury. Dr. Mooney disputes causation, but also assigns the equivalent of seven percent of the right foot, or five percent of the right lower extremity, for permanent functional impairment according to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition.

While I acknowledge that the physician's impairment ratings are similar, I also note that neither physician offers an opinion about functional impairment loss of the fifth toe. Having found that claimant did not prove a permanent injury extending beyond the right fifth toe, I turn to the functional loss of the right fifth toe. Considering that claimant's right fifth toe was amputated, I find that he sustained 100 percent functional loss of the right fifth toe as a result of his frostbite injury of February 5, 2019. Claimant has not proven injury beyond the right fifth toe.

Claimant seeks an award of healing period benefits following his work injury. Specifically, claimant seeks an award of healing period benefits between March 22, 2019 and May 14, 2019. Defendants offered reasonable stipulations that claimant was off work and entitled to the claimed healing period if he proved his injury arose out of and in the course of his employment. I accepted those stipulations and find, based on defendants' stipulations, that claimant's claimed medical expenses at Claimant's Exhibit 5 are causally related to the February 5, 2019 work injury, that said charges were fair and reasonable, and that the treatment offered was reasonable and necessary to treat the February 5, 2019 injury. (Hearing Report)

With respect to claimant's claim for an independent medical evaluation, I find that Dr. Bansal did not evaluate claimant. Similarly, I find that Dr. Bansal's report was issued on April 22, 2020. Dr. Mooney's impairment rating was issued after that date and defendants did not have an impairment rating from a physician of their choosing prior to April 22, 2020.

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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

In this case, I found the opinions of Dr. McKnight most credible and convincing. Accordingly, I found that claimant proved by a preponderance of the evidence that James Buchanan sustained frostbite to his fifth toe on his right foot as a result of operating a lift outside during his employment on February 5, 2019. I conclude claimant has established that he sustained an injury that arose out of and in the course of his employment with Midwest Manufacturing on February 5, 2019.

Having reached this conclusion, I must also consider the employer's notice defense. The Iowa Workers' Compensation Act imposes time limits on injured employees both as to when they must notify their employers of injuries and as to when injury claims must be filed.

In this case, I found that James Buchanan reported his foot problems to his superiors, Adam Molander and Mike Wise, during the very early morning hours of February 6, 2019 at the end of his shift. I also found that the employer knew it was cold outside, that Mr. Buchanan complained about his feet being cold, that the employer told claimant to take breaks to warm up, his supervisor offered him tips to avoid frostbite such as wiggling his toes, and offered him toe warmers. The employer, therefore, had knowledge that claimant worked in cold conditions, that he complained his feet were cold, that the floor mat in the lift claimant operated was missing, and that claimant complained of potential frostbite at the end of his shift on February 6, 2020. Therefore, I conclude that claimant reported the alleged injury and that the employer had actual knowledge of the injury on February 6, 2019. For this reason, I conclude that the employer failed to affirmatively prove its notice defense. Claimant is entitled to benefits in some amount.

Mr. Buchanan's first claim for benefits is for temporary total, or healing period, benefits. Specifically, claimant seeks award of healing period benefits from March 22, 2019 through May 14, 2019. Defendants stipulate that claimant was off work during this period of time and entitled to benefits if he proves his injury arose out of and in the course of his employment. (Hearing Report) Having already concluded that claimant did prove an injury arising out of and in the course of his employment, I accepted the parties' stipulations and similarly conclude that claimant is entitled to award of healing period benefits from March 22, 2019 through May 14, 2019. Iowa Code section 85.34(1).

Claimant also seeks an award of permanent disability benefits. Claimant asserts that he sustained a scheduled member disability to the right foot as a result of the February 5, 2019 injury. Claimant contends he should be compensated with permanent disability benefits pursuant to Iowa Code section 85.34(2)(o) for the loss of a foot. Defendants contend that claimant's injury is limited to the right fifth toe and should be compensated as an injury to a toe other than the great toe pursuant to Iowa Code section 85.34(2)(i).

Having found that claimant did not prove his injury extended beyond the fifth digit of the right foot, I conclude claimant's injury should be compensated as an injury to a toe other than the great toe. Pursuant to Iowa Code section 85.34(2)(i), the loss of one toe other than the great toe is compensated based upon a fifteen-week schedule. Considering that claimant sustained an amputation of the right fifth toe, I found that claimant sustained a 100 percent functional impairment of the right fifth toe. Accordingly, I conclude that claimant is entitled to an award of 15 weeks of permanent partial disability benefits as a result of the February 5, 2019 work injury. Iowa Code section 85.34(2)(i).

Claimant also asserts a claim for past medical expenses. The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

Defendants reasonably stipulated that the medical providers would testify that their charges were fair and reasonable and that the medical care they rendered to claimant was reasonable and necessary. While disputing causal connection of the injury, defendants also reasonably and appropriately stipulated that the medical charges were related to the disputed injury. (Hearing Report) Having concluded that claimant established a compensable work injury on February 5, 2019 and having accepted the parties' stipulations, I conclude that claimant is entitled to an award of his claimed past medical expenses.

In addition to past medical expenses for treatment, claimant also seeks award of his independent medical evaluation fees. (Hearing Report) Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

In this instance, Dr. Bansal did not perform an evaluation on claimant because claimant was deceased. Presumably, claimant is seeking the charges for Dr. Bansal's record review and report. However, the language of Iowa Code section 85.39 is specific and only requires reimbursement for an "evaluation."

Additionally, Dr. Bansal's report was issued before defendants obtained or possessed a permanent impairment rating from a physician of their choosing. A prerequisite of reimbursement pursuant to Iowa Code section 85.39 is that defendants obtain an impairment rating prior to claimant's subsequent evaluation and permanent impairment rating. Therefore, for either of these reasons, I conclude that claimant cannot prove entitlement to reimbursement for Dr. Bansal's charges pursuant to Iowa Code section 85.39.

The final disputed issue is whether costs should be assessed against either party. Claimant has prevailed and specifically asks for assessment of his costs. Claimant's costs are contained at Claimant's Exhibit 9 and include claimant's filing fee ($100.00), Dr. Bansal's review and report fee ($784.00), and charges for a conference with Dr. McKnight ($125.00).

It is reasonable to assess claimant's filing fee pursuant to 876 IAC 4.33(7). However, I did not rely upon Dr. Bansal's opinions. I do not find it reasonable to assess his fees for review or his report. Similarly, there is no basis in Agency Rule 4.33 to assess the cost of a medical conference with Dr. McKnight. Accordingly, the only costs I assess are claimant's filing fee ($100.00).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant healing period benefits for the period from March 22, 2019 through May 14, 2019.

Defendants shall pay claimant fifteen (15) weeks of permanent partial disability benefits commencing on May 15, 2019.

All weekly benefits shall be payable at the stipulated weekly rate of four hundred seventy-two and 02/100 dollars ($472.02) per week.

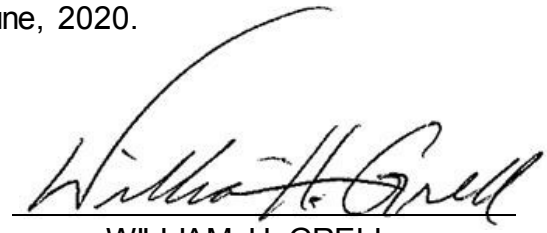
Interest shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

Defendants shall reimburse claimant for all out-of-pocket medical expenses detailed in Claimant's Exhibit 5, and shall reimburse any third-party payor, directly pay any medical charges, and/or hold claimant harmless for all medical expenses contained in Claimant's Exhibit 5.

Defendants shall reimburse claimant for costs totaling one hundred and 00/100 dollars ($100.00).

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 29th day of June, 2020.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nick Platt (via WCES)

Charles A. Blades (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.