BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MIGUEL BURGOS,

Claimant,

vs.

OLDCASTLE MATERIALS IOWA GROUP/OMG MIDWEST, INC.,

Employer,

and

LIBERTY MUTUAL INSURANCE,

Insurance Carrier,
Defendants.

File No. 5059157

ARBITRATION

DECISION

Head Notes: 1803, 1803.1, 2503, 2907

STATEMENT OF THE CASE

Claimant, Miguel Burgos, filed a petition in arbitration seeking, workers' compensation benefits from Oldcastle Materials Iowa Group/OMG Midwest Inc. (Oldcastle), employer, and Liberty Mutual Insurance, insurer, both as defendants. This matter was heard in Des Moines, Iowa on July 3, 2018 with a final submission date of August 6, 2018.

The record in this case consists of Joint Exhibits 1-13, Claimant's Exhibits 1-7, Defendants' Exhibits A through H, and the testimony of claimant and Randy Cooper.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

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

2. Whether there is a causal connection between the injury and the claimed medical expenses.

3. Costs.

FINDINGS OF FACT

Claimant was 51 years old at the time of hearing. He was born in El Salvador. Claimant moved to the United States when he was 13. Claimant graduated from high school in California. He went to community college for six months and received a certificate as a pharmacy technician. Claimant went to college for two years, studied accounting, but did not graduate.

Claimant speaks Spanish and English. He testified without the aid of an interpreter at hearing although an interpreter was present.

Claimant has worked on a production line banding cardboard bundles. He did copying. He packaged heavy computers. He assembled heavy water pumps. He installed decorative fireplaces. He worked assembling blades for turbines. Claimant has worked for various production companies performing quality control. He worked installing underground pipe.

Claimant testified he was no longer able to perform most of his prior jobs that required heavy lifting.

Claimant began with Oldcastle in 2013. He testified he worked as a "floater." Claimant said as a floater he has ran a skid loader, operated a machine broom, operated a water truck and shoveled asphalt. A job description for claimant's position indicates claimant had to exert 25-50 pounds of force frequently and lift up to 50 pounds. (Claimant's Exhibit 4, pages 57-62)

Randy Cooper testified he is a safety manager for Oldcastle. Mr. Cooper testified Oldcastle is also known as CRH Americans. He said claimant is employed by Des Moines Asphalt and Paving, which falls under the umbrella of CRH.

Claimant testified the first year he worked for Oldcastle, he had instances of lower back and neck pain. Claimant attributed this pain to his body adjusting to his work.

In 2013 claimant was evaluated by Timothy Swinton, M.D. twice for neck pain, radiating into the arm, lower back pain and migraines. Claimant was treated with medication. (Ex. B, pp. 6-15)

In March of 2014 claimant returned to Dr. Swinton with complaints of chronic migraines. Claimant was treated with medication. (Ex. B, pp. 16-19)

Claimant returned to Dr. Swinton in February and April of 2015 for migraines and neck pain. Claimant was treated with medication and given trigger point injections. (Ex. B, pp. 20-29)

In October 2015 claimant returned to Dr. Swinton with complaints of neck pain and migraines. Claimant was given trigger point injections. (Ex. B, pp. 30-36)

On November 20, 2015 claimant was driving a water truck on Highway 30 in Iowa. Claimant said it was snowing, and he was going down a hill. The truck slid off the road. The truck rolled approximately three to five times. Claimant said when the truck stopped he felt pain all over his body.

Ambulance records from the accident note claimant indicated pain in his left shoulder, pain in both hips, pain in the left leg and bruising on the left shoulder, left clavicle, and a head laceration. (Joint Ex. 1)

Claimant was evaluated at Central Iowa Healthcare in Marshalltown, Iowa. He was given a CT of the cervical spine and an x-ray of the pelvis and left shoulder. Diagnostic testing showed degenerative changes. Claimant was assessed as having a left mid-shaft radius fracture. He was given medications and sent home. (Jt. Ex. 2, pp. 2-9)

Claimant testified that after the accident, he was put on early winter layoff.

Claimant was evaluated by Daniel Miller, M.D. on November 23, 2015 for leg problems. Claimant returned to Dr. Miller on December 1, 2015 with complaints of pain in the left arm and shoulder. Claimant also complained of headaches. (Jt. Ex. 3, pp. 20-24)

Claimant was seen by Benjamin Paulson, M.D., an orthopedic surgeon, on December 3, 2015. Claimant was seen for follow up of a left wrist fracture. Claimant was assessed as having a left radius fracture and right wrist pain. (Jt. Ex. 4, pp. 33-35)

On December 7, 2015 claimant underwent an MRI of the cervical spine. It showed degenerative changes from C3-C6. (Jt. Ex. 5, pp. 84-85)

On December 8, 2015 claimant underwent surgery to the left wrist. Surgery consisted of internal fixation of the left radial shaft fracture. Surgery was performed by Dr. Paulson. (Jt. Ex. 6)

On December 17, 2015 claimant was evaluated by Kurt Smith, D.O. Claimant complained of left shoulder and neck pain. Claimant was assessed as having a shoulder strain and a whiplash injury to the neck. Claimant was treated with medication and prescribed physical therapy. (Jt. Ex. 2, pp. 11-14)

Claimant was seen by Dr. Smith for follow up of neck and shoulder pain on March 24, 2016. Claimant's pain had resolved. Claimant's shoulder pain had improved. Claimant was returned to work at full duty. Claimant was told to wean off of muscle relaxants and discontinue physical therapy. Claimant was told to follow up with an orthopedist for his wrist and hand issues. Claimant was found to be at maximum medical improvement (MMI) for the shoulder and neck. (Jt. Ex. 4, pp. 40-43, 47-48)

On the same date claimant had a follow up with Dr. Paulson for the right wrist fracture. Claimant's symptoms had improved, but claimant had numbness and tingling in the left hand and forearm. Claimant was encouraged to wear a brace at night. He was returned to work with no restrictions for the wrist. (Jt. Ex. 4, pp. 44-45)

Claimant returned to Dr. Paulson on April 21, 2016. He was assessed as having persistent carpal tunnel problems. Claimant was given a therapeutic carpal tunnel injection on the left. (Jt. Ex. 4, pp. 49-51)

On April 9, 2016 claimant saw Dr. Smith in follow up for neck pain. Claimant was given a trigger point injection. (Jt. Ex. 4, pp. 53-54, 60-62)

Claimant returned to Dr. Paulson on May 19, 2016 for follow up of the left wrist pain. Claimant received only temporary relief from the left carpal tunnel injections. Surgery was discussed and chosen as a treatment option. (Jt. Ex. 4, pp. 58-59)

Claimant returned to Dr. Smith with complaints of left leg pain. EMG/NCV studies were recommended. On June 28, 2016 claimant underwent EMG/NCV testing. It showed no evidence of peripheral compression, neuropathy or lumbar radiculopathy. (Jt. Ex. 4, pp. 66-67)

On June 5, 2016 claimant underwent a left carpal tunnel release. Surgery was performed by Dr. Paulson. (Jt. Ex. 6, p. 94)

Follow up care on July 18, 2016 indicated claimant's symptoms had improved and claimant was doing well. (Jt. Ex. 4, pp. 72-73)

On July 29, 2016 claimant was seen in follow up by Dr. Smith. Claimant was found to be at MMI for the cervical spine, shoulder and lower extremity. He had no restrictions regarding the injury for these body parts, but had continued restrictions for his left hand. (Jt. Ex. 4, pp. 74-76)

In an August 31, 2016 report, Robert Broghammer, M.D. gave his opinions of claimant's condition following an IME.

Claimant complained of left leg pain up the left hip. Claimant also complained of left shoulder pain and neck pain. Dr. Broghammer assessed claimant as having a left shoulder strain, cervical strain and a left sacroiliac joint dysfunction. (Ex. E)

Dr. Broghammer opined claimant's cervical problems were due to preexisting chronic problems and not his motor vehicle accident. He found claimant was at MMI for the left shoulder and cervical spine condition. He found claimant had no ratable permanent impairment and no permanent restrictions for either condition. (Ex. E, p. 62) He found claimant was not at MMI for the SI joint dysfunction. He opined claimant had no permanent restrictions or permanent impairment for that condition. (Ex. E, pp. 62-63)

Claimant returned in follow up with Dr. Paulson on September 9, 2016. Dr. Paulson found claimant was at MMI for the left carpal tunnel release and had no work restrictions. (Jt. Ex. 4, pp. 77-80)

From September through December of 2016 claimant was evaluated by Mary Shook, M.D., for follow up care of leg, knee, and back pain. Claimant was discharged from care by Dr. Shook on December 13, 2016. (Jt. Ex. 8, pp. 125-164)

In a March 29, 2017 report Sunil Bansal, M.D. gave his opinions of claimant's condition following an IME. Claimant complained of continued headaches, bilateral shoulder pain, left elbow pain, numbness and tingling in the fingers of the left hand, lower back pain, left hip pain and left knee pain. (Cl. Ex. 1, pp. 1-12)

Dr. Bansal opined claimant's work injury aggravated claimant's spondylosis in his cervical spine from level C3-C6. He opined claimant sustained a left rotator cuff injury. Dr. Bansal found claimant's work injury caused claimant's right sacroiliitis. (Cl. Ex. 1, pp. 13-18)

Dr. Bansal found claimant had a 5 percent permanent impairment to the neck; a 4 percent permanent impairment to the body as a whole for the left shoulder; a 5 percent permanent impairment to the left upper extremity; and a 5 percent permanent impairment to the back. Dr. Bansal limited claimant to no lifting more than 40 pounds with both hands, and up to 10 pounds only on the left. He told claimant to avoid situations requiring repetitive neck motion. He also told claimant to avoid bending and twisting. He limited claimant to avoiding sitting, standing or walking more than 60 minutes at a time. (Cl. Ex. 1, pp. 18-21)

Claimant testified when he got Dr. Bansal's report, he gave it to his employer. He said after receiving the report, the employer made claimant a flagger/pilot car driver in approximately April of 2017.

Claimant said as a flagger he rotates every half an hour between flagging cars and driving a pilot car. Claimant said he has a valid CDL.

In a June 12, 2017 letter, Dr. Paulson indicated he had reviewed Dr. Bansal's IME report. He disagreed with Dr. Bansal's permanent impairment rating. Dr. Paulson found claimant had no loss of range of motion in the left wrist when compared to the uninjured right wrist. He opined that as claimant had a normal two-point sensation on the left, claimant would be found to have a 3 percent permanent impairment for the carpal tunnel release. He disagreed with permanent restrictions given by Dr. Bansal to claimant's left upper extremity. He opined claimant did not require further medical care for the left upper extremity injury. (Jt. Ex. 4, pp. 81-83)

In a letter dated June 12, 2017 Dr. Shook indicated she had read both Dr. Bansal and Dr. Broghammer's IME reports. Dr. Shook disagreed claimant would need SI joint injections in the future. She opined claimant was at MMI regarding his back and SI joint

issues. She opined claimant had a 3 percent permanent impairment for his back and SI joint problems. (Jt. Ex. 8, pp. 167-169)

In an August 7, 2017 report, Daryl Short, DPT, gave his findings of claimant's abilities following a functional capacity evaluation (FCE). Claimant was found to have given consistent effort. Claimant was found to be able to lift up to 30 pounds occasionally. He was found to be able to work in the lower-medium physical demand level. (Cl. Ex. 2)

On August 25, 2017 claimant underwent an MRI of the lumbar spine. It showed multi-level degeneration disc disease. (Jt. Ex. 5, pp. 86-87)

On September 21, 2017 claimant was evaluated by Alan Bollinger, D.O. Claimant had a two-year history of chronic lower back and neck pain. Claimant was treated with medication and prescribed physical therapy. (Jt. Ex. 11, pp. 176-171)

In an October 5, 2017 letter Dr. Bansal indicated he had reviewed claimant's MRI. Dr. Bansal recommended claimant have further evaluation with a spine surgeon. (Cl. Ex. 1, p. 31)

In a February 9, 2018 letter, written by claimant's counsel, Dr. Swinton indicated he had treated claimant for neck and back pain with radiculopathy in the right arm and legs. He had also treated claimant for migraines. Dr. Swinton indicated claimant's pain had subsided. Claimant continued to work full duty for defendant-employer until the November of 2015 accident. (Jt. Ex. 12, p. 186)

Dr. Swinton agreed claimant's November of 2015 work injury aggravated an underlying cervical condition, a likely rotator cuff injury on the left, a left carpal tunnel syndrome, and aggravated a degenerative condition in claimant's lumbar spine. (Jt. Ex. 12, p. 193) He opined claimant had some level of permanent impairment to the neck, back, left shoulder and left arm due to the November of 2015 accident. He also agreed with the restrictions placed by Dr. Bansal. (Jt. Ex. 12, pp. 193-194)

On February 20, 2018 claimant was evaluated by Matthew Biggerstaff, D.O. at Broadlawns Medical Center. Claimant was given a lumbar steroid injection at the L5-SI levels. (Jt. Ex. 13, pp. 201-205)

Claimant returned to Broadlawns in April of 2018. Claimant had a 50 percent reduction in pain. Claimant was assessed as having lumbar radiculopathy. An EMG of his left lower extremity was recommended. (Jt. Ex. 13, pp. 206-210)

Claimant returned to the pain management clinic at Broadlawns on April 25, 2018. A diagnostic lumbar medial branch block did not provide enough relief to consider a radiofrequency ablation. Claimant was recommended to have an MRI and shoulder x-ray. Claimant was also recommended to consider referral to a surgeon. (Jt. Ex. 13, pp. 211-214)

Claimant testified his neck and shoulder pain have improved, but the pain has not gone away. He testified since his accident his migraines are stronger and more frequent. He testified he continues to have lower back pain in his legs.

Claimant testified at the time of injury he earned approximately $17.00 an hour. At the time of hearing, claimant was earning $18.28 an hour.

Claimant testified he has not applied for work with any other employer. He said he works overtime in the summer for Des Moines Asphalt. At the time of hearing claimant was still employed with Des Moines Asphalt. He testified his job duties have been changed since April of 2017 and that he no longer shovels asphalt.

CONCLUSIONS OF LAW

The first issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits. Defendants contend claimant's permanent impairment is limited to a scheduled member disability. Claimant contends his impairment should be assessed as an industrial disability.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

If claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

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

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of

the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

A number of experts have opined regarding claimant's permanent impairment. Dr. Miller treated claimant for his arm, shoulder, leg and back pain. He saw claimant on five occasions between November of 2015 and November of 2017. Dr. Miller did not find claimant had any permanent impairment or permanent restrictions. (Jt. Ex. 3)

Dr. Paulson treated claimant for his upper extremity injury. He treated claimant from December of 2015 through June of 2017. He saw claimant approximately 12 times. Dr. Paulson performed both surgeries on claimant's upper extremity. He opined claimant had a 3 percent permanent impairment to the left upper extremity as a result of his November of 2015 injury. (Jt. Ex. 4; Jt. Ex. 6)

Dr. Bollinger treated claimant for problems with his back, neck and leg. He saw claimant approximately five times from September of 2017 to November of 2017. Dr. Bollinger did not find claimant had any permanent impairment or permanent restrictions. (Jt. Ex. 11)

Dr. Smith treated claimant from December of 2015 through July of 2016. He treated claimant approximately 14 times. Dr. Smith treated claimant for back pain, left shoulder complaints, lower extremity problems, and neck pain. Dr. Smith found claimant had no permanent impairment or permanent restrictions. (Jt. Ex. 4, p. 76)

Dr. Broghammer evaluated claimant one time for an IME. Dr. Broghammer found claimant had no permanent impairment or permanent restrictions. (Ex. E)

Dr. Shook treated claimant from September 2016 through December 2016. She saw claimant approximately seven times. Dr. Shook opined claimant had a 3 percent permanent impairment regarding problems with his back and SI joint. (Jt. Ex. 8, p. 168)

Dr. Swinton treated claimant for neck pain, back pain and headaches both before and after the accident. He opined claimant had a permanent impairment to his neck, back, left shoulder and left arm due to the November of 2015 motor vehicle accident. (Jt. Ex. 12, p. 194) Dr. Swinton's opinions regarding permanent impairment are helpful in understanding claimant's disability. However, an unspecific permanent impairment is not a factor in determining claimant's industrial disability.

Dr. Bansal evaluated claimant one time for an IME. Dr. Bansal opined claimant had a permanent impairment to the left shoulder, left arm, back and neck. (Cl. Ex. 1) Dr. Bansal's opinion is problematic for several reasons. Dr. Bansal found claimant had an additional 2 percent permanent impairment to the left lower extremity based on loss

of range of motion. As noted in Dr. Paulson's report, when compared to claimant's uninjured right upper extremity, claimant actually has no loss of range of motion. (Jt. Ex. 4, pp. 81-83)

Second, nearly every treating physician who reviewed Dr. Bansal's IME report disagreed with his findings of permanent impairment and permanent restrictions.

Third, as noted, Dr. Bansal evaluated claimant on one occasion for an IME. As detailed above, Drs. Miller, Bollinger, Paulson, Smith, and Shook treated claimant on a number of occasions over several years. The opinions of treating doctors are not to be given greater weight simply because they are treating doctors. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404, 408 (Iowa 1994). However, as a practical matter, Drs. Miller, Bollinger, Paulson, Smith, and Shook have far greater experience and familiarity with claimant's condition and medical presentation than does Dr. Bansal.

Based on the above, it is found the opinions of Dr. Bansal regarding claimant's permanent impairment are not convincing.

Dr. Paulson found claimant had a 3 percent permanent impairment to the left upper extremity. Dr. Shook found claimant had a 3 percent permanent impairment to the body as a whole for the back and SI joint dysfunction. It is found these permanent impairments are used in determining claimant's industrial disability.

The record indicates when claimant took Dr. Bansal's report to work, claimant was moved to a flagger/pilot car driver position. It is unclear to what extent Dr. Bansal's restrictions are being applied at claimant's employment. However, the record does indicate that, in some capacity, claimant has been moved to a lighter work duty based, in part, on Dr. Bansal's report.

Claimant earned approximately $17.00 an hour at the time of injury. At the time of hearing claimant was earning $18.28 per hour. Claimant worked overtime. Claimant is still employed with Des Moines Asphalt. Claimant was 51 years old at the time of hearing. He speaks English and Spanish. When all relevant factors are considered, it is found claimant has a 10 percent loss of earning capacity or industrial disability.

The next issue to be determined is whether there is a causal connection between the injury and the claimed medical expenses.

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

Under Iowa Code section 85.27, the employer has the right to choose medical care as long as it is offered promptly and is reasonably suited to treat the injury without undue inconvenience to the employee. An employer is not responsible for the cost of medical care that is not authorized by section 85.27. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190 (Iowa 2003). A claimant can seek payment of unauthorized medical care if there is a preponderance of the evidence the care was reasonable and beneficial and provides a more favorable outcome than the care authorized by the employer. Brewer Strong v. HNI Corp., 913 N.W.2d 235, 244-45 (Iowa 2018). Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010). To be beneficial, the medical care must provide a more favorable medical outcome than would likely have been achieved by the care authorized by the employer. Id. at 206.

Claimant seeks medical expenses of $11,561.88. (Cl. Ex. 6) Claimant had an x-ray for migraines in August of 2017. (Jt. Ex. 10, pp. 174-175) Claimant had an MRI in August of 2017 for the lumbar spine. (Jt. Ex. 5, pp. 86-87) In September of 2017 claimant had an x-ray for the cervical spine. (Jt. Ex. 11, pp. 176-181) This treatment was not authorized by defendants. There is little evidence this treatment was reasonable and provided a more favorable outcome than care provided by the employer. For this reason it is found defendants are not liable for these expenses.

On October 5, 2017 claimant had an MRI of the brain. This MRI was not made into an exhibit in the record. This MRI was not authorized by defendants. There is little evidence in the record this treatment was reasonable and provided a more favorable outcome than care provided by the employer. For this reason, defendants are not liable for this expense.

The remaining of the expenses found at Exhibit 6 relate to unauthorized treatment from Broadlawns. As noted, these medical expenses were not authorized. There is little evidence that this treatment provided a more favorable outcome than care provided by the employer. Defendants are not liable for the Broadlawns expenses.

The next issue to be determined is costs.

Claimant seeks reimbursement of $900.00 for an FCE. (Ex. 7, pp. 80, 87)

Rule 876 IAC 4.33 indicates, in relevant part:

Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

Rule 4.33 allows for the taxation of reasonable costs associated with obtaining two reports of medical providers. The relevant inquiry with regard to taxation of the FCE cost in question is whether the FCE was required by a medical provider as necessary for the completion of a medical report. In this instance, if the FCE was ordered by a physician to evaluate claimant's permanent disability and need for restrictions, the cost is a reasonable cost under Rule 876 IAC 4.33. If it is not, taxation of costs of the FCE is inappropriate.

There is no evidence Dr. Bansal ordered the FCE at issue. The FCE does not fall under a reimbursable cost under Rule 876 IAC 4.33. Given this, claimant is not due reimbursement for the FCE.

ORDER

Therefore it is ordered:

That defendants shall pay claimant fifty (50) weeks of permanent partial disability benefits at the rate of eight-hundred thirty and 30/100 dollars ($830.30) per week commencing on December 13, 2016.

That defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. April 24, 2018). That defendants shall receive a credit for benefits previously paid.

That defendants shall pay costs, except for costs associated with the FCE.

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

Signed and filed this 24th day of October, 2018.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.