BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GERARDO LEYVA,

Claimant,

vs.

JBS USA LLC,

Employer,

and

AMERICAN ZURICH INS. CO.,

Insurance Carrier,
Defendants.

File No. 5047991

ARBITRATION

DECISION

Head Note Nos.: 2701; 1802

STATEMENT OF THE CASE

Claimant, Gerardo Leyva, filed a petition for arbitration seeking workers' compensation benefits from JBS USA, LLC and American Zurich Insurance Company.

The matter came on for hearing on August 25, 2015, before Deputy Workers' Compensation Commissioner Joseph L. Walsh in Iowa Falls, Iowa. The record in the case consists of claimant's exhibits 1 through 12; defense exhibits A through D; as well the sworn testimony of claimant, Gerardo Leyva and his spouse Miriam Rodas. All exhibits were offered without objection with the exception of Defendant's Exhibit A, pages 19-21, a report from the defense medical expert which was provided the day before hearing. The objection to the report was overruled since it was from a treating physician. The parties briefed this case and the matter was fully submitted on September 11, 2015.

ISSUES

The following issues were submitted for determination.

1. Whether the claimant is entitled to any healing period, temporary total and/or temporary partial disability. Claimant alleges entitlement to a running award of healing period commencing on April 17, 2015. The defendants argue that, while claimant was off work during this period of time, there is no causal connection between her alleged work injury. The dispute hinges upon the nature and situs of claimant's conditions which are causally connected to the work injury.

2. The claimant alleges that the issue of permanent partial disability is not ripe because the claimant has not fully healed. The defendants contend that, even if there was an injury which arose out of and in the course of employment, the injury was temporary only and there is no permanency.

3. Whether the claimant is entitled to medical expenses as outlined in Claimant's Exhibit 11.

4. Whether the claimant is entitled to reimbursement for the independent medical evaluation in Claimant's Exhibit 6.

5. Whether the claimant is entitled to penalty for the unreasonable delay or denial of payments.

STIPULATIONS

Through the hearing report, the parties reached the following stipulations which are accepted at this time.

1. The parties had an employer-employee relationship at the time of the alleged injury.

2. The claimant suffered a cumulative injury which arose out of and in the course of his employment which manifested on or about May 19, 2014. This injury is a cause of both temporary and permanent disability.

3. If any permanent partial benefits are owed, the parties stipulate that the disability is to the bilateral upper extremities, however, the claimant alleges the condition is in his shoulders as well. The situs of the injury is disputed as set forth above.

4. Affirmative defenses have been waived.

5. The parties have stipulated to the weekly rate of compensation. It is $372.78 per week.

6. The parties have stipulated that 65 weeks of benefits were paid prior to hearing. The parties dispute whether these payments are properly classified as temporary or permanent benefits as set forth above.

FINDINGS OF FACT

Gerardo Leyva lives in Marshalltown, Iowa, with his wife, Miriam Rodas. At the time of hearing he was 29 years old. He has one son and three stepchildren. He is a Cuban immigrant. He completed high school in Cuba. He is clean cut and well dressed in a suit and tie. Gerardo and his wife, Miriam Rodas both testified under oath. I find them to be credible.

When he immigrated to Miami, Florida, he worked as a machine operator at a candy factory. He also worked at a restaurant, helping the wait staff. He then moved to Nebraska and worked at a JBS USA beef plant as a strip trimmer, cutting fat off meat. He also worked at Tyson, as a tender puller. Then he became employed at the JBS plant in Marshalltown; he started working there in 2011. He first performed work known as feather boning, removing the bone from the loin. He injured his back in 2012 performing this job. He fully healed from this job and returned to work removing fat from loins. He then moved to a job known as "push hog" in approximately June 2013. The job involved pulling the full hogs on an overhead track to the main chain, approximately five at a time. He grabbed the hog carcass by the legs and pulled multiple carcasses at a time. His best estimate is that he pulled the hogs around half a city block. The floor was slippery with a lot of ice. He testified it was not uncommon to fall down and he did so fairly regularly. He testified that he had to grab the hogs forcefully and exert a great deal of strength to move the line. When a carcass would fall off the line, the claimant would have to pick it up and place it in a cart. He was expected to perform this work quickly.

Claimant testified he sometimes performed this work without any assistance. Over time, Gerardo began to develop pain in his hands and wrists. He testified he first noticed pain, numbness and weakness in both of his hands. He also began to notice pain in his forearms. He reported these symptoms to his supervisor and the company nurse on May 19, 2014. (Claimant Exhibit 1, p. 6) He testified he was provided conservative treatment (ice and NSAIDs) at the plant and the soon began to radiate all the way up his arms. (Cl. Ex. 1, pp. 7-10) He initially continued to perform his regular job while he followed up for treatment at the plant.

On June 10, 2014, he was referred to Daniel Miller, M.D., at Occupational Medicine Plus. Dr. Miller recorded the following history in his first visit. "Patient is having bilateral hand pain which radiates up arms into shoulders with weakness in arms and loss of grip." (Cl. Ex. 7, p. 1) He diagnosed de Quervain's disease in his bilateral wrists and provided a wrist splint and medications. (Cl. Ex. 7, p. 2) Gerardo returned to Dr. Miller on June 17, 2014. At that time, Dr. Miller also provided substantial restrictions including no lifting greater than 20 pounds. (Cl. Ex. 7, p. 5) He also diagnosed bilateral carpal tunnel syndrome and ordered an EMG. Thereafter, Gerardo began performing light-duty work. The EMG was abnormal. "Bilateral median neuropathy; localizing to the level of the wrist." (Cl. Ex. 4, p. 2) He was instructed to follow up with Dr. Miller.

On July 1, 2014, he returned to Dr. Miller. Dr. Miller referred Gerardo to a specialist, Benjamin Paulson, M.D, at Iowa Orthopaedic Services. He first saw Dr. Paulson on July 18, 2014. Dr. Paulson diagnosed bilateral carpal tunnel syndrome and treated Gerardo with injections, bracing and physical therapy. (Cl. Ex. 5, p. 2) Dr. Paulson restricted the claimant to lifting less than 10 pounds and no use of a knife. (Cl. Ex. 5, p. 3) Gerardo's symptoms did not improve. On August 8, 2014, Dr. Paulson recommended surgery. Surgery was performed on the left on August 29, 2014 (left carpal tunnel release) and the right on October 31, 2014 (right carpal tunnel release). (Cl. Ex. 6, p. 6; Def. Ex. B) Gerardo testified the surgeries did not help. In March 2015,

he was sent for a functional capacity evaluation at E3 Work Therapy Service. (Cl. Ex. 3) He was provided permanent restrictions: lifting 24 pounds occasionally from floor to waist, lifting 13 pounds waist to crown occasionally, and carrying 9 pounds bilaterally occasionally. (Cl. Ex. 3, p. 1) Gerardo testified that he told Dr. Paulson about his shoulder symptoms. He testified he was told Dr. Paulson could not treat his shoulders. At hearing, this testimony was confirmed by his spouse.

Dr. Paulson placed Gerardo at maximum medical improvement on April 10, 2015 and assigned impairment ratings of 11 percent of the left arm and 10 percent of the right. (Cl. Ex. 5, pp. 9-10) He assigned the permanent restrictions from the FCE. (Cl. Ex. 5, pp. 10-11) Claimant's counsel immediately wrote to defendants asking for treatment for the claimant's shoulders and other arm conditions. (Cl. Ex. 10, p. 8) There is no evidence in the record that defendants responded to this initial request for treatment.

After the permanent restrictions were assessed, the employer placed Gerardo in the position called "trim hard bone." Gerardo testified at hearing that this job caused an increase in his pain and symptoms. When he reported the increased pain, Gerardo testified he was sent home. He testified that his supervisors, named specifically, reacted negatively when he objected to performing work due to his restrictions. Since being sent home, Gerardo has continued to check for jobs at the plant. He testified that none have become available within his restrictions.

On June 30, 2015, Gerardo saw Farid Manshadi, M.D., for an independent medical evaluation (IME). Dr. Manshadi diagnosed Gerardo with deQuervain's tenosynovitis, bilateral carpal tunnel, bilateral lateral epicondylitis, and bilateral shoulder impingement syndrome. (Cl. Ex. p. 2, p. 6) He opined these conditions were all related to Gerardo's repetitive work duties for the employer. (Cl. Ex. 2, pp. 9-10) He assigned impairment ratings which were significantly consistent with the ratings assigned by Dr. Paulson. (Cl. Ex. 2, p. 10) Dr. Manshadi, however, specifically opined that Gerardo had not reached maximum medical improvement from the conditions set forth above. He recommended treatment including physical therapy, injections and surgical evaluation. (Cl. Ex. 2, p. 10)

Claimant's counsel again wrote to defendants in July 2015, after receiving Dr. Manshadi's expert opinion. Treatment was again demanded for Gerardo's elbows and shoulders. Defendants responded quickly this time and arranged a return visit with Dr. Paulson. (Cl. Ex. 10, p. 11) The following information is documented at Gerardo's August 14, 2015, visit: "pt states the pain is the same as before, but now it is in his shoulders. Advised pt Dr. Paulson doesn't treat shoulders, but he will evaluate hands and wrists." (Def. Ex. A, p. 1) Dr. Paulson then documented the pain in his hands, wrists, elbows and shoulders. "I have nothing further to offer and do not know any way to make him better. I suggest he see Dr. Dan Miller again for his shoulder pain to see if Dr. Miller has any further suggestions." (Def. Ex. A, p. 2) This documentation confirmed Gerardo's testimony that he had previously been told Dr. Paulson could not treat his shoulders.

At the time of hearing, Gerardo continued to have pain in his bilateral hands, arms and shoulders. He takes medications every day to help with the pain. He is not able to perform many of his ordinary activities of daily living, such as carrying groceries or helping lift his son, Edwin, who has a disability. He is unable to engage in sports or other family activities.

CONCLUSIONS OF LAW

The central fighting issue in this case is the nature and situs of the claimant's disabilities. The parties have stipulated that Gerardo suffered a cumulative work injury which manifested on May 19, 2014. The defendants contend this injury only caused disability in the claimant's bilateral wrists and arms. The defendants' physician treated the claimant and released him with permanent impairment. Claimant contends that the disability extends to his bilateral shoulders. He also contends that he has untreated conditions or diagnoses in his bilateral hands, wrists and arms. If the claimant is correct, he needs further evaluation and treatment for these conditions, then he has a strong argument that he is still in a healing period.

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).

The expert opinions in this case are conflicted. I find, however, that the greater weight of evidence supports the claimant's contentions that he has untreated conditions in his bilateral shoulders, elbows and wrists. I base this finding upon the expert medical opinion of Dr. Manshadi combined with Gerardo's credible testimony. Dr. Manshadi's opinion is found in the record at claimant's exhibit 1, page 10. He diagnosed bilateral de Quervain's tenosynovitis, bilateral lateral epicondylitis and bilateral shoulder

impingement syndrome and he related those conditions to his work activities. He recommended diagnostic studies on the shoulders, with cortisone injections, physical therapy and even possibly surgery. (Cl. Ex. 2, p. 10)

I find this evidence more convincing than the opinion of Dr. Paulson primarily because his opinion is more consistent with the claimant's credible testimony. While the defendants claim that Gerardo's shoulder pain is undocumented prior to his July 2015, visit with Dr. Paulson, this argument is not entirely accurate. The JBS medical notes documented early on that the pain went up his arms. (Cl. Ex. 1, pp. 7-10) Dr. Miller documented the pain radiating into his shoulders in June 2014. (Cl. Ex. 7, p. 1) He even reported shoulder pain at his FCE in March 2015. (Cl. Ex. 3, p. 5) Gerardo then clearly complained of shoulder pain in July 2015. (Def. Ex. A) Given the total amount of documentation in the file, this is a significant amount of medical documentation of shoulder symptoms.

Dr. Miller also clearly diagnosed de Quervain's disease. Dr. Paulson chose to focus his treatment on the carpal tunnel syndrome which was documented in the studies. Dr. Paulson never explained why he did not address or even really treat the de Quervain's tenosynovitis or lateral epicondylitis. There may be a very good reason he did not, however, there is no reason provided in this record. Dr. Paulson may have felt the claimant did not have these diagnoses. He may have felt these diagnoses were not causally connected to the work injury or he may not specialize in the treatment of these conditions. I cannot speculate. At his last visit with Gerardo in July 2015, Dr. Paulson provided the following opinion. "I have nothing further to offer and do not know any way to make him better. I suggest he see Dr. Dan Miller again for his shoulder pain to see if Dr. Miller has any further suggestions." (Def. Ex. A, p. 2) The defendants never had Gerardo evaluated by a shoulder specialist. Such an evaluation may have clarified Gerardo's medical condition. Gerardo was also never even re-evaluated by Dr. Miller for the shoulders, as was suggested by Dr. Paulson.

Based upon the record before me, I find by a preponderance of evidence that all of the claimant's ongoing symptoms in his upper extremities are causally connected to his stipulated May 2014, work injury. I adopt the opinions of Dr. Manshadi.

The next issue is whether claimant is entitled to a running healing period award.

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor

an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

Since I have found that Gerardo has conditions in his bilateral arms and shoulders which have gone largely untreated, I find that he has been in a healing period since April 17, 2015. The claimant has not returned to work, he is not capable of substantially similar work and he is not at maximum medical improvement. I base this conclusion upon the expert opinion of Dr. Manshadi, combined with Gerardo's credible testimony. Consequently, I conclude that claimant is entitled to healing period benefits commencing on April 17, 2015, through the present and continuing until such time as he is no longer eligible for such benefits under the statute. At such time, defendants shall provide claimant notice before terminating benefits.

Since I have determined that claimant is still in a healing period, I find that the issue of permanency is not ripe for adjudication.

The next issue is whether the claimant is entitled to medical expenses as outlined in Claimant's Exhibit 11.

The medical expenses outlined in Claimant's Exhibit 11 is for medical mileage for authorized medical care. The defendants do not seem to truly dispute this and it is clearly allowable under the statute. The defendants are ordered to pay the mileage demand as outlined in Exhibit 11.

The final issue is the claimant's need for alternate medical care.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

The employer's chosen physician, Dr. Paulson has specifically stated he has nothing further to offer the claimant. The claimant is in need of evaluation of his bilateral de Quervain's tenosynovitis, lateral epicondylitis and shoulder impingement syndrome. Based upon the record before the agency, I cannot find the care has been abandoned. It was denied. It has now been established that the condition for which the claimant seeks treatment is causally connected to the work injury. The defendants shall authorize an orthopedist other than Dr. Paulson, to evaluate these conditions and determine the appropriate treatment.

Claimant also seeks IME expense.

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).

The claimant is entitled to the IME expense outlined in Claimant's Exhibit 12.

The next issue is penalty.

In Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996), and Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996), the supreme court said:

> Based on the plain language of section 86.13, we hold an employee is entitled to penalty benefits if there has been a delay in payment unless the employer proves a reasonable cause or excuse. A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to

contest the employee's entitlement to benefits. A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable."

Christensen, 554 N.W.2d at 260.

The supreme court has stated:

(1) If the employer has a reason for the delay and conveys that reason to the employee contemporaneously with the beginning of the delay, no penalty will be imposed if the reason is of such character that a reasonable fact-finder could conclude that it is a "reasonable or probable cause or excuse" under Iowa Code section 86.13. In that case, we will defer to the decision of the commissioner. See Christensen, 554 N.W.2d at 260 (substantial evidence found to support commissioner's finding of legitimate reason for delay pending receipt of medical report); Robbennolt, 555 N.W.2d at 236.

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

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

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

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

Id.

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

(6) In determining the amount of penalty, the commissioner is to consider factors such as the length of the delay, the number of delays, the information available to the employer regarding the employee's injury and wages, and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

(7) An employer's bare assertion that a claim is "fairly debatable" does not make it so. A fair reading of Christensen and Robbennolt, makes it clear that the employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." See Christensen, 554 N.W.2d at 260.

Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

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

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

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

In this case, the denial by the defendants was fairly debatable due to the medical reports of Dr. Paulson. The claimant has failed to prove the denial was unreasonable.

ORDER

THEREFORE IT IS ORDERED:

Claimant is entitled to a running award of benefits. Defendants shall pay the claimant a running award commencing April 17, 2015, forward until such time as benefits may cease pursuant to Iowa Code section 85.34(1), at the rate of three hundred seventy-two dollars and 78/100 ($372.78) per week.

Either party may file a new petition for arbitration for the purpose of assessment permanent partial disability, when appropriate.

Defendant shall pay accrued weekly benefits in a lump sum.

Defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendant shall be given credit for the weeks previously paid.

Defendants shall authorize an orthopedist other than Dr. Paulson to evaluate the claimant's need for further treatment for bilateral hands, wrists, elbows and shoulders consistent with this decision. Defendants shall complete this by sending correspondence to claimant's counsel within thirty (30) days from the date of this decision, naming the new authorized physician.

Defendants shall reimburse claimant's IME expense in the amount of one thousand two hundred and no/100 dollars ($1,200.00) as outlined in Claimant's Exhibit 12, page 6.

Defendants shall pay claimant's medical mileage as set forth in Claimant's Exhibit 11.

Defendants shall pay the claimant's wages as agreed at hearing. (Transcript, p. 6)

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

Costs are taxed to defendant.

Signed and filed this 10th day of August, 2016.

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