

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GERALD SHERIFF,	File No. 1642813.01
Claimant,	
vs.	
ARCHER DANIELS MIDLAND CO.,	ARBITRATION DECISION
Self-Insured Employer,	
Defendant.	Headnotes: 1803, 3001

**STATEMENT OF THE CASE**

Claimant Gerald Sheriff seeks workers' compensation benefits from the defendant, self-insured employer Archer Daniels Midland Co. (ADM). The undersigned presided over an arbitration hearing on November 30, 2021, held by internet-based video by order of the Commissioner. Sheriff participated personally and through attorney Gary B. Nelson. ADM participated by representative Mike Schechinger and through attorney Peter J. Thill.

**ISSUES**

Under rule 876 IAC 4.19(3)(f), the parties jointly submitted a hearing report defining the claims, defenses, and issues submitted to the presiding deputy commissioner. The hearing report was approved and entered into the record via an order because it is a correct representation of the disputed issues and stipulations in this case. The parties identified the following disputed issues in the hearing report:

- 1) What is the weekly rate of workers' compensation to which Sheriff is entitled based on his gross earnings?
- 2) Is Sheriff entitled to additional temporary total disability (TTD) or healing period (HP) benefits from February 1, 2018, through February 21, 2018?
- 3) What is the nature and extent of permanent disability, if any, caused by the alleged injury?
- 4) Is Sheriff entitled to recover the cost of an independent medical examination (IME)?
- 5) Is Sheriff entitled to a penalty?

- 6) Is Sheriff entitled to taxation against ADM of the costs in Claimant's Exhibit 3?

### **STIPULATIONS**

In the hearing report, the parties entered into the following stipulations:

- 1) An employer-employee relationship existed between Sheriff and ADM at the time of the alleged injury.
- 2) Sheriff sustained an injury on January 13, 2018, which arose out of and in the course of his employment with ADM.
- 3) The alleged injury is a cause of temporary disability during a period of recovery.
- 4) If ADM is liable for the injury, Sheriff is entitled to TTD or HP benefits from February 1, 2018, through February 21, 2018.
- 5) If permanent partial disability (PPD) benefits are awarded, the commencement date is April 1, 2018.
- 6) At the time of the stipulated injury:
  - a) Sheriff was married.
  - b) Sheriff was entitled to two exemptions.

The parties' stipulations in the hearing report are accepted and incorporated into this arbitration decision. The parties are bound by their stipulations. This decision contains no discussion of any factual or legal issues relative to the parties' stipulations except as necessary for clarity with respect to disputed factual and legal issues.

### **FINDINGS OF FACT**

The evidentiary record in this case consists of the following:

- Joint Exhibits (Jt. Ex.) 1 through 2;
- Claimant's Exhibits (Cl. Ex.) 1 through 3;
- Defendants' Exhibits (Def. Ex.) A through E; and
- Hearing testimony by Sheriff and David Grieder,<sup>1</sup> a foreman at ADM.

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<sup>1</sup> The hearing transcript incorrectly spelled Grieder's surname as "Drieder."

After careful consideration of the evidence and the parties' post-hearing briefs, the undersigned enters the following findings of fact.

ADM hired Sheriff in 2006. (Hrg. Tr. pp. 14–15, 24) For the bulk of Sheriff's time at ADM and at all times material hereto, he worked as a fieldhouse utility worker. (Hrg. Tr. p. 15; Ex. A) It was physical work that includes duties such as moving railcars, using stairs, walking a lot, shoveling, and loading and unloading rail cars and tractor trailers. (Hrg. Tr. pp. 15, 26–31; Ex. A) Sheriff also trains other employees as needed. (Hrg. Tr. p. 25)

ADM allows employees to bid to work on certain shifts. (Hrg. Tr. p. 32) In 2008, Sheriff bid into the swing shift. (Hrg. Tr. p. 32) He enjoys working the swing shift. (Hrg. Tr. p. 32) It was the shift he was working on the date of the stipulated injury. (Hrg. Tr. pp. 31–32)

On January 13, 2018, Sheriff was working for ADM. (Hrg. Tr. p. 15) A coworker asked him to help open a railcar lid that was frozen shut. (Hrg. Tr. p. 16) In the winter, Sheriff and his coworkers typically use a special tool to help provide additional leverage when opening railcar lids that were frozen shut. (Hrg. Tr. p. 16) When Sheriff was lifting the lid, he felt a pop and burning sensation in the left side of his body that slowly went away. (Hrg. Tr. p. 17)

Sheriff continued to work before ultimately reporting the injury. (Hrg. Tr. p. 17) The pain from the injury became a dull ache and he developed a bulge in his left groin. (Jt. Ex. 1, p. 1) ADM provided care under Iowa Code section 85.27 with Shirley Pospisil, M.D., at UnityPoint and Kent Choi, M.D., the University of Iowa Hospitals and Clinics (UIHC). (Hrg. Tr. p. 17; Jt. Exs. 1, 2) Sheriff continued to work for ADM while receiving care until Dr. Choi performed a bilateral hernia repair on February 1, 2018. (Hrg. Tr. pp. 17–18; Jt. Ex. 1, pp. 1–18)

Sheriff was off work from February 1, 2018, through February 21, 2018. (Hrg. Tr. p. 18; Jt. Ex. 1, p. 19) ADM paid him what they classified at the time as TTD benefits at the weekly rate of \$992.02. (Def. Ex. D, p. 13) While Sheriff was off work, ADM paid him a total of \$2,976.05 in TTD benefits. (Def. Ex. D, p. 13)

UIHC released him to return to work with restrictions effective February 22, 2018. (Hrg. Tr. p. 18; Jt. Ex. 1, pp. 19–20) ADM paid Sheriff temporary partial disability (TPD) benefits for the time periods after the injury when he was able to work but under restrictions that reduced his hours and income. (Def. Ex. D, p. 13) In total, ADM paid Sheriff \$2,911.02 in TPD benefits. (Def. Ex. D, p. 13)

Sheriff returned to full-duty work on April 1, 2018. (Hrg. Tr. p. 18; Jt. Ex. 1, pp. 19–20) He returned to the position of fieldhouse utility worker which he held at the time of the work injury. (Hrg. Tr. p. 18) He continues to work on the swing shift because he prefers it. (Hrg. Tr. p. 32) His hourly rate of pay was higher after the injury than it was on the date it occurred. (Hrg. Tr. p. 34)

ADM requires employees to work some overtime and employees with more seniority have the opportunity to accept or reject overtime hours. (Hrg. Tr. p. 33) Sheriff has the same opportunities to work overtime after returning from surgery as he did prior to the date of injury. (Hrg. Tr. pp. 32–33) Sheriff testified he worked about the same number of hours after the injury as he did before it. (Hrg. Tr. pp. 32–33)

Sheriff's job duties after returning to work without restrictions are the same as before he sustained the stipulated work injury. (Hrg. Tr. pp. 18–19) However, Sheriff has been tasked with training more workers since his return from hernia surgery. (Hrg. Tr. p. 19) Training other workers means he does not have to perform the more physically demanding parts of the job as often as he did before the injury because the workers he trains perform those duties. (Hrg. Tr. p. 19) Sheriff gets a bump in pay when he is training other workers. (Hrg. Tr. p. 34)

Defense counsel sent a letter to Dr. Pospisil requesting an opinion on what, if any, permanent functional impairment Sheriff had as a result of the stipulated work injury. (Jt. Ex. 2, p. 24) At the time, Dr. Pospisil had not seen Sheriff since the exam at which she released him to return to full-duty work in February of 2018. (Hrg. Tr. p. 19; Jt. Ex. 2, pp. 23–24) She did not examine Sheriff as part of her assessment of permanent impairment. (Hrg. Tr. pp. 19–20; Jt. Ex. 2, p. 24)

Dr. Pospisil did not physically examine Sheriff before issuing her opinion on permanent functional impairment; instead, she telephoned him. (Hrg. Tr. p. 20) After a phone conversation on September 15, 2020, Dr. Pospisil noted, Sheriff “had some pain initially however he has none now. He has no complaints regarding the surgery or outcome.” (Jt. Ex. 2, p. 24) Dr. Pospisil used Table 6-9 on page 136 of the Fifth Edition of the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (Guides) to conclude Sheriff “does not appear to have any impairment due to his surgery” and assigned him a zero percent permanent functional impairment rating. (Jt. Ex. 2, p. 24)

Table 6-9 contains three classes of permanent impairment due to herniation. Guides, p. 136. Class 1 has a defined range from zero to nine percent impairment of the whole person. Id. The listed criteria are, “Palpable defect in supporting structures of abdominal wall **and** slight protrusion at site of defect with increased abdominal pressure; readily reducible **or** occasional mild discomfort at site of defect but not precluding most activities of daily living.” Id. (emphasis in original).

In the medical field, the adjective “palpable” means “perceptible to touch; capable of being palpated.” *Palpable*, Stedman's Medical Dictionary 645730, Westlaw (database updated Nov. 2014). Dr. Pospisil telephoned Sheriff before issuing an impairment rating using this table but did not examine him. This means she was not in a position to accurately assess the first required criterion for a Class 1 hernia impairment under Table 6-9 of the Guides because she could not tell if he had a “palpable defect in supporting structures of the abdominal wall.” Guides, p. 136. Likewise, there is no indication she was able to determine whether he had a “slight protrusion at site of defect

with increased abdominal pressure” that was “readily reducible.” Id. For these reasons, the lack of an examination by Dr. Pospisil hurts the credibility of her impairment rating.

Further reducing the persuasiveness of Dr. Pospisil’s opinion on permanent impairment is Sheriff’s hearing testimony. During the hearing, Sheriff credibly testified that around the time of September 15, 2020, he was doing quite a bit of training for ADM. (Hrg. Tr. p. 20) This meant the physical demands of his job were lower because trainees performed the heavy tasks. (Hrg. Tr. pp. 19–20) He also credibly testified the pain level on the left side of his body, where he underwent hernia repair surgery, varies based on how much physical activity he performs. (Hrg. Tr. p. 23) Because of this and the fact Sheriff’s trainees were performing most of the physically demanding job duties around the time he spoke with Dr. Pospisil, he was not feeling pain at the time of their phone call. Therefore, the weight of the evidence shows Dr. Pospisil based her impairment rating on an inaccurate understanding of Sheriff’s symptoms.

Claimant’s counsel arranged for Sheriff to undergo an IME with Farid Manshadi, M.D. (Cl. Ex. 1, pp. 1–4) Dr. Manshadi physically examined Sheriff on August 19, 2021, and reviewed medical records relating to his work injury. (Cl. Ex. 1, pp. 5–7) He noted in his IME report:

On examination today with valsalva there was a mild defect in the left inguinal hernia area noted. Also there was evidence of pain with that as well. There were no issues on the right side and no defect could be found with valsalva.

(Cl. Ex. 1, p. 6)

On the question of permanent functional impairment, Dr. Manshadi used Table 6-9 on page 136 of the Guides to find Sheriff’s herniation fell under Class 1 and opined he has a three percent impairment of the whole person. (Cl. Ex. 1, p. 6) This opinion is based on a review of Sheriff’s medical records and an examination during which he observed the criteria necessary for such a classification that is consistent with Sheriff’s credible hearing testimony regarding his ongoing complaints relating to the work injury. Consequently, Dr. Manshadi’s opinion on permanency is most persuasive and is adopted.

Dr. Manshadi issued an itemized invoice for the IME and report. (Cl. Ex. 3, p. 30) Dr. Manshadi charged Sheriff four hundred dollars for the examination portion of his IME. (Cl. Ex. 3, p. 30) Dr. Manshadi charged one thousand two hundred dollars for the report. (Cl. Ex. 3, p. 30) His total bill was one thousand six hundred dollars. (Cl. Ex. 3, p. 30)

ADM determined that it miscalculated Sheriff’s rate for purposes of TTD and TPD benefits, causing him to receive less in benefits than that to which he was entitled under Iowa law. Consequently, ADM issued him a check dated November 17, 2021, for \$173.99 in TTD benefits. (Def. Ex. D, p. 14) In addition, ADM issued him a check dated November 18, 2021, for \$583.18 in TPD benefits. (Def. Ex. D, p. 15) It is unclear based

on the record why ADM miscalculated Sheriff's rate, causing the late payments of benefits.

Sheriff contends ADM failed to properly calculate his gross earnings for rate purposes because it did not include all of his holiday and vacation pay during the time period in question. ADM contends Sheriff has erroneously double-counted the hours for which he was entitled to vacation and holiday pay at the time in question. Sheriff has failed to present sufficient evidence to support the finding ADM failed to properly calculate his gross earnings with respect to holiday and vacation pay.

At the time of hearing, Sheriff was still working in the same job, with the same duties, for ADM. (Hrg. Tr. p. 21) He works the same hours, earning at least as much as he was at the time of injury. (Hrg. Tr. p. 21) Sheriff's repaired hernia felt better after the surgery than before it, but he continues to have issues. (Hrg. Tr. p. 21) His ongoing symptoms consist of periodically feeling a pull or a pinch on his left side—in particular, when descending a ladder and lifting lids. (Hrg. Tr. pp. 21, 37–38) The sensation causes Sheriff to experience pain he rates at a level of four on a scale from zero to ten. (Hrg. Tr. pp. 22–23)

## **CONCLUSIONS OF LAW**

In 2017, the Iowa legislature amended the Iowa Workers' Compensation Act. See 2017 Iowa Acts, ch. 23. The 2017 amendments apply to cases in which the date of an alleged injury is on or after July 1, 2017. Id. at § 24(1); see also Iowa Code § 3.7(1). Because the injury at issue in this case occurred after July 1, 2017, the Iowa Workers' Compensation Act, as amended in 2017, applies. Smidt v. JKB Restaurants, LC, File No. 5067766 (App. Dec. 11, 2020).

### **1. Rate.**

The parties stipulated Sheriff was married and entitled to two exemptions at the time of the stipulated injury. However, while the parties agree Sheriff's earnings should be calculated under Iowa Code section 85.36(6), they dispute the amount of his gross earnings over the time in question. Sheriff contends his gross earnings were \$1,753.50 per week. ADM claims they were \$1,728.40. Thus, the rate dispute stems from the parties' disagreement on Sheriff's gross earnings.

As found above, there is an insufficient basis in the evidence from which to conclude ADM did not properly include Sheriff's holiday and vacation pay in its most recent calculation of his gross earnings for workers' compensation purposes. Sheriff has failed to meet his burden of proof on rate. Based on this and the parties' stipulations, Sheriff's workers' compensation rate is \$1,728.40 dollars per week.

### **2. Permanent Disability.**

Disputes about medical causation are typically of two types under the Iowa Workers' Compensation Act. One is whether the injury arises out of an actual risk of the

claimant's employment. See Bluml v. Dee Jay's Inc., 920 N.W.2d 85, 85–86 (Iowa 2018); see also Lakeside Casino v. Blue, 743 N.W.2d 169, 173–74 (Iowa 2007); Meyer v. IBP, Inc., 710 N.W.2d 213, 223 (Iowa 2006); Almquist v. Shenandoah Nurseries, 254 N.W. 35 (Iowa 1934). The other is whether the injury caused compensable disability. See Schutjer, 780 N.W.2d at 560 (quoting Grundmeyer, 649 N.W.2d at 752).

“Medical causation presents a question of fact.” Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844 (Iowa 2011). The answer to this question lies “essentially within the domain of expert testimony.” Id. at 845 (quoting Dunlavy v. Econ. Fire. & Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995)). The agency “has the duty to determine credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion.” Dunlavy, 526 N.W.2d at 853. The agency determines the weight to give an expert opinion based on consideration of:

- 1) “[T]he accuracy of the facts relied upon by the expert,” Schutjer, 780 N.W.2d at 560 (quoting Grundmeyer, 649 N.W.2d at 752);
- 2) “[T]he completeness of the premise with which the expert is given,” Dunlavy, 526 N.W.2d at 853; and
- 3) “[O]ther disclosed facts and circumstances,” id.

The agency may accept or reject an expert opinion in whole or in part. Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010) (quoting Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002)).

Here, the parties stipulated that Sheriff sustained an injury arising out of and in the course of his employment with ADM on January 13, 2018. Their dispute centers on whether the stipulated work injury caused Sheriff permanent disability. As found above, Dr. Manshadi's opinion is most persuasive on this question. The weight of the evidence establishes the stipulated work injury caused Sheriff a permanent functional impairment of three percent to his whole body.

In 2017, the legislature amended the Iowa Workers' Compensation Act. See 2017 Iowa Acts ch. 23. Among those amendments were changes to section 85.34(2), including to what is now codified at paragraph (v). This statutory provision now provides in pertinent part, “If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity.” Iowa Code § 85.34(2)(v).

The amendment creates a new mandatory bifurcated litigation process with respect to a claimant's permanent disability from a work injury if the requirements of the statute are met. If the claimant returned to work with the defendant-employer after the

injury and remains so employed, earning the same or more as the claimant earned at the time of the work injury, the claimant is limited to PPD benefits for functional impairment only. If the defendant-employer later terminates the claimant's employment, the claimant has the right to seek reopening with the agency for PPD benefits based on an assessment of industrial disability. See id.

Here, the evidence shows Sheriff returned to work at ADM in the same position he held at the time of injury. ADM has increased Sheriff's hourly wage rate since his return to work. He was working about the same hours and earning more at the time of hearing than he was at the time of injury. Therefore, section 85.34(2)(v) dictates his disability is determined based only on his permanent functional impairment and not any lost earning capacity.

Sheriff has met his burden of proof on permanent disability. The evidence shows it is more likely than not he sustained a three percent impairment to the whole body resulting from the stipulated injury. Three percent multiplied by five hundred is fifteen. Sheriff is entitled to fifteen weeks of PPD benefits under Iowa Code section 85.34(2)(v).

### **3. Penalty.**

"Because penalty benefits are a creature of statute, our discussion begins with an examination of the statutory parameters for such benefits." Keystone Nursing Care Ctr. v. Craddock, 705 N.W.2d 299, 307 (Iowa 2005). Under Iowa Code section 86.13(4)(a),

If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.

This provision "codifies, in the workers' compensation insurance context, the common law rule that insurers with good faith disputes over the legal or factual validity of claims can challenge them, if their arguments for doing so present fairly debatable issues." Covia v. Robinson, 507 N.W.2d 411, 412 (Iowa 1993) (citing Dirks v. Farm Bureau Mut. Ins. Co., 465 N.W.2d 857, 861 (Iowa 1991) and Dolan v. Aid Ins. Co., 431 N.W.2d 790, 794 (Iowa 1988)). "The purpose or goal of the statute is both punishment and deterrence." Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229, 237 (Iowa 1996).

The legislature established in Iowa Code section 86.13(4)(b) a burden-shifting framework for determining whether penalty benefits must be awarded in a workers' compensation case. See 2009 Iowa Acts ch. 179, § 110 (codified at Iowa Code § 86.13(4)(b)); see also Pettengill v. Am. Blue Ribbon Holdings, LLC, 875 N.W.2d 740, 746–47 (Iowa App. 2015) as amended (Feb. 16, 2016) (discussing the burden-shifting required by the two-factor statutory test). The employee bears the burden to establish a



prima facie case for penalty benefits. See Iowa Code § 86.13(4)(b). To do so, the employee must demonstrate a denial, delay in payment, or termination of workers' compensation benefits. Iowa Code § 86.13(4)(b)(1). If the employee fails to prove a denial, delay, or termination, there can be no award of penalty benefits and the analysis stops. See id. at § 86.13(4)(b); see also Pettengill, 875 N.W.2d at 747. However, if the employee makes the requisite showing, the burden of proof shifts to the employer. See id. at § 86.13(4)(b); see also Pettengill, 875 N.W.2d at 747.

To avoid an award of penalty benefits, the employer must “prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.” Iowa Code § 86.13(4)(b)(2). An excuse must meet all of the following criteria to be “a reasonable or probable cause or excuse” under the statute:

- (1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.
- (2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.
- (3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

Id. § 86.13(4)(c).

This paragraph creates a mandatory timeline for the employer to follow in showing it had a “reasonable or probable cause or excuse” for the termination of benefits. Iowa Code § 86.13(4)(c)(1)–(3). First, the employer's excuse for the termination must have been *preceded* by an investigation. Id. § 86.13(4)(c)(1). Second, the results of the investigation were “*the actual basis ... contemporaneously*” relied on by the employer in terminating the benefits. Third, the employer “*contemporaneously* conveyed the basis for the ... termination of benefits to the employee *at the time of the ... termination.*” Id. § 86.13(4)(c)(3)

Pettengill, 875 N.W.2d at 747 (emphasis in original). “An employer cannot unilaterally decide to terminate an employee's benefits without adhering to Iowa Code section 86.13; to allow otherwise would contradict the language of that section.” Id.

“A ‘reasonable basis’ for denial of the claim exists if the claim is ‘fairly debatable.’” Keystone Nursing Care Ctr., 705 N.W.2d at 307 (quoting Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 260 (Iowa 1996)). A claim may be fairly debatable because of a good faith legal or factual dispute. See Covia, 507 N.W.2d at 416 (finding a jurisdictional issue fairly debatable because there were “viable arguments

in favor of either party”). “[T]he reasonableness of the employer’s denial or termination of benefits does not turn on whether the employer was right. The issue is whether there was a reasonable basis for the employer’s position that no benefits were owing.” Keystone Nursing Care Ctr., 705 N.W.2d at 307–08.

Here, the evidence shows ADM made a late payment to Sheriff of \$173.99 in TTD benefits and \$583.18 in TPD benefits. Sheriff has therefore presented a prima facie case for penalty purposes. ADM has not provided a reason for the failure to timely pay Sheriff these benefits. This means ADM has not provided a reasonable basis for the failure to pay Sheriff in full the TTD benefits and TPD benefits to which he was entitled at the time they were due. ADM’s failure to pay Sheriff the full amount payable under the statute entitles him to a penalty under the statute. See id. at 237.

The following factors are used in determining the amount of penalty benefits:

- The length of the delay;
- The number of the 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. Robbenolt, 555 N.W.2d at 238.

Sheriff presented no evidence of prior penalties the agency has imposed against ADM. The record shows ADM had the information it needed to accurately calculate Sheriff’s rate of workers’ compensation at the time the TTD and TPD benefits to which he was entitled were due. The delay covered each week of benefits and lasted years. For these reasons, Sheriff is entitled to a penalty of \$300.00.

#### **4. Costs.**

“All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.” Iowa Code § 86.40. “Fee-shifting statutes using ‘all costs’ language have been construed ‘to limit reimbursement for litigation expenses to those allowed as taxable court costs.’” Des Moines Area Reg’l Transit Auth. v. Young, 867 N.W.2d 839, 846 (Iowa 2015) (quoting City of Riverdale v. Diercks, 806 N.W.2d 643, 660 (Iowa 2011)). Statutes and administrative rules providing for recovery of costs are strictly construed. Id. (quoting Hughes v. Burlington N. R.R. Co., 545 N.W.2d 318, 321 (Iowa 1996)).

The assessment of costs includes “the reasonable costs of obtaining no more than two doctors’ or practitioners’ reports.” 876 IAC 4.33.

A “report” is a “formal oral or written presentation of facts or a recommendation for action.” Black’s Law Dictionary 1492 (10th ed. 2014). The word “obtain” is used as a modifier in the rule and means “[t]o bring

into one's own possession; to procure, esp[ecially] through effort.” Id. at 1247. Thus, the concept of obtaining a report for a hearing is separate from the concept of a physical examination. A “physical examination” is “[a]n examination of a person's body by a medical professional to determine whether the person is healthy, ill, or disabled.” Id. at 680. The concept of “obtaining” a report is separate from the process of “obtaining” an examination. Our legislature recognized as much by separately authorizing the commissioner to appoint “a duly qualified, impartial physician to examine the injured employee and make report.” Iowa Code § 86.38. A medical report for purposes of a hearing is aligned with a prehearing medical deposition. In the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition.

Young, 867 N.W.2d at 845–46. Consequently, Sheriff is not entitled to taxation of the full cost of Dr. Manshadi’s examination and report (\$1,600.00), only the report (\$1,200.00).

Because Sheriff prevailed on the disputed issue of his entitlement to PPD benefits, the following costs are taxed against ADM:

- Six and 80/100 dollars (\$6.80) for the costs of service of the original notice, 876 IAC 4.33(3);
- One thousand two hundred dollars (\$1,200.00) for the cost of Dr. Manshadi’s practitioner report, id. at 4.33(6); and
- One hundred dollars (\$100.00) for the petition filing fee, id. at 4.33(7).

### **ORDER**

Based on the above findings of fact and conclusions of law, it is ordered:

- 1) The defendant shall pay to Sheriff fifteen (15) weeks of permanent partial disability benefits at the rate of one thousand seven hundred twenty-eight and 40/100 dollars (\$1,728.40) per week from the commencement date of April 1, 2017.
- 2) The defendant shall pay accrued weekly benefits in a lump sum.
- 3) The defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.
- 4) The defendant shall pay Sheriff a penalty of three hundred dollars (\$300.00).
- 5) The defendant shall pay to Sheriff the following amounts for the following costs:

- a) Six and 80/100 dollars (\$6.80) for the costs of service of the original notice;
  - b) One hundred and 00/100 dollars (\$100.00) for the filing fee; and
  - c) One thousand two hundred dollars (\$1,200.00) for the cost of Dr. Manshadi's practitioner report.
- 6) The defendant shall file subsequent reports of injury as required by Rule 876 IAC 3.1(2).

Signed and filed this 25th day of May, 2022.



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BEN HUMPHREY  
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Gary B. Nelson (via WCES)

Peter J. Thill (via WCES)

**Right to Appeal:** This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.