

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICHARD HUFF,

Claimant,

vs.

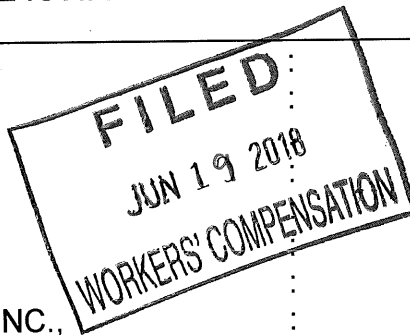
CRST EXPEDITED, INC.,

Employer,

and

AIG INSURANCE COMPANY,

Self-Insured,  
Defendant.



File No. 5063162

ARBITRATION

DECISION

Headnotes: 1402.40, 1403.10, 1802,  
1803.1, 2701, 3002

Claimant Richard Huff filed a petition in arbitration on February 2, 2017, alleging he sustained injuries to his right leg and foot, head trauma, and neck, and fractured teeth, while working for the defendant, CRST Expedited, Inc. ("CRST") on April 24, 2016. Huff further contends he sustained sequela pressure ulcers to his right leg and reconstruction, including, vein grafting from his left arm, a muscle graft from his back, a skin graft from his right thigh, and depression. CRST filed an answer on March 13, 2017, admitting Huff sustained an injury to his right leg only, and denying Huff sustained any additional injuries as a result of the work injury. Huff filed an amended petition naming AIG Insurance Company ("AIG") as a defendant.

An arbitration hearing was held on March 19, 2018, at the Division of Workers' Compensation in Des Moines. Attorney Rebecca Saffin Parrish-Sams represented Huff. Huff appeared by video conference call. Attorneys Charles Blades and Valerie Foote represented CRST and AIG. Joint Exhibits ("JE") 1 through 33, and Exhibits F and G were admitted into the record. The joint exhibits in this case total 677 pages. On May 1, 2017, the Division of Workers' Compensation adopted Uniform Guidelines for Preparation of Hearing Exhibits ("Guidelines"). The Guidelines followed by the Division direct the parties they may submit 100 pages of joint exhibits, and 50 pages each of individual exhibits. <https://www.iowaworkcomp.gov/news-and-updates>. In the future, the parties should contact the assigned deputy workers' compensation commissioner before the hearing to discuss joint exhibits exceeding 100 pages.

The record was held open through April 11, 2018, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

Before the hearing the parties prepared a hearing report, listing stipulations and issues to be decided. CRST and AIG waived all affirmative defenses.

### **STIPULATIONS**

1. An employer-employee relationship existed between CRST and Huff at the time of the alleged injury.
2. Huff sustained an injury on April 24, 2016, which arose out of and in the course of his employment with CRST.
3. The alleged injury is a cause of temporary disability during a period of recovery.
4. The alleged injury is a cause of permanent disability.
5. Huff is seeking healing period benefits from April 24, 2016 through the present and continuing, unless he is found to be permanently and totally disabled, in which case permanency commences on April 24, 2016.
6. Although entitlement cannot be stipulated to, the parties agree Huff has been off work since April 24, 2016.
7. At the time of alleged injury, Huff was single and entitled to one exemption.
8. Prior to the hearing Huff was paid 98 weeks of compensation at the rate of \$375.44 per week.
9. Costs have been paid.

### **ISSUES**

1. What is the nature of the injury?
2. Has Huff reached maximum medical improvement?
3. If Huff has reached maximum medical improvement, what is the extent of disability?
4. If Huff has reached maximum medical improvement, what is the commencement date for permanency?
5. What is the rate?
6. Is Huff entitled to payment of unpaid medical bills set forth in JE 31?

7. Does the agency have jurisdiction over Huff's claim for alternate medical care?
8. If the agency has jurisdiction over Huff's claim for alternate medical care, is Huff entitled to the relief he seeks?
9. Is Huff entitled to interest?
10. Is Huff entitled to an award of penalty benefits?
11. Is CRST entitled to a credit for overpayment of the weekly rate?
12. Should costs be assessed against either party?

### **FINDINGS OF FACT**

Huff is single with four adult children. (JE 27, p. 2) Huff attended high school through the tenth grade, and earned a GED in 1980. (JE 27, p. 4) At the time of the hearing Huff was living in a second floor student housing apartment in Statesboro, Georgia. (Tr., pp. 26-27) Huff pays individuals to take him shopping. (Tr., p. 28)

CRST hired Huff as an over-the-road truck driver on July 9, 2014. (JE 22; JE 26, p. 3) At the time of his hiring Huff did not own or lease a home. He had also given his vehicle to his son. (Alt Care Hearing) Huff lived in his truck the entire time he worked for CRST before his work injury. (JE 27, p. 3; Tr., p. 52)

Prior to working for CRST Huff worked as a roofer, head mechanic, concrete finisher, carpenter, service technician for fire equipment, salvage yard manager, gas company service technician and installer, and detailer lot manager. (JE 27, pp. 5-8; Tr., pp. 53, 57-62)

The morning of April 24, 2016, Huff was involved in a seven car accident on Interstate 80 while Huff was driving a semi tractor-trailer for CRST in snowy conditions. (JE 1) Huff's passenger was killed, and Huff received treatment from emergency medical service providers and he was taken to the Memorial Hospital of Carbon County in Rawlins, Wyoming, complaining of shooting pain in his right leg. (JE 2, p. 2; JE 3, p. 5)

Huff testified at the scene of the accident he recalls:

[w]ell, basically I woke up, I looked around. I seen the door and whatever else was piled on top of Sherry, and her left arm was sticking straight up in the air. So I reached over and felt her wrist to get a pulse, and there was no pulse.

And then – then I realized that my left leg was hurting, and it was sitting on top of the engine, so I got that off. And then I noticed that I was

kind of scrunched down in the seat, so I reached down and kind of scooted myself up. And then that's when I realized that my right leg was broke, because it was moving around just below the knee.

And then the next thing I remember is the intense cold. It was like 10 or 12 degrees and snowing and blowing, and the cab was ripped open like a can opener on the passenger side. The hood was gone. Windshields were all gone. Couldn't find my glasses, couldn't find my phone.

And so one of the other truckdrivers seen me moving around in the cab, and she come over to offer me a blanket to cover up with.

And I asked her "How long ago did the accident happen?"

She said, "Probably 10 or 15 minutes ago."

And – And it wasn't long after that, maybe 10 or 15 minutes, before the ambulance crews and the fire department and the police showed up. And then they started working on getting me out of the truck.

(Tr., pp. 43-44)

Hospital staff documented Huff had abrasions on his forehead, left cheek, left hand, the dorsum of the hand, and bilateral tibias anterior portions, a bruise on his left shoulder, and comminuted fracture of the right knee, and preexisting diabetes and hypertension. (JE 3, pp. 1, 5-6, 10) Vincent Hinshaw, D.O., noted he believed Huff had experienced a concussion, but he could not identify if Huff had a loss of consciousness, and documented Huff's abrasions did not require any type of closure. (JE 3, p. 6) The emergency department records document Huff reported he had no loss of consciousness following the accident, and he did not complain of any headaches. (Ex. G, p. 1) Hospital staff documented his "[o]ropharynx reveals poor dentition, but there are no loose teeth or evidence of intraoral injury. There is no tenderness about the mandible." (Ex. G, p. 1)

On April 26, 2016, Anil Menedal, M.D., performed surgery on Huff, applied an external fixator with traction, and diagnosed him with a "[r]ight knee tibial plateau fracture, bicondylar, Schatzker type VI, comminuted, closed." (JE 3, p. 17) Dr. Menedal performed a second surgery on May 3, 2016, noting Huff had a peroneal nerve injury due to the proximal fibular fracture. (JE 3, pp. 22-23) Dr. Menedal diagnosed Huff with a "[r]ight knee type 6 Schatzker bi-condylar tibial plateau fracture, comminuted, closed, severely displaced," and skin necrosis and eschar "corresponding to the upper lateral aspect of the right leg." (JE 3, pp. 22, 25)

Huff was discharged from the hospital on May 5, 2016. (JE 3, p. 27) Charles Young, M.D. documented Huff developed a wound infection and loss of skin over his wound, and the wound was positive for MRSA. (JE 3, p. 27) Huff returned to the

intensive care unit on May 18, 2016, with bilateral pneumonia. (JE 3, p. 28) Dr. Hinshaw documented Huff had some burns on the lateral left heel and lateral forefoot that appeared to be healing. (JE 3, p. 29) Dr. Hinshaw documented Huff's diabetes mellitus was "poorly controlled," but controlled in the hospital. (JE 3, p. 30)

Huff was discharged from the hospital on May 25, 2016, for a revision of his wound and possible skin graft with a plastic surgeon in Denver. (JE 3, pp. 33-34) Huff had documented foot drop. (JE 3, p. 35) Huff was transported from Wyoming to Denver by air ambulance. (JE 3, p. 36)

On May 25, 2016, Huff was admitted to University of Colorado Hospital in Denver, Colorado. (JE 4, p. 1) Huff was referred to infectious disease with an infection. (JE 4, p. 2) Hospital staff noted his tobacco dependence was contributing to his poor wound healing, and noted Huff did not take medication to treat his diabetes at home. (JE 4, p. 2) Huff received treatment for open wounds on his right anterior calf and ankle and left lateral calf, a deep tissue injury on his right heel, and a deep tissue injury on his left big toe. (JE 4, p. 6) On May 31, 2016, Frederic Deleyiannis, M.D., performed a revision open reduction internal fixation of a right proximal tibia fracture on the right, and harvested fifteen centimeters of cephalic vein graft from Huff's left arm, and a skin graft from his right thigh. (JE 4, pp. 14-18)

On June 11, 2016, Huff was discharged from the University of Colorado Hospital and transported to Savannah, Georgia by air ambulance, and admitted to Select Specialty Hospital. (JE 4, pp. 22-23; JE 5, p. 1; JE 6, p. 1) Hospital staff documented Huff had a past surgical history of a recent right lower extremity ORIF with revision, left latissimus free flap and extensive vein graft from left upper extremity and split thickness skin graft to flap from right thigh, and that he had been working with physical therapy, but he was currently unable to ambulate and he was receiving extensive wound care therapy to his right lower extremity. (JE 6, p. 1) Upon admission Huff had wounds on his right heel, left ear, right ear, and sacrum. (JE 6)

On July 12, 2016, Huff was discharged from Select Specialty Hospital to his son in Statesboro, Georgia, with diagnoses of a right lower extremity wound infection, status post open reduction and internal fixation with skin flap, hypertension, anemia of chronic disease, and deconditioning. (JE 6, p. 52) Huff was unable to perform weight bearing exercises at discharge. (JE 6, p. 52) Huff's son lived in a student apartment complex in Statesboro, on the second floor. (Tr., p. 62) Huff's son's apartment does not have an elevator and is not handicapped accessible. (Alt Care Hearing)

After moving to Statesboro, Huff received skilled nursing care at home to treat his wounds. (JE 7) The nursing staff documented he had a history of two or more falls and had lost ten pounds or more within the last year. (JE 7, p. 3) Huff was living in a second floor apartment, he was not ambulatory, and nursing staff documented his son would assist with evacuation. (JE 7, pp. 14-17) Huff reported four falls when he was receiving skilled nursing care to treat his wounds. (JE 7, pp. 17, 26, 34-35) Huff was discharged from skilled nursing care on August 17, 2016. (JE 7, p. 36)

Upon discharge, the skilled nursing staff noted Huff could independently feed himself, but he was unable to prepare light meals, he was unable to ambulate, but could wheel himself independently, he could bear weight and pivot during a transfer from a bed to a chair, but he could not transfer himself, he could use the telephone, he was able to dress his upper and lower body without assistance if his clothing was laid out or handed to him, and he was unable to use the shower or tub, but he was able to bathe himself independently with or without the use of devices at the sink, and he was able to manage toileting hygiene if supplies were laid out for him. (JE 7, p. 39-40) Nursing staff documented Huff was receiving "non-agency" caregiver assistance with activities of daily living and instrumental activities of daily living, and advocacy or facilitation of his participation in medical care, and no assistance with medications, medical procedures, management of equipment, or supervision. (JE 7, p. 41)

Huff's son left Statesboro and moved to Woodstock, Georgia, near Atlanta, Georgia, three hundred miles away. (Tr., p. 63) Huff continued to live in the student apartment.

Huff was referred to S. Mark Kamaleson, M.D., an orthopedic surgeon. (JE 9, pp. 1-2) Dr. Kamaleson ordered a computerized tomography scan of Huff's right knee, physical therapy, a walker for ambulatory support, Mobic for pain, and restricted Huff to seated work only. (JE 9, p. 2) Huff received physical therapy for gait training, balance training, and to improve his range of motion from September through April 2017. (JE 8) During an appointment on September 29, 2016, Dr. Kamaleson informed Huff he may want to think about an above-knee amputation at some point. (JE 9, pp. 5-6)

Huff developed a pressure ulcer on his right heel and he received wound care treatment from John Martin, M.D., a surgeon. (JE 10; JE 11) Dr. Martin diagnosed Huff with a stage three right heel pressure ulcer, debrided the wound, ordered wound treatment protocol to be completed daily, and directed Huff to avoid weight bearing on the right. (JE 11, pp. 2-10)

Huff continued to experience pain in his lower extremity. (JE 9) During an appointment on May 16, 2017, Dr. Kamaleson documented he did not know if Huff was going to improve significantly, and that he needed to think about being placed at maximum medical improvement or discuss a possible above-knee amputation and prosthesis, noting "it is very difficult for someone to be able to walk after an above-knee amputation." (JE 9, pp. 10-11) Huff received treatment for his right pressure ulcer through February 8, 2017, until the ulcer closed. (JE 11)

William Terrell, M.D., an orthopedic surgeon, examined Huff on March 27, 2017, and noted his wound appeared well healed and he had foot drop. (JE 12, p. 1) Dr. Terrell discussed amputation, which Huff declined, and assessed Huff with right knee stiffness, and recommended an external fixator on the femur and tibia and gradual correction over ten weeks with ten months of night bracing, and an orthotic device. (JE 12, p. 2) Dr. Terrell informed Huff he would not perform surgery until his dental work was completed and he quit smoking. (JE 12, p. 3) Dr. Terrell determined Huff was at

maximum medical improvement on January 22, 2018, and noted that if Huff wished to quit smoking he would see him again. (JE 12, p. 5)

The Social Security Administration determined Huff was disabled on August 25, 2017, and awarded him benefits back to October 2016, finding the date he became disabled to be April 24, 2016, the date of the accident. (JE 29, p. 1; Tr., p. 52) The Social Security Administration awarded Huff \$10,816.50 in back benefits, and payments of \$1,443.00 per month. (JE 29, p. 1)

During his employment with CRST, Huff did not have a home and he lived in his truck. (JE 27, p. 3; Tr., p. 52) Huff did not use the back benefits he received from the Social Security Administration to move to the Atlanta area to be closer to his family. (Tr., pp. 64-65) Huff testified he used the money to pay past debts associated with the foreclosure on his home prior to his employment with CRST. (Tr., p. 73) Huff relayed it would be impossible for him to move closer to his son because "that will be 2, 3, \$400 to move up that way. And I wouldn't be able to take anything with me. I can't afford to have a moving company move me." (Tr., pp. 65-66) Huff reported his son could not move him because the "engine is blown" in his vehicle. (Tr., p. 66)

Huff testified a woman named Shondra with ADRC in Bulloch County had provided him with a contact west of Atlanta near his children, and he was told he could be placed on a waiting list and perhaps in a year he could move into a handicapped living facility, but reported he has not heard anything back and had not called because "I didn't know the phone number. She basically had us on the phone with her." (Tr., p. 68) Huff has had a cellular telephone since 1989. (Tr., p. 68)

Huff was referred to David Kurtzman, DDS, for a dental evaluation. (JE 14) Dr. Kurtzman noted all of his remaining teeth, 19, 21, 22, 23, 24, 25, 26, 27, and 28, were decayed and should be removed. (JE 14) Huff's remaining teeth were removed on September 26, 2017. (JE 15, p. 2)

The Coastal Regional Commission of Georgia Area Agency on Aging performed a screening assessment of Huff for home and community-based services in June 2017. (JE 13) Chandra George, a case manager whose training is unknown, completed the screening. (JE 13) George noted Huff is able to eat, but he cannot perform bathing and grooming because he lives in a non-handicap assessable apartment. (JE 13, pp. 1-2) George found Huff was continent, and independent with preparing meals, eating, laundry, housework, dressing, transferring, and routine health. (JE 13, pp. 1-4) George documented Huff is able to negotiate a porch, stairs, walkways, and get into and navigate essential places such as a doctor's office and bank, and he is able to get in and out of public transportation, but he is "stuck on the second floor of his apartment most days" and scoots down the stairs on his buttocks using a crutch when he leaves the apartment. (JE 13, pp. 3)

Robert Rondinelli, M.D., Ph.D., a physiatrist, performed an independent medical examination for Huff in February 2018, concerning wheelchair accessible housing,

transportation, and in-home assistance. (JE 18) Dr. Rondinelli reviewed Huff's medical records only and recommended Huff receive accessible housing, transportation, and in-home assistance. (JE 18)

Christopher Leber, M.D., a psychiatrist licensed in Florida, conducted an independent medical examination for Huff in February 2018. (JE 19) Leber examined Huff and reviewed his medical records. (JE 19) Dr. Leber diagnosed Huff with status post severe complex right tibial plateau fracture, status post closed reduction with external fixator placement in the right knee, status post open reduction internal fixation of right tibial plateau fracture with medial and lateral tibial plateau plates and screws, status post debridement and wound VAC application to the area of methicillin-resistant *Staphylococcus aureus*, status post traumatic brain injury, ongoing anxiety, depression, insomnia, and night terrors, severely impaired mobility, self-care and activities of daily living, status post trapezius muscle flap resection for transfer to right anterior, proximal tibia for coverage of the necrotic fascial area, status post damage to teeth with extractions and impaired dentition. (JE 19, p. 41)

Dr. Leber noted Huff's treating orthopedic surgeon found he was at maximum medical improvement since January 2018, but if he would cease smoking, he would be able to undergo corrective surgery on his right leg. (JE 19, p. 39) Using Table 17-5, page 529, section f, of the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides 5th Edition"), Dr. Leber assigned a forty-percent impairment of the whole person because Huff is required to use two crutches to ambulate, and noted "[a]lthough this is not the only area of his body affected by this accident, his lack of normal gait is the largest impairment affecting his everyday life and his quality of life." (JE 19, p. 39) Dr. Leber opined Huff requires wheelchair accessible housing and transportation as a result of his work injury. (JE 19, p. 40)

Huff's counsel notified CRST and AIG she believed CRST and AIG were underpaying benefits to Huff based on an incorrect rate on December 16, 2016, January 3, 2017, January 18, 2017, and January 20, 2017. (JE 25, pp. 6-11) The attorney for CRST and AIG sent a letter to Huff's counsel on January 27, 2017, stating that using the methodology in Jacobsen Transportation Co. v. Harris, 778 N.W.2d 192 (2010), CRST had calculated Huff's average weekly pay for 30 weeks prior to the injury, and then 13 weeks prior to the injury, throwing out weeks in which the earnings were markedly different than the average. (Ex. F, p. 36) CRST and AIG averred "[u]sing this method, as shown by the attached, we have calculated the claimant's AWW to be \$355.34 and the corresponding weekly rate to be [sic] \$355.34. We used the thirteen weeks where the earnings were closest to the median amount of \$603.75. We included per diem pay and other earnings shown in the 30 weeks of payroll records." (Ex. F, p. 36)

At hearing, Huff testified during reconstruction surgery a vein was cut out of his left arm, causing a scar. (Tr., p. 29) When questioned whether he has problems from where the vein was removed in his arm, Huff replied, "[y]eah. Not only do I (inaudible). I get pain when I'm using the crutches in the wrist, the elbow." (Tr., p. 30) Huff clarified,



"[w]ell, when I use the crutches and I support all my weight on the crutches as I'm moving, I get pains in my wrist and in my elbow and in the center of my forearm" that tracks "exactly where the scar is. At the beginning and end of the scar and in the middle." (Tr., p. 30)

Huff further testified he had a hole in his shin, and hospital staff removed a muscle in his back. (Tr., p. 31) Huff relayed that since the muscle was removed "I get nerve pains and also get pains in the muscle when I try lifting myself or supporting myself on the crutches." (Tr., p. 32)

Huff's treating providers performed skin grafting on Huff and removed skin from the outside of his right thigh, approximately four to five inches wide. (Tr., pp. 32-33) Huff testified, "I get nerve pains and sensitive to the sun and occasionally I get little pains in the skin." (Tr., p. 33)

Huff relayed that during the accident he sustained burns to his left heel and calf. (Tr., p. 34) Huff testified the area is scarred and he still has problems with his left leg. (Tr., p. 34) Huff reported, "[t]he main one on my calf, it is really tight. You know, the skin is stretched tight, and it likes to crack and bleed. And the one on my heel, every time I put a shoe on, it hurts." (Tr., pp. 34-35)

Huff testified that following the accident he vomited for several days, "pretty much continually." (Tr., p. 46) Huff reported he believes he has lasting problems from a concussion he sustained, including "a headache every day. And they go from just a mild little headache up to a migraine. I have sensitivity to light. I have memory issues. Sometimes I can't even remember my own name. Pretty much that's it." (Tr., p. 46)

Huff reported prior to the accident he did not have any upper teeth, and during the accident "I had all but six of my teeth knocked out. . . I had six teeth, and then I had two that were broke off in the gum." (Tr., pp. 47-48) Huff reported that prior to the accident he had all of his lower teeth. (Tr., pp. 80-81)

Huff testified that following the accident he has "nightmares every night about the accident, you know, after waking up from the crash. And then I got through that. It could be two to three times to ten times in a night. And I almost always wake up at the end when they're putting me in the ambulance." (Tr., p. 49) Huff relayed he has a lot of guilt following the death of his co-driver, Sherry. (Tr., pp. 50-51)

Huff uses crutches and a wheelchair for ambulation. (Tr., p. 42) Huff testified he uses crutches five percent of the time, and his wheelchair the remaining ninety-five percent of the time. (Tr., p. 42) Huff testified while he was receiving inpatient treatment in Savannah, he refused to use a walker because "[i]t just seemed stupid to me because I couldn't do it very much. A couple of hops, and I was done." (Tr., p. 42) Huff later testified he has a walker that was provided by CRST and AIG, and he received a new wheelchair, but the wheel was broke. (Tr., pp. 84-85)

Huff has continued to have problems with the skin on his heel and reported he had a new infection that had been debrided a week before the hearing. (Tr., p. 90) Huff was not taking any pain medication at the time of the hearing. (Tr., p. 91)

## CONCLUSIONS OF LAW

### I. Nature of the Injury

Huff alleges he sustained injuries to his right leg and foot, head trauma, and neck, and fractured teeth, as a result of the accident. He also avers he sustained sequela pressure ulcers to his right leg and reconstruction, including, vein grafting from his left arm, a muscle graft from his back, and skin graft from his right thigh, and depression. CRST avers Huff has sustained a scheduled injury to his right lower extremity only.

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of an in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of the employer.

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

An injury to one part of the body can later cause an injury to another. Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 16-17 (Iowa 1993) (holding a psychological condition can be caused or aggravated by a scheduled injury). The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11,

17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997). “In order for a cause to be proximate, it must be a ‘substantial factor.’” Ayers, 731 N.W.2d at 17. A probability of causation must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997).

The question of medical causation is “essentially within the domain of expert testimony.” Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must “weigh the evidence and measure the credibility of witnesses.” Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert’s education, experience, training, and practice, and “all other factors which bear upon the weight and value” of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

It is undisputed Huff sustained a serious injury to his right lower extremity. Dr. Terrell, an orthopedic surgeon, agreed to perform surgery on Huff’s right lower extremity, if he quit smoking. (JE 12, p. 3) Huff did not quit smoking, and Dr. Terrell found he reached maximum medical improvement on January 22, 2018, noting he would see Huff again if he quit smoking. (JE 12, p. 5) As of the date of the hearing Huff had not quit smoking. (Tr., pp. 39, 72)

Only one physician has provided an impairment rating in this case, Dr. Leber, at the request of Huff. (JE 19) Dr. Leber agreed, without surgery, Huff reached maximum medical improvement with respect to his right lower extremity on January 22, 2018. (JE 19, p. 39)

Huff contends in addition to his right lower extremity impairment, he sustained permanent impairments to his skin, upper extremities, left lower extremity, and mouth as a result of the work injury. Chapter 8 of the AMA Guides 5th Edition contains principles of assessment for the skin. Chapter 11 of the AMA Guides 5th Edition contains principles of assessment for the ear, face, nose, throat and related structures. Chapter 16 of the AMA Guides 5th Edition contains principles of assessment for the upper extremities. Dr. Leber’s opinion does not reference Chapters 8, 11, or 16 of the AMA Guides 5th Edition. Huff’s medical records do not support any need for additional treatment or permanent impairments to skin apart from the right lower extremity, upper extremities, or left lower extremity, as a result of the work injury

As part of his treatment Huff’s remaining teeth were removed, and at hearing CRST and AIG agreed to a consent order to provide Huff with dental implants. (Tr., p. 4) Dr. Leber recommended additional treatment for Huff’s mouth in his report. (JE 19, pp. 46-47) It has yet to be determined whether Huff has sustained a permanent impairment to his mouth, and the issue is not ripe for adjudication.

Dr. Leber's report recommended future medical treatment with a neuropsychologist and psychologist for assessment and treatment of a traumatic brain injury, anxiety, depression, insomnia, and night terrors, related to the accident. (JE 19, pp. 46-47, 51) No contrary opinion was provided concerning causation. There is no evidence in the record as to whether these conditions are permanent, or the extent of permanency. The record does not support Huff has reached maximum medical improvement with respect to the mental health conditions or brain injury diagnosed by Dr. Leber or that he has sustained a permanent mental health condition or brain injury at this time. The issue of extent of disability is not ripe for adjudication.

## **II. Rate**

Huff alleges his weekly rate is \$483.08. CRST and AIG aver his weekly rate is \$355.34. Huff's rate calculations are shown in Joint Exhibit 33, pages 1 and 2, and cover sixteen weeks. CRST and AIG's rate calculations are shown in Joint Exhibit 33, pages 3 through 5 and cover thirty weeks.

Iowa Code section 85.36 sets forth the basis for determining an injured employee's compensation rate. Mercy Med. Ctr. v. Healy, 801 N.W.2d 865, 870 (Iowa Ct. App. 2011). The basis of compensation shall be the "weekly earnings of the injured employee at the time of the injury." Iowa Code § 85.36. "The term "weekly earnings" is defined in Iowa Code section 85.36 as,

gross salary, wages, or earnings of an employee to which such employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured, as regularly required by the employee's employer for the work or employment for which the employee was employed.

Iowa Code section 85.36 sets forth several methods for determining an injured employee's compensation or rate. Mercy Med. Ctr. v. Healy, 801 N.W.2d 865, 870 (Iowa Ct. App. 2011). Under Iowa Code section 85.36(6),

[i]n the case of an employee who is paid on a daily or hourly basis, or by the output of the employee, the weekly earnings shall be computed by dividing by thirteen the earnings, including shift differential pay but not including overtime or premium pay, of the employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury. If the employee was absent from employment for reasons personal to the employee during part of the thirteen calendar weeks preceding the injury, the employee's weekly earnings shall be the amount the employee would have earned had the employee worked when work was available to other employees of the employer in a similar occupation. A week which does not fairly reflect the employee's customary earnings shall be replaced by the closest previous

week with earnings that fairly represent the employee's customary earnings.

When he was hired, CRST agreed to pay Huff \$.25 per mile. (JE 22, p. 9) Huff drove across the United States for CRST and the miles he drove per week were not fixed or uniform. (Tr., pp. 93-94; JE 33) At the time of his work injury Huff was paid \$.28 per mile and \$.10 per mile per day per diem. (JE 33; Tr., p. 51) CRST increased Huff's payment per mile to \$.28 per mile starting with his January 19, 2016 paycheck, and prior to that, within the thirty weeks before the work injury, he was earning \$.26 per mile, plus a \$.10 per mile per diem. (JE 33)

In Jacobson Transp. Co. v. Harris, 778 N.W.2d 192 (Iowa 2010), also involving a truck driver, the commissioner concluded the thirteen weeks preceding the work injury were not representative, expanded the number of weeks to be considered, and concluded three of the thirteen weeks were not representative, and looked at thirty weeks of compensation received by the claimant to determine whether the individual thirteen weeks were representative. The Iowa Supreme Court affirmed the commissioner's methodology.

Joint Exhibit 33, pages 1 through 5, contains summaries of the parties' rate calculations. The parties do not use the same days of the week in their calculations. The parties have not explained in their post-hearing briefs how they determined the work week.

Joint Exhibit 33 documents Huff was paid twice per week. The pickup dates listed on the payroll statements in Joint Exhibit 33 provide the best evidence of Huff's workweek. Huff's accident occurred on April 24, 2016. April 21, 2016, was the most recent paycheck Huff received, covering four trips over a partial week. The first full seven day week includes the paycheck from April 19, 2016. The following chart provides a summary of wages earned by pickup date according to the payroll statements in Joint Exhibit 33.

Week	Dates	Wages	Week	Dates	Wages
1	4/13/16-4/19/16	\$1,085.09	16	12/30/15-1/5/16	\$698.94
2	4/6/16-4/12/16	\$1,765.46	17	12/23/15-12/29/15	\$315.18
3	3/30/16-4/5/16	\$446.12	18	12/16/15-12/22/15	\$926.82
4	3/23/16-3/29/16	\$555.37	19	12/9/15-12/15/15	\$920.98
5	3/16/16-3/22/16	\$0	20	12/2/15-12/8/15	\$383.76
6	3/9/16-3/15/16	\$173.47	21	11/25/15-12/1/15	\$389.52

7	3/2/16-3/8/16	\$924.73	22	11/18/15-11/24/15	\$934.74
8	2/24/16-3/1/16	\$639.35	23	11/11/15-11/17/15	\$391.32
9	2/17/16-2/23/16	\$192.85	24	11/4/15-11/10/15	\$275.76
10	2/10/16-2/16/16	\$1,062.89	25	10/28/15-11/3/15	\$475.05
11	2/3/16-2/9/16	\$383.04	26	10/21/15-10/27/15	\$1,052.28
12	1/27/16-2/2/16	\$152.38	27	10/14/15-10/20/15	\$807.84
13	1/20/16-1/26/16	\$937.46	28	10/7/15-10/13/15	\$463.68
14	1/13/16-1/19/16	\$798.39	29	9/30/15-10/6/15	\$798.40
15	1/6/16-1/12/16	\$1,038.84	30	9/23/15-9/29/15	\$121.68

For the thirty weeks before the work injury Huff's average weekly earnings were \$598.36 per week. Looking at Huff's wages for the thirteen weeks preceding the work injury, considering his earnings over the thirty weeks preceding the work injury, I find the weeks of April 6, 2016 through April 12, 2016, March 16, 2106 through March 22, 2016, March 9, 2016 through March 15, 2016, February 17, 2016 through February 23, 2016, and January 27, 2016 through February 2, 2016, not representative. I find the remaining weeks from January 20, 2016 back through December 15, 2015, representative. The total of the representative weeks is \$9,694.36, divided by thirteen, results in gross weekly earnings of \$745.72. Using the ratebook in effect at the time of Huff's work injury, Huff's rate is \$457.31 per week.<sup>1</sup>

### III. Healing Period Benefits

Iowa Code section 85.33 governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012). As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for loss of earnings" during a period of recovery from the condition. Id. An award of healing period benefits or total temporary disability benefits is not dependent on a finding of permanent impairment. Dunlap, 824 N.W.2d at 556. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Id.

<sup>1</sup> <https://www.iowaworkcomp.gov/pdfs> (2015-2016 Ratebook).

“[A] claim for permanent disability benefits is not ripe until maximum medical improvement has been achieved.” Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 201 (Iowa 2010). “Stabilization of the employee’s condition ‘is the event that allows a physician to make the determination that a particular medical condition is permanent.’” Dunlap, 824 N.W.2d at 556 (quoting Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 200). If the employee has a permanent disability, then payments made prior to permanency are healing period benefits. Id. If the injury has not resulted in a permanent disability, then the employee may be awarded temporary total benefits. Id. at 556-57. The record supports Huff has sustained a permanent impairment to his right lower extremity as a result of the work injury. Therefore, if he is entitled to temporary benefits, he is entitled to healing period benefits.

Iowa Code section 85.34(1) governs healing period benefits, as follows:

[i]f an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of this section, the employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

Under Iowa Code section 85.33(6), “‘employment substantially similar to the employment in which the employee was engaged at the time of the injury’ includes, for purposes of an individual who was injured in the course of performing as a professional athlete, any employment the individual has previously performed.” Huff is not currently working. As discussed above, Huff is not at maximum medical improvement for all of his conditions. Huff is entitled to a running award of healing period benefits from the April 24, 2016, at the rate of \$457.31 per week. CRST and AIG are entitled to a credit for all benefits paid to date. Given the rate calculation, no overpayment has occurred.

#### **IV. Penalty**

Huff seeks to recover penalty benefits because CRST and AIG underpaid benefits owed to him based on an incorrect rate. CRST and AIG aver no penalty benefits should be awarded.

Iowa Code section 86.13 governs compensation payments. Under the statute’s plain language, if there is a delay in payment absent “a reasonable or probable cause or excuse,” the employee is entitled to penalty benefits, of up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse. Iowa Code § 86.13(4); see also Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 260 (Iowa 1996) (citing earlier version of the statute). “The application of the penalty provision does not turn on the length of the delay in making the correct

compensation payment.” Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229, 236 (Iowa 1996). If a delay occurs without a reasonable excuse, the commissioner is required to award penalty benefits in some amount to the employee. Id.

The statute requires the employer or insurance company to conduct a “reasonable investigation and evaluation” into whether benefits are owed to the employee, the results of the investigation and evaluation must be the “actual basis” relied on by the employer or insurance company to deny, delay, or terminate benefits, and the employer or insurance company must “contemporaneously convey the basis for the denial, delay, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.” Iowa Code § 86.13(4)(a). An employer may establish a “reasonable cause or excuse” if “the delay was necessary for the insurer to investigate the claim,” or if “the employer had a reasonable basis to contest the employee’s entitlement to benefits.” Christensen, 554 N.W.2d at 260. “A ‘reasonable basis’ for denial of the claim exists if the claim is ‘fairly debatable.’” Burton v. Hilltop Care Ctr., 813 N.W.2d 250, 267 (Iowa 2012). “Whether a claim is ‘fairly debatable’ can generally be determined by the court as a matter of law.” Id. The issue is whether the employer had a reasonable basis to believe no benefits were owed to the claimant. Id. “If there was no reasonable basis for the employer to have denied the employee’s benefits, then the court must ‘determine if the defendant knew, or should have known, that the basis for denying the employee’s claim was unreasonable.’” Id.

Benefits must be paid beginning on the eleventh day after the injury, and “each week thereafter during the period for which compensation is payable, and if not paid when due,” interest will be imposed. Iowa Code § 85.30. In Robbennolt, the Iowa Supreme Court noted, “[i]f the required weekly compensation is timely paid at the end of the compensation week, no interest will be imposed . . . . As an example, if Monday is the first day of the compensation week, full payment of the weekly compensation is due the following Monday.” Robbennolt, 555 N.W.2d at 235. A payment is “made” when the check addressed to the claimant is mailed, or personally delivered to the claimant. Meyers v. Holiday Express Corp., 557 N.W.2d 502, 505 (Iowa 1996) (abrogated by Keystone Nursing Care Ctr. v. Craddock, 705 N.W.2d 299 (Iowa 2005) (concluding the employer’s failure to explain to the claimant why it would not pay permanent benefits upon the termination of healing period benefits did not support the commissioner’s award of penalty benefits)).

When considering an award of penalty benefits, the commissioner considers “the length of the delay, the number of delays, the information available to the employer regarding the employee’s injuries and wages, and the prior penalties imposed against the employer under section 86.13.” Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 336 (Iowa 2008). The purposes of the statute are to punish the employer and insurance company and to deter employers and insurance companies from delaying payments. Robbennolt, 555 N.W.2d at 237.

The parties did not correctly calculate Huff’s rate in this case. The record does not support CRST and AIG delayed paying benefits to Huff, rather it supports the



benefits were underpaid due to an incorrect rate calculation. Joint Exhibit 25 contains correspondence between the parties. Huff's counsel notified CRST and AIG she believed CRST and AIG were underpaying benefits to Huff based on an incorrect rate on December 16, 2016, January 3, 2017, January 18, 2017, and January 20, 2017. (JE 25, pp. 6-11) On January 27, 2017, the attorney for CRST and AIG sent a letter to Huff's attorney stating CRST and AIG had determined Huff's rate under the Jacobsen Transp. Co. case. (Ex. F, p. 36) Exhibit F does not provide a chart or other explanation of the calculations. Imposition of penalty benefits is appropriate.

The parties stipulated Huff was paid ninety-eight weeks of benefits at the rate of \$375.44 on the hearing report. Huff's weekly rate is \$457.31. Huff was underpaid \$81.87 in benefits per week, times ninety-eight weeks, resulting in a total underpayment of \$8,023.26. Huff is awarded \$4,011.63 in penalty benefits.

## **V. Alternate Medical Care and Medical Bills**

### **A. Alternate Medical Care**

At hearing, Huff renewed his request for alternate medical care, asking CRST and AIG be ordered to provide Huff with wheelchair accessible housing, transportation services, mental health counseling, and all other treatment, appliances, and services recommended by Drs. Leber and Rondinelli. Huff's brief requested the deputy workers' compensation commissioner "order CRST to provide and pay for each and every Physician Service, Rehabilitation Service, Equipment and Supply item, Environmental Modification, and Nursing and Attendant Care service Dr. Leber lists in his Life Care Plan" at pages 40 and 46 to 51, without listing Huff's specific requests. (Brief, p. 22) CRST and AIG aver the deputy workers' compensation commissioner lacks jurisdiction to decide this issue because rulings on two prior alternate medical care proceeding decisions appealed and reversed by the district court have been appealed to the Iowa Supreme Court. The requests for mental health counseling, and treatment, appliances, and some services recommended by Drs. Leber and Rondinelli were not previously addressed in the prior two alternate medical care hearings before the undersigned.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefore, allow and order other care." Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns

on the question of reasonable necessity, not desirability"). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

In his report, Dr. Leber notes Huff should receive accessible housing, transportation, and physician services from a dentist, oral maxillofacial surgeon, orthopedic surgeon, physical medicine and rehabilitation/pain management, plastic surgeon, routine diagnostics, medications, laboratory studies, rehabilitation services including a gym membership, vocational evaluation, vocational counseling, physical therapy, an AFO, a rollator walker with seat, a single tip cane, shower chair, manual wheelchair, power scooter, power scooter battery and maintenance, a scooter carrier, two hours of home health aide services and four hours of home health aide services, tendon lengthening or transfer surgery, and dental implants. (JE 19, pp. 40, 46-49) Dr. Rondinelli also documents in his opinion Huff needs wheelchair accessible housing, transportation, and in-home assistance. (JE 18)

At the start of the hearing the parties entered into a consent order, whereby CRST and AIG agreed to pay for dental implants and eyeglasses for Huff. Huff has not established the dental care provided by CRST and AIG is unreasonable.

There is no evidence Huff has requested additional pain management treatment and he testified at hearing he does not take pain medicine. CRST and AIG have authorized treatment with orthopedic surgeons, plastic surgeons, and surgery, routine diagnostics, medications, and laboratory studies. Huff has not received additional surgery because he has not quit smoking, which is a requirement before his physician will operate. There is no evidence in the record Huff requested CRST and AIG approve treatment with a physiatrist for pain.

In his post-hearing brief Huff also requested an AFO, a rollator walker with seat, a single tip cane, shower chair, manual wheel chair, power scooter, power scooter battery and maintenance, and a scooter carrier. Dr. Leber's report does not identify the type of AFO needed. There was no evidence presented at hearing Huff has requested an AFO from CRST and AIG. Huff testified at hearing he did not like using a walker when he was in Savannah receiving treatment. He later received a walker paid for by CRST and AIG. There is no evidence the walker is defective. There is no evidence he has requested a cane or another walker from CRST and AIG.

Huff relayed he has a shower chair at hearing. There was no evidence presented he needs or has requested a second shower chair. CRST and AIG have provided Huff with a manual wheel chair. There was evidence presented at hearing one of the wheels on his wheelchair is broken. CRST and AIG are responsible for repairs to the wheelchair. There was no evidence presented at hearing Huff has requested the new wheelchair be replaced. There was no evidence presented at hearing Huff

requested a power scooter, maintenance of the scooter, or a carrier for the scooter prior to the hearing.

CRST and AIG are responsible for all medical treatment related to the work injury. Huff has not established CRST and AIG have acted unreasonably with respect to the medical treatment he has received involving orthopedic surgeons, or plastic surgeons or that CRST and AIG have unreasonably refused to provide routine diagnostics, medications, and laboratory studies, an AFO, a walker, a cane, shower chair, manual wheel chair, or power scooter.

Huff also seeks a gym membership, vocational evaluation, vocational counseling, and physical therapy. Vocational evaluation and vocational counseling are not medical services. Moreover, Dr. Leber's report does not discuss what gym activities Huff could benefit from. There is no evidence Huff requested a gym membership to treat his physical condition prior to the hearing. CRST and AIG have authorized physical therapy for Huff in the past. There was no evidence presented at hearing Huff requested additional physical therapy before the hearing from CRST and AIG. Huff has not established CRST and AIG have acted unreasonably with respect to the provision of physical therapy or gym membership.

Dr. Leber recommended CRST and AIG pay for two and four hours of home health services, transportation services, and accessible housing. It is unclear whether he is recommending two hours, four hours, or six hours of home health services, and the recommendations section does not provide what services Huff needs and how they relate to Huff's medical condition. Huff previously filed two applications for alternate medical care requesting CRST and AIG be ordered to pay for wheelchair accessible housing, transportation services, and in-home nursing services. The undersigned denied the applications. Huff appealed to the Iowa District Court for Polk County. The district court reversed the decisions, and CRST and AIG appealed to the Iowa Supreme Court. When a petition for judicial review has been filed, the agency loses jurisdiction over the matter. McCormick v. North Star Foods, Inc., 533 N.W.2d 196, 199 (Iowa 1995) (agency loses jurisdiction when a petition for judicial review is filed). The undersigned lacks jurisdiction to decide whether CRST and AIG should be ordered to pay for accessible housing, transportation services, and in-home nursing services.

Following the filing of the petitions for alternate medical care, Dr. Rondinelli has recommended Huff receive wound care for an ulcer on his heel. (JE 18, p. 12) Huff testified at hearing he had recently received wound care for the ulcer on his heel. Huff has not established the care provided by CRST and AIG to treat his ulcer is unreasonable.

Dr. Leber issued his report on February 8, 2018, recommending Huff receive neuropsychological assessment and evaluation and treatment from a neuropsychologist and psychiatrist for Huff's traumatic brain injury, depression, anxiety, insomnia, flashbacks, nightmares, and suicidal thoughts. (JE 19, pp. 34, 46-47) Huff requested counseling from Palmer in the past and she referred him to the employee assistance

program. (JE 21, p. 9) There is no evidence CRST and AIG ever referred Huff for any psychological assessment, evaluation, or treatment. Dr. Leber's findings Huff sustained a traumatic brain injury, depression, and anxiety as a result of the work injury are un rebutted. Dr. Leber has opined Huff requires psychological assessment, evaluation, and any recommended treatment. Dr. Leber has not recommended Huff be examined by a particular practitioner or by particular practitioners. CRST and AIG shall authorize the recommended assessment, evaluation, and any recommended treatment.

## **B. Medical Bills**

Huff seeks to recover medical bills totaling \$117,118.97 set forth in Joint Exhibit 31, for treatment he received for his work injuries. CRST and AIG's post-hearing brief provides CRST and AIG have paid \$462,664.05 in medical bills, and they have paid or are in the process of paying for the medical bills set forth in Joint Exhibit 31, with the exception of Dr. Leber's report and expenses, which total \$12,806.88. Given CRST and AIG agree they are responsible for payment of the medical bills set forth in Joint Exhibit 31, the issue is moot. CRST and AIG have agreed to pay or have paid for all of the medical expenses set forth in Exhibit 31, with the exception of Dr. Leber's report, which is addressed below in costs. CRST and AIG are responsible for the \$104,312.09 in medical bills listed in Joint Exhibit 31.

## **VI. Costs**

Huff seeks to recover costs totaling \$10,201.92. (JE 32) Huff seeks to recover \$100.00 for the filing fee, \$12.92 for service, \$150.00 for the cost of the alternate medical care hearing transcript, \$6,500.00 for Dr. Leber's report, \$3,250.00 for Dr. Rondinelli's report, the \$189.00 cost of the alternate care hearing transcript, and the costs of the hearing videographer, and hearing court report and transcript. (JE 32, p. 1) On March 20, 2018, CRST and AIG stipulated Huff had paid the cost of the hearing videographer.

Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides,

[c]osts 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.

The requested costs may be recovered under the administrative rule. I find the requested costs reasonable and that the costs should be assessed to CRST and AIG.

**ORDER**

IT IS THEREFORE ORDERED, THAT:

Defendants shall pay the claimant a running award of healing period benefits from April 24, 2016, at the rate of four hundred fifty-seven and 31/100 dollars (\$457.31), until such time as benefits shall cease pursuant to Iowa Code section 85.34.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten (10) 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 (2) percent. See Gamble v. AG Leader Tech., File No. 5054686 (App. Apr. 24, 2018)

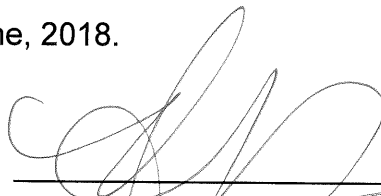
Defendants shall pay the claimant four thousand eleven and 63/100 dollars (\$4,011.63) in penalty benefits.

Defendants are responsible for all medical bills set forth in Joint Exhibit 31, totaling one hundred four thousand three hundred twelve and 09/100 dollars (\$104,312.09).

Defendants are assessed one hundred and 00/100 dollars (\$100.00) for the filing fee, twelve and 92/100 dollars (\$12.92) for service, one hundred fifty and 00/100 dollars (\$150.00) for the cost of the alternate medical care hearing transcript, six thousand five hundred and 00/100 dollars (\$6,500.00) for Dr. Leber's report, three thousand two hundred fifty and 00/100 dollars (\$3,250.00) for Dr. Rondinelli's report, one hundred eighty-nine and 00/100 dollars (\$189.00) for the cost of the alternate care hearing transcript, the cost of the hearing videographer, and the cost of the hearing court reporter and transcript.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 19<sup>th</sup> day of June, 2018.

  
HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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HLP/sam

**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.