BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FRANCIS J. STEPHEN III, Claimant, vs. A TOUCH OF CLASS BANQUET & CONVENTION CENTRE, Employer, and ACCIDENT FUND INSURANCE COMPANY OF AMERICA, Insurance Carrier, Defendants.	:	File No. 1588289.01 ARBITRATION DECISION Head Note Nos.: 1402.40, 1801, 1803, 2501, 2502, 2907, 3001, 4000.1, 4000.2

STATEMENT OF THE CASE

Francis Stephen III, claimant, filed a petition for arbitration against A Touch of Class Banquet & Convention Centre (hereinafter referred to as "A Touch of Class") and its workers' compensation insurance carrier, Accident Fund Insurance Company of America. This case came before the undersigned for an arbitration hearing on May 19, 2021. Due to the ongoing pandemic in the state of Iowa and pursuant to an order of the Iowa Workers' Compensation Commissioner, this case was tried using the CourtCall videoconference platform.

The parties filed a hearing report before the scheduled 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 16, Claimant's Exhibits 1 through 8, and Defendants' Exhibits A through G.

Claimant testified on his own behalf. No other witnesses testified at trial. Pursuant to an evidentiary ruling entered at the time of hearing, claimant introduced Claimant's Exhibit 8 after the hearing. That exhibit was received pursuant to the ruling and the evidentiary record closed upon receipt of Claimant's Exhibit 8.

Counsel for the parties requested an opportunity to file post-hearing briefs. This request was granted. Both parties filed briefs simultaneously on June 30, 2021. The case was considered fully submitted to the undersigned on that date.

STATEMENT OF THE ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the March 24, 2014 work injury caused temporary disability and, if so, the extent of claimant's entitlement to temporary total disability, temporary partial disability, or healing period benefits.

2. The extent of claimant's entitlement to permanent disability benefits.

3. Claimant's average gross weekly earnings immediately prior to the injury and the applicable weekly worker's compensation rate at which benefits should be paid.

4. Whether claimant is entitled to reimbursement pursuant to Iowa Code section 85.39 for an independent medical evaluation.

5. Whether claimant is entitled to medical mileage reimbursement.

6. Whether penalty benefits should be assessed against defendants for an allegedly unreasonable delay, denial, and/or termination of weekly benefits pursuant to Iowa Code section 86.13(4).

7. Whether sanctions in the form of an assessment of costs related to vocational reports should be assessed against defendants for their denial of a request for admission during discovery.

8. Whether costs should be assessed against either party and, if so, in what amount.

FINDINGS OF FACT

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

Francis Stephen III, claimant, is a 43-year-old, right-hand dominant gentleman. He resides in Cedar Rapids, Iowa. Mr. Stephen has a bachelor's degree from the University of Iowa in business administration.

Upon graduating from college in 2001, claimant purchased a 2.5-acre banquet venue and began operating A Touch of Class Banquet & Convention Centre, the employer in this case. A Touch of Class was a multi-room, full-service event location. It hosted weddings, banquets and live entertainment. Mr. Stephen operated A Touch of Class from 2001 through 2018. He served as the operations manager for the facility, but also performed numerous physical tasks to operate the business, including kitchen work, maintenance, landscaping, banquet set-up and teardown, scheduling duties,

marketing, and general supervision of employees. In addition to A Touch of Class, claimant also owns, or shares ownership in, several other businesses, including real estate.

Defendants accurately point out that prior to the alleged injury date, claimant experienced significant low back symptoms. The medical evidence demonstrates that he obtained treatment for his low back prior to the injury date. In fact, claimant was diagnosed with a disk bulge at the L4-5 level and required an epidural steroid injection approximately seven years before the injury date. (Joint Ex. 1, p. 1) Claimant also obtained some chiropractic care for his low back prior to the work injury. (Joint Ex. 9, p. 61) In fact, claimant obtained some chiropractic treatments in February and March 2014. That care focused on both claimant's neck and low back. (Joint Ex. 10, pp. 62-63)

The chiropractic care provided to claimant shortly before his work injury does not appear to be extensive. No referrals were made for further medical care. Yet, as defendants point out in their brief, it does not appear that claimant's independent medical evaluator, Mark Taylor, M.D., was aware of the low back treatments obtained shortly before the work injury. There is no evidence documenting prior right shoulder injuries or treatment.

On March 24, 2014, Mr. Stephen was working at A Touch of Class. He carried garbage out to a dumpster. Unfortunately, there was a puddle of water that froze overnight and claimant was standing on that ice patch when he attempted to swing the trash bag into the dumpster. He slipped on the ice and fell hard onto his low back and right shoulder areas. Although Mr. Stephen had prior work-related injuries to his left shoulder and left ankle, he denied any prior injuries to his low back or right shoulder.

The employer and insurance carrier accepted the low back and right shoulder injuries as compensable and provided claimant medical care. He was referred to a neurosurgeon, Chad Abernathey, M.D., for treatment of his low back. Dr. Abernathey diagnosed claimant with "left S1 radiculopathy secondary to left L5-S1 disc extrusion." (Joint Ex. 3, p. 16) He recommended and performed low back surgery on claimant on October 30, 2014. Dr. Abernathey performed a left L5-S1 partial hemilaminectomy and discectomy. (Joint Ex. 7, p. 55)

Following the low back surgery, Dr. Abernathey offered claimant physical therapy. Claimant declined therapy. (Joint Ex. 3, p. 17) Dr. Abernathey documented that claimant was recovering well and that he was working without difficulty in a light duty capacity by November 7, 2014. (Joint Ex. 3, p. 17)

Dr. Abernathey released claimant to return to work without restrictions as a result of the low back injury on December 17, 2014. (Joint Ex. 3, p. 17) On April 20, 2015, Dr. Abernathey declared claimant at maximum medical improvement (MMI) for his low back. (Joint Ex. 3, pp. 17-18) Dr. Abernathey opined that claimant sustained a 7 percent permanent impairment of the whole person as a result of his low back injury. (Joint Ex. 3, pp. 17-18)

Mr. Stephen testified that he continues to have low back symptoms after the work injury. Specifically, claimant testified that he continues to have acute pain in the center of his low back. He testified that he has difficulties and it is painful to bend forward and that walking is painful for his low back. Mr. Stephen indicated that he moves a lot in his chair when seated. He testified that he experiences pain into his left buttocks and down to the left knee as a result of his low back injury. Mr. Stephen also explained that he has a constant level of pain, but that his pain level will significantly increase with movement or in certain positions. He testified that he has to change positions from sitting, standing, and walking frequently due to low back symptoms.

Claimant also submitted to an independent medical evaluation performed by Mark C. Taylor, M.D., on May 2, 2016. (Claimant's Ex. 1, pp. 4-14) It is unclear who requested this evaluation or selected Dr. Taylor to perform the evaluation. (Claimant's Ex. 1, pp. 1-3) Dr. Taylor opined that claimant sustained a 12 percent permanent impairment of the whole person as a result of his low back injury. (Claimant's Ex. 1, p. 13) Dr. Taylor also offered a tentative opinion after his initial evaluation that recommended work restrictions for claimant. (Claimant's Ex. 1, p. 12)

In addition to the low back injury, claimant also sustained an injury to his right shoulder as a result of his fall at work on March 24, 2014. (Joint Ex. 1, p. 1) Initial conservative care did not resolve claimant's right shoulder symptoms. An MRI was obtained on April 28, 2016. It demonstrated a partial thickness tear in two of the rotator cuff tendons but no full-thickness tears. (Joint Ex. 11)

Physical therapy for the shoulder continued but did not ultimately resolve claimant's right shoulder symptoms. Claimant ultimately sought care with an orthopaedic surgeon, Gregory R. Hill, M.D. Dr. Hill obtained a repeat MRI of the right shoulder, which he reported showed a 90 percent tear of the supraspinatus and a partial tear of the biceps tendon. (Joint Ex. 4, p. 19) However, Dr. Hill issued a causation opinion concluding that claimant's condition by March 2017 was not related to the initial work injury because a change in findings within the shoulder. (Joint Ex. 4, p. 22) However, Dr. Hill later opined that the change in findings within the right shoulder could be the result of physical therapy efforts. (Joint Ex. 4, pp. 25-26)

Ultimately, defendants appear to have admitted ongoing liability for the right shoulder condition and authorized medical care. Unfortunately, in spite of operative intervention by Dr. Hill on August 4, 2016 and again on August 29, 2018, claimant's right shoulder symptoms did not completely resolve. (Joint Ex. 7, pp. 56-59; Joint Ex. 8) With ongoing low back and right shoulder symptoms, claimant testified it was difficult to perform all of the job demands of operating A Touch of Class. Therefore, in March 2018, claimant sold the business. He has continued to manage real estate properties in which he has financial interest. However, claimant has not worked anywhere or even applied for a job since selling his business in March 2018.

Claimant was referred to Matthew Bollier, M.D., at the University of Iowa Hospitals and Clinics for further orthopaedic evaluation and care of his right shoulder. (Joint Ex. 5) Dr. Bollier evaluated claimant's right shoulder on April 26, 2019. Dr. Bollier recommended a repeat MRI of the right shoulder and suggested there may be pathology within the long head biceps tendon. (Joint Ex. 5, p. 35) Ultimately, Dr. Bollier

recommended further surgical inspection and repair. He took claimant to surgery on July 9, 2019 and performed a right shoulder distal clavicle resection, subacromial decompression, biceps tendon repair, and a right rotator cuff repair. (Joint Ex. 5, p. 36)

Dr. Bollier's surgery provided claimant some symptomatic relief. (Joint Ex. 5, p. 40) However, claimant continued to report sharp pain in his right shoulder with certain movements and concerns about lifting heavy things months after Dr. Bollier's surgical intervention. (Joint Ex. 5, p. 43) Although Dr. Bollier did not believe claimant would experience a 100 percent recovery of his right shoulder, he concluded that claimant was at MMI and capable of working without restrictions related to his right shoulder as of December 18, 2019. (Joint Ex. 5, pp. 45, 50) Dr. Bollier assigned a permanent impairment rating equivalent to two percent of the whole person as a result of claimant's right shoulder work injury. (Joint Ex. 5, pp. 46, 50)

Claimant obtained a repeat independent medical evaluation performed by Dr. Taylor on March 23, 2021. Dr. Taylor evaluated claimant's low back again, as well as his right shoulder. Claimant complained of ongoing symptoms in the right shoulder, including sharp pains he rated as high as 9 out of 10 on the typical pain scale with aggravating movements. (Claimant's Ex. 1, p. 24) Claimant also complained of ongoing low back pains that could increase up to as high as an 8 on the 10-point pain scale. (Claimant's Ex. 1, p. 24)

At this second evaluation, it does appear that Dr. Taylor was made aware of the prior epidural steroid injections and was able to take those into account, though he may not have been aware of the chiropractic care for claimant's low back within 1-2 months of the work injury. (Claimant's Ex. 1, p. 25) Following his evaluation, Dr. Taylor confirmed his prior 12 percent permanent impairment rating for the claimant's low back injury. He opined that claimant also sustained an 11 percent permanent impairment of the whole person related to the right shoulder injury. Combining these impairment ratings, Dr. Taylor opined that claimant sustained a 22 percent whole person impairment as a result of the combined effects of his low back and right shoulder injuries. (Claimant's Ex. 1, pp. 27-28)

Dr. Taylor acknowledged that claimant was able to lift up to 50 pounds during some work conditioning. However, Dr. Taylor recommended limiting lifting 50 pounds to an occasional basis and only between knee and waist level. He recommended other significant restrictions, including lifting 35-40 pounds below knee level only with his right arm close to the body. Dr. Taylor recommended limiting lifting overhead to no more than 30 pounds. He also recommended claimant be able to sit, stand, and walk as needed, limit squatting, bending, and kneeling to an occasional basis. Dr. Taylor opined claimant should not stoop, bend, or squat with any weight, and that claimant avoid anything more than occasional overhead reaching with the right arm. (Claimant's Ex. 1, p. 28)

Dr. Taylor also recommended further evaluation for claimant's low back for potential treatment options to alleviate claimant's symptoms, which might include medication management, physical therapy, or injections. (Claimant's Ex. 1, p. 29) At the time of hearing, claimant took no prescription medications for either the low back or

right shoulder. Dr. Taylor recommended no additional treatment for claimant's right shoulder.

As I consider the respective permanent impairment ratings of Dr. Taylor and those of Dr. Abernathey and Dr. Bollier, I find that Dr. Taylor's impairment ratings are more specific and thorough. He acknowledges surgical intervention and uses the appropriate section of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, for the low back injury and resulting surgery. I find claimant has proven he sustained a 12 percent permanent impairment of the whole person as a result of the low back injury.

With respect to the right shoulder injury, Dr. Bollier's impairment rating carries some weight because he evaluated claimant several times and performed surgery on the shoulder. However, I note that Dr. Taylor acknowledges and rates the distal clavicle resection performed on claimant's right shoulder. Dr. Taylor's ranges of motion were evaluated with the use of a goniometer. Ultimately, I find the impairment rating offered by Dr. Taylor for the right shoulder is more complete and convincing than the rating offered by Dr. Bollier. I find that claimant has proven he sustained an 11 percent impairment of the whole person as a result of the right shoulder injury. I accept Dr. Taylor's analysis and opinion that these are combined under the AMA Guides to represent a 22 percent permanent impairment of the whole person.

Claimant was able to continue managing and operating A Touch of Class between his injury in 2014 and March 2018. He clearly has supervisory skills, scheduling skills, and other managerial and business skills that are transferrable if he elects to seek alternate employment or open a new business. Dr. Taylor's restrictions seem somewhat restrictive considering claimant's ability to continue operating his business for nearly four years after his injury.

On the other hand, the objective functional impairment related to the low back and right shoulder, as well as claimant's reported ongoing symptoms in both the low back and right shoulder, suggest that the full releases to return to work without restrictions offered by Drs. Abernathey and Bollier are probably too lenient and optimistic. I find that Mr. Stephen is physically capable of more than Dr. Taylor's restrictions. However, I also find that full work releases are not reasonable and appropriate given the ongoing symptoms. I find claimant's decision to sell his business was a reasonable business option given his ongoing symptoms.

Claimant had an extensive healing period and continued to work after his injury. This would suggest he is a motivated worker. On the other hand, he has made no attempts to apply for or return to work since selling A Touch of Class in 2018. He does not appear motivated to return to similar employment, though he does continue to manage real estate in which he has a financial interest.

Claimant's age and educational background suggest he is capable of retraining and finding alternate employment. His restrictions or limitations preclude heavier work, but claimant should be qualified for and capable of pursuing many types of employment with a college business degree.

Both parties submitted vocational expert opinions. Claimant introduced the opinions of Barbara Laughlin. (Claimant's Ex. 2) Ms. Laughlin provides an analysis of claimant's occupational loss and opines that claimant has sustained an injury that is "significantly limiting." (Claimant's Ex. 2, p. 52) She notes the sit, stand, and walk limitations imposed by Dr. Taylor and concludes that claimant would require accommodation to return to work in any position identified by the defense vocational expert.

After providing a strong critique of the defense vocational expert, Ms. Laughlin does acknowledge that claimant sustained no vocational impact if the full duty release by Dr. Bollier is accepted as accurate. She also performed some labor market research and identifies potential job openings available to claimant in clerical and administrative work pertaining to health related claims, work as a gate guard at a local Fleet Farm, as well as a potential hotel clerk position. She identifies wage ranges for these jobs from $10.93 to $18.31 per hour. (Claimant's Ex. 2, pp. 42-43) Ms. Laughlin also provided supplemental opinions in response to those offered by defendants' vocational expert, but she ultimately did not change her opinions.

Defendants offered a vocational expert opinion authored by Tom Karrow. Mr. Karrow interviewed claimant via Zoom and offered him several job leads. (Defendants' Ex. G, pp. 1-3) Claimant did not follow-up or apply for any of the jobs identified by Mr. Karrow. Claimant utilized none of Mr. Karrow's placement services.

Therefore, defendants asked Mr. Karrow to offer a vocational opinion and analysis. Mr. Karrow opined that claimant has numerous transferrable skills and that claimant's residual abilities would permit him to work in several positions, including customer service, sales, assistant manager, management, and similar retail positions. Mr. Karrow noted that there is a low unemployment rate (5.2%) in claimant's area of residence and opined that claimant "is employable in his current labor market." (Defendants' Ex. G, p. 13)

Both vocational experts offer important and credible information. However, I find neither of the vocational opinions is entirely accurate or enlightening in this situation. Both vocational experts appear to believe claimant remains employable. I concur with these findings and opinions.

The vocational effect of claimant's injuries are subject to differing opinions of these experts. Realistically, claimant has sustained at least moderate loss of future earning capacity. He underwent surgery on his low back and three surgeries on his right shoulder. He carries permanent impairment for both injuries, as discussed above.

I did not find the full duty releases of Drs. Abernathey or Bollier to be realistic. However, I also found the restrictions imposed by Dr. Taylor to likely be too severe. Ultimately, claimant's loss of earning capacity is moderate.

Considering claimant's age, his employment history, educational qualifications, permanent restrictions, the length of his healing period, his permanent functional impairment, his lack of current motivation to return to similar employment, and all other factors of industrial disability identified by the Iowa Supreme Court, I find that Mr.

Stephen proved he sustained a 50 percent loss of future earning capacity as a result of the March 24, 2014 work injury.

Mr. Stephen also asserts a claim for healing period benefits. Specifically, claimant claimed temporary partial disability benefits from September 23, 2014 through January 15, 2015, from June 1, 2016 through September 15, 2016, and from October 1, 2016 through February 28, 2018. Claimant seeks healing period benefits from the date of the sale of his business, March 1, 2018 through December 17, 2019, when declared to be at MMI by Dr. Bollier.

No detailed wage information was produced for claimant's earnings after his injury date. At page 9 of his post-hearing brief, claimant concedes that claimant "received temporary partial disability benefits from September 23, 2014 through January 15, 2015, June 1, 2016, through September 15, 2016, and October 1, 2016, through February 28, 2018." He cites defendants' payment records for this concession and statement. I have no additional information available to enter findings about lost wages or potential temporary partial disability entitlement and claimant does not specifically assert entitlement to any additional benefits for these periods of time.

Instead, claimant's healing period claim appears to focus on the period from March 1, 2018 through December 17, 2019. I find that claimant sold his business and was no longer working for or receiving wages from A Touch of Class as of March 1, 2018. Claimant had not achieved MMI by this date. Obviously, he had returned to work but the employer could not offer additional work as of March 1, 2018. Arguably, claimant was capable of substantially similar employment, having continued to manage the business between the 2014 injury date and the sale of the business almost four years later. As of March 1, 2018, however, claimant remained under active care for his right shoulder. He had not even yet been referred to Dr. Bollier or submitted to his third right shoulder surgery. Claimant's right shoulder clearly was not capable of the full scope of job duties claimant previously performed at A Touch of Class as of March 1, 2018.

Mr. Stephen did not achieve MMI for the right shoulder until Dr. Bollier declared it on December 17, 2019. I find that claimant was not at MMI, was not working between March 1, 2018 and December 17, 2019, and that he was not capable of substantially similar employment during those respective dates.

The parties submitted a dispute regarding claimant's gross weekly earnings prior to the date of injury. Claimant contends that all wages, tips, and commissions for a one-year period prior to his injury date should be considered, included, and that the average weekly wage should be determined by dividing those earnings by 52 weeks. Defendants contend that only claimant's base salary or wage, plus tips, should be included in the gross weekly wage calculations.

I find that claimant was paid $27,000.00 per year and was paid on a semi-monthly basis. I find that claimant received tips and commissions as part of his regular and continuing compensation through A Touch of Class. Although claimant was paid semi-monthly, the wage data introduced into evidence documents payment of tips and commissions on a monthly basis. I find that the most accurate way to determine

claimant's average gross weekly wage is to use annualized earnings and divide that by 52. Claimant's Exhibit 4, page 72 provides a chart of claimant's annualized earnings for the 12 months immediately preceding the injury date.

During the 12 months immediately preceding his injury he earned $38,074.90. When those annualized earnings are divided by 52, I find that claimant's average gross weekly earnings at the time of his work injury were $732.21. (Claimant's Ex. 4, p. 72) Claimant was single and entitled to two exemptions on the date of injury. (Hearing Report)

Mr. Stephen asserted a claim for medical mileage. It appears that defendants paid for the medical charges for the various mileage claims asserted by claimant. However, there are no mileage entries in defendants' payment records. I find that claimant incurred the mileage amounts listed in Claimant's Exhibit 5, pages 77-78 and that he proved he incurred $852.85 in mileage expenses related to his medical care for the work injuries.

Finally, the parties submitted a disputed penalty benefit claim. I find that claimant proved a delay in payment of healing period benefits owed from March 1, 2018 through December 17, 2019. Claimant contends that the defendants' contention that claimant voluntarily quit and forfeited future entitlement to healing period benefits is unreasonable. However, I find no specific case law on point and claimant cites no prior precedent that necessarily renders defendants' contention unreasonable. I find that defendants asserted a potentially viable legal position, or a reasonable argument for extension of existing law.

However, regardless of whether defendants' argument for denial of healing period benefits is ultimately determined to be reasonable, I find that defendants did not contemporaneously convey their basis for delay or denial of those benefits. In fact, the only evidence of a notice of the basis for denial of benefits from March 1, 2018 through December 17, 2019, is Claimant's Exhibit 3, page 65, which is a response to request for admission that was served November 16, 2020. Providing an explanation more than two years after a denial of benefits starts is not a contemporary conveyance of the basis for denial.

Claimant also contends that defendants failed to give a proper notice of their intention to terminate benefits. Defendants contend their notice of payment of permanent disability and subsequent termination of benefits satisfies the requirements of Iowa Code section 86.13(4). Defendants did not establish that they provided notice for termination of any healing period benefits when claimant sold his business. Therefore, I find that defendants terminated weekly benefits without appropriate notice and that defendants did not advise claimant of his right to file a claim with this agency, as required by statute.

Finally, claimant contends that defendants did not reasonably estimate and pay industrial disability benefits. I disagree with claimant's assertion on this issue. Defendants obtained permanent impairment ratings from the treating physicians. They received full duty releases from both Dr. Abernathey and Dr. Bollier. If claimant had minimal permanent impairment, no restrictions, a college education, continued

operating his business for four years after the work injury, and is relatively young, defendants had multiple facts, if accepted, that would arguably result in a minimal award of industrial disability. I find that defendants had reasonable bases upon which to terminate permanent disability benefits and challenge entitlement to any additional industrial disability benefits.

CONCLUSIONS OF LAW

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).

Mr. Stephen asserts a claim for temporary partial disability benefits from September 23, 2014 through January 15, 2015, June 1, 2016, through September 15, 2016, and October 1, 2016, through February 28, 2018. I made findings, noting that the defendants paid these various claims and benefits. However, claimant has not otherwise proven entitlement to these benefits.

Realistically, the disputed healing period claim is from the date of the sale of claimant's business on March 1, 2018 through the date that Dr. Bollier declared claimant to be at MMI for the right shoulder, or December 18, 2019. Claimant contends that he was not at MMI until December 17, 2019, that he was not working during this period of time, and that he was not capable of substantially similar work between March 1, 2018 and December 17, 2019. Accordingly, claimant contends he qualifies for healing period benefits pursuant to Iowa Code section 85.34(1).

Defendants dispute liability for healing period benefits during this period of time. Instead, defendants contend that the sale of claimant's business is akin to a voluntary quit. Defendants contend that claimant's sale of A Touch of Class results in a forfeiture of any entitlement to healing period benefits pursuant to Schutjer v. Algona Manor Care Center, 780 N.W.2d 549 (Iowa 2010).

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Claimant has demonstrated entitlement to healing period benefits pursuant to Iowa Code section 85.34(1). He proved he was not at MMI until December 18, 2019, that he was not working between March 1, 2018 and December 17, 2019. Although he had returned to work and continued to manage A Touch of Class, he established that he was not performing the full spectrum of his work duties and that he was not capable of substantially similar work to that being performed immediately prior to this work injury.

The question then becomes whether claimant forfeited any entitlement to healing period benefits pursuant to Schutjer v. Algona Manor Care Center, 780 N.W.2d 549 (Iowa 2010). Again, defendants contend that claimant's sale of his business is akin to a voluntary quit and forfeits claimant's right to future healing period benefits. Iowa Code section 85.33(3) (2013) provides:

> If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employee refuses to accept the suitable work with the same employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal.

The proper test to determine whether healing period benefits are owed is: "(1) whether the employee was offered suitable work, (2) which the employee refused." Schutjer, 780 N.W.2d at 559. Approaching this case in that analytical framework and in the order required by the statutory test, the initial question is whether the employee was offered suitable work. Once A Touch of Class was sold on March 1, 2018, the employer did not offer suitable work to claimant.

Defendants' argument appears to require that claimant's business decision, as the owner of A Touch of Class, to sell his business should be treated as a personal decision as an employee to constitute a "refusal of work." Of course, this approach skips the first portion of the test established by the Supreme Court to determine whether the employer is offering claimant suitable work. If the employer was not owned by claimant and sold its business, it would be obvious that the employer was no longer offering suitable work to claimant. In essence, defendants' argument seeks to convert the employer's business decisions into personal employment decisions of the claimant and essentially eliminate the first portion of the applicable test established in Iowa Code section 85.33 and Schutjer.

I found that the sale of the business was a reasonable business decision given claimant's condition and inability to perform all aspects of his position that he performed prior to the injury. Rather than perceiving the sale of the business as a refusal of suitable work, as urged by defendants, I work through the applicable test in the order of the factors set forth in Schutjer. In this case, the sale of the business resulted in a withdraw of any offer of suitable work by the employer to Mr. Stephen. Once sold, claimant was no longer offered light duty work by the employer and the second portion of the test is not applicable. Therefore, I conclude claimant has proven entitlement to healing period benefits from March 1, 2018 through the date he reached MMI. Given the parties' stipulation about the commencement of permanent disability, I specifically conclude claimant proved entitlement to healing period benefits through December 17, 2019.

In this case, I made findings pertaining to claimant's age, educational and employment backgrounds, his motivation, permanent impairment, permanent restrictions, and other relevant factors pertaining to industrial disability. I note the parties' stipulation that the injury should be compensated with industrial disability as an unscheduled injury. Iowa Code section 85.34(2)(u) (2014); Hearing Report. Accordingly, I must determine claimant's entitlement to industrial disability and corresponding permanent partial disability benefits.

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 Ry. 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 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.

I considered all of the relevant, available factors outlined by the Iowa Supreme Court to assess industrial disability. I found that Mr. Stephen proved a 50 percent loss of future earning capacity as a result of the March 24, 2014 work injury. This is equivalent to a 50 percent industrial disability and entitles claimant to an award of 250 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(u) (2014). Pursuant to the stipulation of the parties, these permanent partial disability benefits should commence on December 18, 2019. (Hearing Report)

I must also determine the rate at which weekly benefits should be paid. Iowa Code 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 the employee was 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.

Mr. Stephen was paid on a semi-monthly basis. However, the wage information introduced documents his earnings in a monthly format. Using a yearly basis, semi-monthly basis or a monthly basis would result in the same average gross weekly earnings and weekly rate. Iowa Code section 85.36(3)-(5). Both parties appear to use an average of annualized earnings to determine claimant's proper weekly rate. I conclude the proper and most accurate method to calculate claimant's gross weekly earnings is to annualize the earnings and divide by 52 pursuant to Iowa Code section 85.36(5).

The real debate between the parties is whether commissions should be included within the calculation of the gross weekly earnings. Claimant includes his annual salary, tips, and commissions to calculate the gross weekly earnings. Defendants include claimant's annual salary, plus the tips he earned during the year prior to his injury to calculate gross weekly earnings. Defendants do not include claimant's commissions within their calculation of claimant's gross weekly earnings.

Iowa Code section 85.36 defines "weekly earnings" as "gross salary, wages, or earnings of an employee." Claimant's typical earnings included his salary, tips, and commissions. I perceive no legal basis why commissions should not be included within claimant's weekly earnings. Defendants offer no precedent or legal analysis of why commissions should not be included within gross weekly earnings. Accordingly, I found that the most accurate way to reflect claimant's gross earnings were to include his salary, tips and commissions for the 12 months immediately preceding his injury.

Claimant's Exhibit 4, page 72 accurately details claimant's earnings during the 12 months immediately preceding the injury. Accordingly, I found that claimant's average gross weekly earnings on the date of injury were $732.21. The parties stipulated that claimant was single and entitled to two exemptions. (Hearing Report)

The weekly benefit amount payable to an employee shall be based upon 80 percent of the employee's weekly spendable earnings, but shall not exceed an amount, rounded to the nearest dollar, equal to 66-2/3 percent of the statewide average weekly wage paid employees as determined by the Department of Workforce Development. Iowa Code section 85.37.

The weekly benefit amount is determined under the above Code section by referring to the Iowa Workers' Compensation Manual in effect on the applicable injury date. Having found that claimant's gross average weekly wage was $732.21, that he was single, and claimant was entitled to two exemptions on the March 24, 2014 injury date, I used the Iowa Workers' Compensation Manual with effective dates of July 1,

2013 through June 30, 2014, to determine that the applicable rate for permanent partial disability benefits is $460.17 per week.

In addition to weekly benefits, claimant asserted a right to reimbursement for his independent medical evaluation pursuant to Iowa Code section 85.39. 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).

> If the evaluation by the physician retained by the employer includes a permanent disability rating and "the employee believes this evaluation to be too low," the employee may obtain a subsequent examination by a physician of the employee's choice and be reimbursed by the employer for the reasonable fee of the examination, plus transportation expenses.

Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 841-842 (Iowa 2015).

Defendants assert in their post-hearing brief that claimant was reimbursed for the initial independent medical evaluation performed by Dr. Taylor. However, no such reimbursement is identified in the defendants' payment records submitted as an exhibit. Moreover, it is not clear from the evidentiary record whether defendants or claimant selected Dr. Taylor for the initial evaluation.

By contrast, it is quite apparent that claimant selected Dr. Taylor to perform the March 23, 2021 independent medical evaluation. (Claimant's Ex. 1, p. 20) Claimant's counsel wrote correspondence to the physician, outlining claimant's request that he perform the evaluation. (Claimant's Ex. 1, pp. 15-17) By the time this evaluation had occurred, Dr. Abernathey had offered an opinion pertaining to permanent impairment of claimant's low back. Additionally, by the time Dr. Taylor performed his second evaluation, Dr. Bollier had also offered an opinion pertaining to permanent impairment concerning claimant's right shoulder injury.

Claimant has established that he selected Dr. Taylor for the March 23, 2021 evaluation. He has also established that, by the time Dr. Taylor performed that evaluation, defendants selected Dr. Abernathey and Dr. Bollier as authorized treating physicians, and that Drs. Abernathey and Bollier had offered permanent impairment opinions. I conclude claimant has established the prerequisites of Iowa Code section 85.39 and is entitled to reimbursement of Dr. Taylor's evaluation fees.

There does not appear to be a dispute about the reasonableness of Dr. Taylor's IME fees. Dr. Taylor charged $1,805.00 for his evaluation on March 23, 2021. I conclude that is a reasonable charge for the evaluation and conclude that defendants should reimburse claimant in this amount pursuant to Iowa Code section 85.39.

Mr. Stephen also asserted a claim for medical mileage reimbursement. His claim is summarized at Claimant's Exhibit 5. I reviewed that exhibit and noted that the defendants paid for medical charges and treatment on those listed dates. Pursuant to Iowa Code section 85.27(1) and agency rule 876 IAC 8.1(2), mileage incidental to the use of a private automobile is reimbursable as a medical expense. The mileage reimbursement amounts utilized by claimant in his calculations are accurate as well. Claimant has established entitlement to the medical mileage itemized in Claimant's Exhibit 5, totaling $852.85.

Mr. Stephen asserts a claim for penalty benefits, alleging that defendants unreasonably delayed or denied benefits and that they unreasonably terminated healing period benefits. Iowa Code section 86.13(4) provides:

> a. If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.
>
> b. The workers' compensation commissioner shall award benefits under this subsection if the commissioner finds both of the following facts:
>
> (1) The employee has demonstrated a denial, delay in payment, or termination in benefits.
>
> (2) The employer has failed to prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.

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).

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).

Iowa Code section 86.13(4)(c) provides the relevant statutory standard to determine if a basis for denial or delay of benefits is reasonable. It provides:

In order to be considered a reasonable or probable cause or excuse under paragraph "b," an excuse shall satisfy all of the following criteria:

> (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 for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

In this case, I found that defendants did not offer a reasonable excuse for the delay in payment of benefits. Iowa Code section 86.13(4)(b)(2). Specifically, I found that defendants did not contemporaneously convey their bases for delay of benefits. Therefore, by statutory definition, defendants did not offer a reasonable excuse for the denial, delay, or termination of benefits. Iowa Code section 86.13(4)(c)(3). Defendants bore the burden to establish a reasonable basis, or excuse, and to prove the contemporaneous conveyance of those bases to the claimant. Defendants failed to carry their burden of proof on the penalty issues, and a penalty award is appropriate. Iowa Code section 86.13.

The purpose of Iowa Code section 86.13 is both punishment for unreasonable conduct but also deterrence for future cases. Id. at 237. In this regard, the Commission is given discretion to determine the amount of the penalty imposed with a maximum penalty of 50 percent of the amount of the delayed, or denied, benefits. Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 261 (Iowa 1996). Claimant urges that the defendants' actions were egregious, that they have a history of penalty benefits being awarded, and that a 50 percent, maximum penalty is warranted in these circumstances.

In exercising its discretion, the agency must consider factors such as the length of the delays, 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. Meyers v. Holiday Express Corp., 557 N.W.2d 502, 505 (Iowa 1996). In this situation, defendants did not contemporaneously convey the basis for their denial of benefits or there termination of healing period benefits. Nor did defendants offer an explanation, as required, that claimant could contest the decision before the Iowa Workers' Compensation Commissioner. The defendants' denial of and termination of healing period benefits was unreasonable and justifies a penalty award.

Claimant also asserts that a penalty should be assessed for defendants' decision not to volunteer additional permanent disability benefits. However, I found that the defendants' decision was reasonable in this respect. Defendants possessed medical opinions from the treating surgeons, suggesting that claimant was capable of returning to work without medical restrictions. Even claimant's vocational expert conceded that a full medical release would result in no loss of future earnings. Defendants possessed legitimate evidence and basis to challenge payment of additional permanent disability and their termination of and denial of additional permanent disability benefits does not warrant imposition of penalty benefits.

Therefore, I consider only the extent of a penalty on the healing period benefits denied. In total, defendants denied healing period benefits from March 1, 2018 through December 14, 2019. This is a period of 93.429 weeks of healing period. At the weekly rate of $460.17, this is a total of $42,993.22 in benefits denied. Defendants raised a novel issue of first-impression pertaining to their basis for denial. Although they failed to contemporaneously convey that basis to claimant and ultimately lost on the issue, I believe the amount of the penalty can be tempered somewhat and still achieve the goals and purposes of the penalty benefit statute.

Therefore, having considered the relevant factors and the purposes of the penalty statute, I conclude that a section 86.13 penalty in the 10-15 percent range is appropriate under these circumstances. Specifically, I conclude that a penalty benefit award of $5,000.00 is appropriate in this case. Such an amount is appropriate to punish the employer for delays in payment of benefits under these facts, its failure to provide contemporaneous notice of the basis for denial, and should serve as a deterrent against future conduct. However, the facts of this case are not of such an egregious nature that an additional penalty is warranted.

Mr. Stephen also asks the undersigned to impose a discovery sanction for defendants' denial of a request for admission. Specifically, claimant asserts that defendants' response to Request for Admission No. 15 should be subject to sanctions.

(Claimant's Ex. 3, p. 65) Request for Admission No. 15 requests that defendants admit healing period benefits are owed for the period of March 1, 2018 through December 18, 2019.

First, the parties stipulated that permanent partial disability benefits should commence on December 18, 2019. Accordingly, healing period benefits are only awarded through December 17, 2019 in this case. Accordingly, claimant has not proven the underlying facts and claim asserted in Request for Admission No. 15. Specifically, claimant did not assert a claim for healing period benefits on December 18, 2019 at the time of trial. Accordingly, I conclude it would be and was appropriate to deny the request for admission because the inclusive dates of healing period entitlement were erroneous based on the parties' stipulation as to the commencement date for permanent disability. Nevertheless, I will address the reasonableness of the defendants' response notwithstanding this issue.

Defendants denied the request for admission and asserted, "The Claimant voluntarily resigned, which constitutes a refusal of light duty work at the time of the resignation and at all times in the future pursuant to Schutjer v. Algona Manor Care Center, 780 N.W.2d 549, 559 (Iowa 2010)." (Claimant's Ex. 3, p. 65) Claimant asserts this response violates the discovery rule and that defendants should be sanctioned pursuant to Iowa Rule of Civil Procedure 37(c)(2). Of course, there is not a rule of civil procedure 37(c)(2) in Iowa at this time or at the time of the 2014 work injury.[1]

Iowa Rule of Civil Procedure 1.510 provides for requests for admissions. Rule 1.510(3) permits a party that has served a request for admission the option of filing a discovery motion to determine the sufficiency of the defendants' answer or response to a request for admission. Claimant did not exercise that right in this case. Nor has claimant certified that there was a good faith attempt made to resolve this dispute via personal communication with defense counsel prior to asserting a claim for discovery sanctions. See Iowa Rule of Civil Procedure 1.517(5).

Even if the requirements of personal communication are not considered or required, sanctions are not imposed if "[t]he party failing to admit had reasonable grounds to believe that the party might prevail on the matter," or "[t]here was other good reason for the failure to admit." Iowa Rule of Civil Procedure 1.517(3)(c)-(d). In this instance, defendants cited a potentially applicable Iowa Supreme Court precedent that they sought to extend to apply in this factual situation. Neither party cited precedent that specifically addressed this factual situation. I conclude that defendants raised an issue of first impression and it was reasonable for them to deny the request for admission based on their legal argument, as well as the fact that the request was factually inaccurate by containing the date of December 18, 2019. Accordingly, I conclude that the claimant's request for discovery sanctions should be denied.

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[1] Perhaps this is an unintentional citation to Federal Rule of Civil Procedure 37. However, there is no such numbered rule of civil procedure in Iowa, and a federal rule of civil procedure may be persuasive but certainly is not binding in an Iowa administrative proceeding.

Finally, claimant requests that his costs be taxed against defendants. Costs are taxed at the discretion of the agency. Iowa Code section 86.40. However, costs statutes are construed strictly. Coker v. Abell-Howe Co., 491 N.W.2d 143, 151 (Iowa 1992). Claimant has prevailed in the case and received an award of benefits. Therefore, I conclude it is reasonable to assess his costs in some amount.

Claimant's Exhibit 7 includes a request for assessments of claimant's filing fee ($100.00) and service fees ($14.10). Both are reasonable and assessed pursuant to 876 IAC 4.33(3), (7).

Claimant also seeks assessment of Dr. Taylor's independent medical evaluation. Having concluded that the IME fee should be assessed pursuant to Iowa Code section 85.39, I decline to also assess it as a cost.

Mr. Stephen's final request for costs includes Barbara Laughlin's vocational charges. At the time of hearing, the undersigned assessed defendants up to $500.00 for a rebuttal report to be prepared after hearing by Ms. Laughlin as part of an evidentiary ruling on a late submitted report. Claimant obtained a rebuttal report from Ms. Laughlin. If they have not already done so, defendants should reimburse claimant the amount of Ms. Laughlin's rebuttal report dated June 14, 2021. Pursuant to the oral order at the time of trial, defendants shall reimburse claimant a total of $500.00 for the cost of Ms. Laughlin's June 14, 2021 rebuttal report. (Claimant's Ex. 8, p. 103; Transcript, p. 15)

Claimant also seeks the cost of Ms. Laughlin's initial vocational opinion and report ($1,504.00), as well as her initial rebuttal report ($480.00). I did not find either vocational expert's opinions to be terribly helpful or enlightening. Ultimately, I found that claimant's restrictions were likely somewhere between those offered by Dr. Taylor and the full-duty releases offered by the treating physicians. While the vocational reports offered some information about potential jobs available to claimant, about his motivation, and which critiqued each other, I did not specifically accept or rely upon either vocational opinion in reaching my industrial disability analysis and award. Therefore, I decline to assess any additional charges related to Ms. Laughlin's vocational opinions.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant healing period benefits from March 1, 2018 through December 17, 2019.

Defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits commencing on December 18, 2019.

All weekly benefits shall be payable at the weekly rate of four hundred sixty and 17/100 dollars ($460.17) per week.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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, as required by Iowa Code section 85.30.

Defendants shall reimburse claimant's medical mileage in the amount of eight hundred fifty-two and 85/100 dollars ($852.85).

Defendants shall reimburse claimant's independent medical evaluation in the amount of one thousand eight hundred five and 00/100 dollars ($1,805.00).

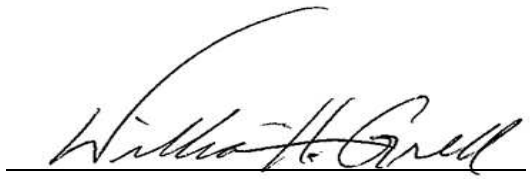
Defendants shall pay claimant penalty benefits in the amount of five thousand dollars ($5,000.00).

Pursuant to the undersigned's evidentiary ruling at the time of the arbitration hearing, defendants shall reimburse claimant, if they have not already done so, in the amount of five hundred and 00/100 dollars ($500.00) for Barbara Laughlin's rebuttal report dated June 14, 2021.

Defendants shall reimburse claimant's costs in the amount of six hundred fourteen and 10/100 dollars ($614.10).

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 __4th____ day of November, 2021.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)

Laura Ostrander (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.