BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
JAN 5 2017
WORKERS' COMPENSATION

DONALD L. RATLIFF,

Claimant,

vs.

QUAKER OATS COMPANY,

Employer,

and

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA,

Insurance Carrier,
Defendants.

File No. 5046704

A P P E A L

D E C I S I O N

Head Note Nos: 1801, 1803, 3000, 4000.2

Defendants Quaker Oats Company, employer, and its insurer, Indemnity Insurance Company of North America, appeal from an arbitration decision filed on July 16, 2015. Claimant, Donald L. Ratliff, responds to the appeal. The case was heard on April 13, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 8, 2015.

The deputy commissioner found claimant achieved maximum medical improvement (MMI) on August 20, 2013, for his stipulated left shoulder injury, which arose out of and in the course of his employment with defendant- employer on August 27, 2012. The deputy commissioner awarded claimant 50 percent industrial disability, which entitles claimant to 250 weeks of permanent partial disability benefits, commencing on August 21, 2013. The deputy commissioner found claimant's gross average weekly earnings at the time of the injury were $1,616.81, which results in a weekly workers' compensation benefit rate for the injury of $913.23. The deputy commissioner awarded claimant penalties totaling $10,693.99 pursuant to Iowa Code section 86.13 for defendants' unreasonable delay in paying permanency benefits and for defendants' unreasonable use of an incorrect weekly workers' compensation benefit rate. The deputy commissioner ordered defendants to pay claimant's prior medical expenses submitted by claimant at the hearing. The deputy commissioner ordered defendants to pay claimant's future medical expenses necessitated by the work injury. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant reached MMI and in awarding industrial disability benefits. Defendants assert the deputy commissioner erred in calculating claimant's gross average weekly earnings and in calculating claimant's weekly workers' compensation benefit rate. Defendants also assert the deputy commissioner erred in awarding penalties.

It should be noted that in defendants' appeal brief there was no assertion that the deputy commissioner erred in his findings regarding the extent of claimant's industrial disability, if claimant achieved MMI. Defendants assert only that claimant is not at MMI and that permanency benefits therefore should not have been awarded.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on July 16, 2015, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant reached MMI on August 20, 2013.

I affirm the deputy commissioner's award of 50 percent industrial disability, which entitles claimant to 250 weeks of PPD benefits commencing on August 21, 2013.

I affirm the deputy commissioner's finding that claimant is entitled to penalties pursuant to Iowa Code section 86.13 for defendants' unreasonable delay in paying permanency benefits after claimant's employment with defendant-employer ended.

I affirm the deputy commissioner's order that defendants pay claimant's prior medical expenses submitted by claimant at the hearing.

I affirm the deputy commissioner's order that defendants pay claimant's future medical expenses necessitated by the work injury.

I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

I modify the deputy commissioner's calculation of claimant's gross average weekly earnings at the time of the injury and I modify the deputy commissioner's calculation of claimant's weekly workers' compensation benefit rate. I also modify the

amount of penalties awarded to claimant. I provide the following additional analysis regarding those issues and also regarding the MMI date and the extent of claimant's industrial disability resulting from the work injury:

## FINDINGS OF FACT

The following findings of fact in the arbitration decision are not disputed on appeal:

Claimant testified he is 60 years old. He grew up in Watkins, Iowa, and later lived in Troy Mills, Iowa. He graduated from high school in 1972. He has no further education.

Claimant had some prior non-work injuries, including breaking his left wrist playing basketball on a work team. In 1975 he had a hairline fracture of his ankle, with no permanent problems. He also had a broken bone while playing baseball.

Claimant's work experience includes working on farms during high school, then working at a mobile home park mowing lawns, setting up mobile homes, etc. He then worked at Cedar Rapids Merchandising, filling vending machines and driving a truck. He worked there about four months. He then worked at Iowa Manufacturing Company, where he operated a lathe. He was laid off in 1975. In 1976 he began working at Quaker Oats, but was laid off a year later. He returned to Quaker Oats and he worked there until 2015.

When claimant was hired at Quaker Oats, he underwent a pre-employment physical. He was in good health. He had no shoulder problems. He was athletic, playing basketball, baseball and softball.

At Quaker Oats, claimant worked primarily in the package department. Over the years he worked in several positions. He was a tube blending machine tender, and he later worked at a pancake job where he had to lift up to 50 pounds. He did that for nine years. His next job also lasted nine years. He then worked at the Tech Service department for six years, where he mowed the grass, cleaned the parking lot, changed light bulbs, etc. Parts of that job were physically demanding. He then worked as an instant oats line operator, where he put the product into packages and sent them down the production line. He then worked as a tender, putting oatmeal into round tubes. He worked at that job about a year. He later did a job operating a fork truck.

After about six months at the fork truck job, claimant first noticed a problem with his left shoulder. He is left-hand dominant. He reported the pain to his employer, and was offered deep tissue massage with someone who may have been a chiropractor. After three weeks, that provider indicated there was nothing further she could do for him. Defendant-employer then offered physical therapy, which was done in the plant's

health center. After a week and a half, that treatment was making claimant's pain worse.

Claimant was then sent to the company doctor, Jeffrey Westpheling, M.D., who diagnosed a frozen shoulder. Dr. Westpheling recommended additional physical therapy, but then discontinued that and ordered an x-ray and eventually an MRI. The MRI showed a rotator cuff tear and a biceps tendon tear.

Claimant was then referred to Matthew White, M.D., orthopedic surgeon. On January 31, 2013, claimant underwent surgery performed by Dr. White which consisted of a left shoulder arthroscopic rotator cuff repair, debridement and decompression. (Exhibit 3, page 4) Over the next several months, claimant attempted physical therapy and underwent injections and Dr. White continuously revised claimant's work restrictions. Dr. White released claimant to return to work on February 1, 2013, the day after the surgery, with restrictions of working two hours per day only, doing light duty one-arm work. (Ex. 3, p. 7)

On February 18, 2013, Dr. White again returned claimant to work with a restriction of light duty or sedentary work with use of the right arm only. (Ex. 3, p. 10) Claimant underwent physical therapy for a time. On March 20, 2013, Dr. White released claimant to return to work with restrictions of no lifting, pushing, or pulling, and continuation of light duty work. (Ex. 3, p. 13) On May 1, 2013, Dr. White returned claimant to work with a restriction of no lifting greater than 10 pounds. (Ex. 3, p. 16)

On July 5, 2013, Dr. White released claimant to return to work with a restriction of no above-shoulder reaching, two hours of fork truck driving per day, and no lifting greater than 10 pounds the remainder of the day. (Ex. 3, p. 23) On July 19, 2013, Dr. White released claimant to return to work with restrictions of no above-shoulder reaching, doing four hours of fork truck driving per day, and no lifting greater than ten pounds the rest of the day. (Ex. 3, p. 24) On August 12, 2013, claimant was released with restrictions of working eight hours per day, 40 hours per week as tolerated, and may perform fork lift duties. (Ex. 3, p. 25)

When claimant completed physical therapy, he was found to lack full range of motion of the left shoulder. (Ex. 2, p. 3) Dr. White concluded claimant reached maximum medical improvement and released him to return to work on August 26, 2013, without any restrictions. (Ex. 3, pp. 26-28) At medical visits over the next few months, claimant reported no pain in his left shoulder. (Ex. 3, p. 29; Ex. E, p. 2-3) On December 18, 2013, Dr. White assigned claimant a permanent partial impairment rating of two percent of the left upper extremity, or one percent of the body as a whole. (Ex. 3, p. 29)

When claimant returned to work, the employer had new fork trucks. The new truck seat was three inches shorter than before, which caused claimant to have pain in his knees. He reported this, and the employer took him off that job. Claimant was

assigned to drive his old truck part of the day, the new one other parts of the day, and eventually claimant was able to operate the new fork truck without pain.

In January 2014, claimant slipped on some ice and twisted his back. Claimant went to a chiropractor, and then he went to his family doctor, Shane Kasner, M.D. Claimant was released to return to work. Claimant agreed at hearing that he did not mention problems with his left shoulder to Dr. Kasner because he was not having problems with his shoulder at that time.

Claimant agreed at hearing that after he returned to full duty in the fork lift job, he worked as many as 60 hours during some weeks and he took voluntary overtime on weekends.

Additional Findings:

MMI:

In the summer of 2014, claimant's left shoulder pain returned. On October 28, 2014, claimant underwent an independent medical evaluation (IME) with Stanley Mathew, M.D. a physiatrist. Dr. Mathew provided a 25 percent permanent partial impairment rating for claimant's left upper extremity and recommended permanent restrictions of avoiding overhead activities, no pushing, pulling, or repetitive rotation of the left shoulder, and no lifting greater than 20 pounds. (Ex. 4, p. 4)

Defendant-employer's management did not enforce Dr. Mathew's restrictions because those restrictions were not from an authorized treating physician. Claimant obtained a letter from Dr. White on January 14, 2015, stating that given the findings of Dr. Mathew, claimant's shoulder has a greater impairment rating than Dr. White's prior rating. Dr. White also indicated Dr. Mathew's restrictions are appropriate. (Ex. 3, p. 30)

Defendants then sent claimant back to Dr. White on January 23, 2015. After his evaluation, Dr. White stated that claimant's current pain with rotator cuff testing indicated a new concern for rotator cuff tearing. At that time, Dr. While gave two options to claimant: 1) Undergo another MRI to determine whether surgery was necessary. However, the doctor stated he was not convinced surgery would be in claimant's best interest given his diabetes and other health conditions, there would be no guarantee of improvement and it could possibly worsen the shoulder condition. Or, 2) End care and follow Dr. Mathew's restrictions, which was an option Dr. White considered reasonable. Dr. White added there was the possibility of future injections or physical therapy, but that would only be an option down the road if claimant were to continue to be limited. (Ex. 3, p. 34)

On February 13, 2015, defendant-employer placed claimant on unpaid leave due to Dr. Mathew's and Dr. White's restrictions and claimant was told he had 30 days to find a job to accommodate his restrictions. (Ex. 5 p. 10) Neither claimant nor defendant-

employer's managers found a suitable job. (Transcript p. 33-34) Defendants did not resume healing period benefits and they denied claimant both short-term and long-term group disability insurance benefits. (Ex. 5, pp. 12-15, Tr. p. 34) Having no income, claimant was forced to retire a couple of years earlier than he planned. (Tr. p. 35)

In a letter dated March 12, 2015, defense counsel requested Dr. White to confirm the following opinions which were discussed in a previous telephone conversation:

> 1. That, based upon your recent evaluation of Mr. Ratliff on January 23, 2015, you do not believe that Mr. Ratliff is presently at maximum medical improvement.
>
> 2. That this is based upon the fact that Mr. Ratliff presented considerably different in his evaluation of January 23, 2015 than he had in your previous evaluation back in August of 2013.
>
> 3. That this opinion is based upon the fact that Mr. Ratliff had not been seen in your office for approximately 15 months and, during this period of time, his condition appears to have significantly changed and, to your knowledge, he has not undergone any additional medical treatment during that period of time as it relates to his left shoulder.
>
> 4. Therefore, in order to properly asses Mr. Ratliff, you recommend a functional capacity evaluation with validity criteria, as well as an updated MRI of the left shoulder.
>
> 5. That after these tests have been completed, you would like to see Mr. Ratliff back in your office for further evaluation and potential treatment,
>
> 6. That, in your opinion, it is certainly possible that additional treatment is necessary for Mr. Ratliff's left shoulder and this treatment may significantly alter any functional impairment rating issued pursuant to the AMA Guidelines, 5th Edition, as well as an opinion as to whether any work restrictions are deemed necessary.

(Ex. C, pp. 37-38)

Dr. White responded by simply placing his signature on the second page without comment and he returned it to defense counsel. (Ex. C, p. 38)

On appeal, defendants continue to assert claimant is not at MMI. However, the major flaw in that position is they have not restarted healing period benefits and claimant has not worked in any capacity since February 13, 2015, due to restrictions caused by the work injury. Defendants also did not submit any evidence they have

authorized Dr. While to resume claimant's medical treatment. Whether that has occurred since the hearing in April 2015 is unknown.

The deputy commissioner found Dr. White's opinions provided in January 2015 to be dispositive because claimant at that time rejected another surgery. (Tr. pp. 27, 54) Dr. White clearly stated that the rejection of surgery and living with the restrictions is a reasonable choice. Dr. White talked about future treatments "down the road" but this has not occurred.

Therefore, MMI has been achieved. In this case there are two possible MMI dates. In addition to the MMI date of August 21, 2013, found by the deputy commissioner, there is a second possible MMI date of January 23, 2015, when claimant decided to choose the option provided by Dr. White to end treatment and live with the restrictions. I affirm the deputy commissioner's finding that August 21, 2013, is claimant's MMI date because nothing of any significance changed regarding claimant's ability to work after that date and because claimant has had no further treatment of any significance after that date.

Gross Average Weekly Earnings and Weekly Benefit Rate:

Defendants admit their own calculations of claimant's gross average weekly earnings and claimant's weekly benefit rate submitted at hearing were incorrect, but they complain that the deputy commissioner improperly included weeks containing holiday pay, wellness pay and both the quarterly and annual bonuses in the calculation. They complain there was no evidence in the record to establish that those bonuses were "regular." They also complain that the deputy commissioner excluded one week because there was no overtime pay. They do not complain about the inclusion of shift differential pay on appeal, but they excluded it in their calculations submitted at hearing.

The deputy commissioner found claimant customarily worked overtime and excluded one week in which claimant only worked 40 hours. The deputy excluded two weeks in which claimant did not work at all and received vacation pay. The deputy commissioner included the shift differential pay, the weeks with holiday pay and wellness pay, and averaged the bonus pay and included both bonuses in the calculation.

Defendants assert the correct average of claimant's gross weekly earnings is $1,493.37, which would result in a weekly benefit rate, classification single with one exemption, $851.12. Claimant asserts the deputy commissioner correctly calculated claimant's gross weekly earnings to include the weeks with holiday and wellness pay, to include one week with vacation pay of $265.20, and to include the bonuses averaged over the quarter and annually, which results in a gross weekly average of $1,616.81, which results in a weekly benefit rate of $913.23.

I disagree with the exclusion of the non-overtime week of 40 hours which claimant worked from August 19, 2012, through August 25, 2012, immediately prior to the work injury. 40 hours per week is considered full-time employment. Pursuant to Iowa Code section 85.36(6), I find any week of 40 hours or more to be a representative week, regardless of how little or how much overtime is worked during that week, and regardless of how many other weeks are worked with overtime. There is no legal authority which supports a contrary finding. If a 40-hour week with no overtime is not a representative week, then it could also be argued that the occasional or solitary week with far more overtime than usual also is not representative and also should be excluded from a rate calculation, which is another argument I specifically reject. Therefore, I find the 40-hour week of August 19, 2012, through August 25, 2012, to be a representative week which will be included in the calculation of claimant's gross average weekly earnings for the injury in question.

I agree with the exclusion of the vacation weeks. I disagree with inclusion of the holiday pay and wellness pay. I agree with the inclusion of the bonuses despite the lack of any testimony that the bonuses were regular. Claimant pointed out in his brief that this agency previously included those bonuses in calculating the rate in another case involving Defendant- Employer. Ament v. Quaker Oats Company, File Nos. 5044299, 5044298 (Arb. Dec. December 30, 2014) rate affirmed on de novo appeal. (App. March 17, 2016).

Using the information contained in Exhibit 7, page 1, when claimant's regular pay, shift differential, quarterly bonus and annual bonus are included, claimant's average gross weekly earnings are calculated as follows:

| Week | Gross Earnings for the Week | |
|---|---|---|
| 8/19/12 – 8/25/12 | $1,110.02 | (1) |
| 8/12/12 – 8/18/12 | $2,197.82 | (2) |
| 8/05/12 – 8/11/12 | $1,767.46 | (3) |
| 7/29/12 – 8/04/12 | $1,880.19 | (4) |
| 7/22/12 – 7/28/12 | $1,571.74 | (5) |
| 7/15/12 – 7/21/12 | $1,434.54 | (6) |
| 7/08/12 – 7/14/12 | vacation week – not included | |
| 7/01/12 – 7/07/12 | vacation week – not included | |
| 6/24/12 – 6/30/12 | worked 33 hours – not representative – not included | |
| 6/17/12 – 6/23/12 | $1,460.02 | (7) |
| 6/10/12 – 6/16/12 | $1,331.78 | (8) |
| 6/03/13 – 6/09/12 | $1,453.02 | (9) |
| 5/27/12 – 6/02/12 | $1,563.06 | (10) |
| 5/20/12 – 5/26/12 | $1,239.83 | (11) |
| 5/13/12 – 5/19/12 | $1,478.78 | (12) |
| 5/06/12 – 5/12/12 | $1,481.58 | (13) |
| | $19,969.84 – Total Gross Earnings | |

$19,969.84 divided by 13, average gross weekly earnings = $1,536.10. Classification single with one exemption, weekly benefit rate = $872.66. I therefore find claimant's weekly correct weekly benefit rate in this matter is $872.66

Penalty:

Using a weekly benefit rate of $913.23, the deputy commissioner imposed a penalty for underpayment of the rate for permanent partial disability benefits by $333.23 per week. While I did not arrive at the same rate as the deputy, even defendants assert on appeal that the weekly benefit rate was at least $851.12. Defendants submitted no evidence to justify their use of the $580.00 per week rate to pay permanency benefits.

However, defendants assert claimant was working full duty for several weeks after being released from care in December 2014 and any industrial loss was fairly debatable. That may have been true in December 2014, but not after Dr. White adopted Dr. Mathew's permanent restrictions and claimant lost his job on February 13, 2015. At that time there should have been a reassessment of claimant's disability in light of Dr. White's views. There is no evidence submitted by defendants that such a reassessment was made. Given the extent of the restrictions and claimant's loss of his job, defendants should have commenced additional permanent partial disability benefits when he stopped working on February 13, 2015, and those benefits should have continued at least until hearing on April 13, 2015, which is 8.571 weeks at the weekly rate of $872.66. This represents an unreasonable delay of permanency benefits in the amount $7,479.57 and the penalty should be 50 percent of that amount, or $3,739.79, given the lack of any reasonable explanation by defendant for such a delay. Legal citations regarding the need to reassess disability are contained in the Conclusions of Law section of this appeal decision.

What may have happened after hearing pending the appeal is unknown and there can be no penalty assessment for failure to pay PPD benefits after hearing.

Extent of Industrial Loss:

Defendants did not address the issue of the extent of industrial loss in their appeal brief if claimant has achieved MMI. Based on that fact, along with the medical evidence presented in this matter, including the permanent restrictions recommended by Drs. White and Mathews, I affirm the deputy commissioner's finding that claimant has sustained 50 percent industrial disability as a result of the work injury.

## CONCLUSIONS OF LAW

I. Claimant is entitled to weekly benefits for healing period under Iowa Code section 85.34 for his absence from work during a recovery period until claimant returns to work; or until claimant is medically capable of returning to substantially similar work to

the work he was performing at the time of injury; or, until it is indicated that significant improvement from the injury is not anticipated, whichever occurs first.

An initial return to work following initial treatment for a work injury does not preclude the reinstitution of temporary total disability or healing period benefits when an employee is compelled to leave work a second time as a result of the same injury. Waldinger Corp. v. Mettler, 817 N.W.2d 1 (Iowa 2012); Teel v. McCord, 394 N.W.2d 405 (Iowa 1986) Healing period may terminate and then begin again. Willis v. Lehigh Portland Cement Co., I-2 Iowa Ind. Comm'r Decisons 485 (RR 1984); Clemens v. Iowa Veterans Home, I-1 Iowa Industrial Comm'r Decisions 35 (RR 1984); Riesselman v. Carroll Health Center, III Iowa Ind. Comm'r Report 209 (App. 1982); Junge v. Century Engineering Corp., II Iowa Industrial Comm'r Report 219 (App. 1981). See also, Iowa Practice, Workers' Compensation, section 13-3.

In multiple healing period scenarios, permanent partial disability is due and payable after the end of the first healing period and this is the time interest on unpaid benefits begins. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986). Credit against the eventual permanent disability award should be given for voluntary weekly payments between the two healing periods as they are permanent disability payments, not healing period. Flug v. Meisner Electric, File No. 5007007 (App. July 2005)

There is no further entitlement to healing period benefits in this case because claimant continued working after his condition worsened in the summer of 2014 and claimant's worsened condition reached MMI before he left work on February 13, 2015.

II. There is no issue as to the extent of claimant's entitlement to permanent disability benefits as this issue was not raised in defendants' appeal brief and claimant did not cross-appeal. Also, the evidence presented in this case supports the award made by the deputy commissioner. The award of 250 weeks of permanent partial disability benefits for 50 percent industrial disability is unchanged.

III. The parties disagree as to computation of the gross weekly rate. Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Iowa Code section 85.36(6).

In calculating gross weekly earrings over the previous 13 weeks, weeks should be excluded from the calculation which are not representative of hours typically or

customarily worked during a typical or customary full week of work, not whether a particular absence from work was anticipated. Jacobson Transp. Co. v. Harris, 778 N.W.2d 192 (Iowa 2010); Griffin Pipe Products Co. v. Guarino, 663 N.W.2d 862 (Iowa 2003).

Iowa Code section 85.61(3) provides that irregular bonuses shall be excluded from the calculation of gross weekly earnings for the purposes of determining the rate of compensation pursuant to methods set forth in Iowa Code section 85.36. It matters not whether an annual or quarterly bonus payment is discretionary or varies in amount; if they are regular bonus payments they shall be included in the rate calculation if it is regularly paid over a number of years. Mayfield v. Pella Corporation, File No. 5019317 (Remand Dec, June 30, 2009)

In this case, I found from averaging the 13 representative pay weeks listed above, claimant's average gross weekly earnings for this injury are $1,536.10. According to this agency's published rate booklet for 2012-2013, using average gross weekly earnings of $1,536.00, classification single with one exemption, results in a weekly benefit rate of $872.66. This is less than the rate calculated by the deputy commissioner, but more than the rate asserted by defendants.

IV. Defendants assert that the penalties imposed were inappropriate under Iowa Code section 86.13. This Code section states that if a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the workers' compensation commissioner shall award extra weekly benefits in an amount not to exceed 50 percent of the amount of benefits that were unreasonably delayed or denied if the employee demonstrates a denial or delay in payment or termination of benefits and the employer has failed to prove a reasonable or probable cause or excuse for the denial, delay or termination of benefits. (Iowa Code section 85.13(4)(b)) Iowa Code section 86.13(4)(c) provides that a reasonable or probable cause or excuse must satisfy the following requirements:

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

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

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

The employer has the burden to show a reasonable and probable cause or excuse. A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable." City of Madrid v. Blasnitz, 742 N.W.2d 77, 82 (Iowa 2007); Christensen v.

Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996); Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996).

In this case, I agree with defendants that there should be no penalty for the delay in paying the initial permanency benefits in that claimant returned to full duty at the time and arguably he suffered no industrial disability. However, on and after February 13, 2015, when he lost his job due to physician imposed activity restrictions, there should have been a re-assessment of his permanent disability and a resumption of weekly permanent disability benefits at least until the date of hearing. To avoid penalty, defendants must show they re-evaluated the case promptly when additional information became available and pay the least amount of permanent partial disability that could reasonably be anticipated to be awarded in a hearing based upon all the information available to them at that time. Simonson v. Snap-On Tools Corporation, File No. 851960 (App. August 25, 2003)

I found that defendants' unreasonable actions resulted in a delay of $7,479.57 of permanency benefits and the penalty should be 50 percent of that amount, or $3,739.79, given defendants' lack of any reasonable explanation for such a delay.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of July 16, 2015, is MODIFIED as follows:

Defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits at the rate of eight hundred seventy-two and 66/100 dollars ($872.66) per week commencing on August 21, 2013.

Defendants shall receive a credit against this award for 25 weeks of permanent partial disability benefits previously paid at the rate of $580.00 per week.

Defendant shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendants shall pay a penalty pursuant to Iowa Code section 86.13 in the amount of $3,739.79.

Defendants shall pay claimant's prior medical expenses submitted by claimant at the arbitration hearing.

Defendants shall pay claimant's future medical expenses necessitated by the work injury.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, and defendants shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed this 5th day of January, 2017.

Joseph S. Cortese II

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WORKERS' COMPENSATION
COMMISSIONER

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