

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERT HERNANDEZ,

Claimant,

vs.

LINN COUNTY, IOWA,

Employer,  
Self-Insured,  
Defendant.

File No: 1664831.01

ARBITRATION DECISION

Head Notes: 1800, 1803, 3800

**STATEMENT OF THE CASE**

The claimant, Robert Hernandez, filed a petition for arbitration seeking workers' compensation benefits from self-insured employer Linn County, Iowa (hereinafter "Linn County"). Matthew Dake appeared on behalf of the claimant. Elena Wolford and Cory Speth appeared on behalf of the defendant.

The matter came on for hearing on September 17, 2021, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner related to the COVID-19 pandemic, the hearing occurred via CourtCall. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-6, Claimant's Exhibit 1-4, and Defendant's Exhibits A-C. The claimant testified on his own behalf. Also testifying were Thad Alexander and Steve Estenson. Stephanie Cousins was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted on October 14, 2021, after briefing by the parties.

**STIPULATIONS**

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

1. There was an employer-employee relationship at the time of the alleged injury.
2. The claimant sustained an injury which arose out of, and in the course of employment, on January 12, 2017.

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. The disability is an industrial disability.
6. The commencement date for permanent partial disability benefits, if any are awarded is January 30, 2018.
7. The claimant's gross earnings were one thousand fifty and 90/100 dollars (\$1,050.90) per week. He was married and entitled to four exemptions. This resulted in a weekly compensation rate of six hundred twenty-one and 28/100 dollars (\$621.28).
8. That, prior to the hearing, the claimant was paid fifteen (15) weeks of compensation at the rate of six hundred eighty-one and 21/100 dollars (\$681.21) per week.
9. The costs requested by the claimant have been paid.

Entitlement to temporary disability and/or healing period benefits is no longer in dispute. Entitlement to medical benefits is also no longer in dispute. The defendant waived their affirmative defenses.

The parties are now bound by their stipulations.

### **ISSUES**

The parties submitted the following issues for determination:

1. The extent of permanent disability benefits.
2. Whether the claimant is entitled to a taxation of costs.

### **FINDINGS OF FACT**

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

Robert Hernandez, the claimant, was 68 years old at the time of the hearing. He previously worked for Linn County for forty-six years. (Testimony). He is left hand dominant. (Testimony). He started with Linn County patching holes and fixing roads during the summer months. (Testimony). He did this for one summer before transitioning to a surveying crew during the winter. (Testimony). He used measuring tools during this job. (Testimony). A position then opened as a parts runner in the Linn County garage. (Testimony). As a parts runner, Mr. Hernandez would pick up automotive parts and deliver them to the Linn County shop for the mechanics.

(Testimony). Finally, for the last ten (10) years, Mr. Hernandez worked as a parts manager for Linn County. (Testimony).

As a parts manager, Mr. Hernandez ordered parts for the county garage. (Testimony). He also put parts away in the county garage. (Testimony). Parts managers also managed fuel supplies, performed data entry, maintained inventory, and picked up and delivered parts. (Testimony; Defendant's Exhibit B:1-2). The parts manager also was to assist mechanics as needed. (DE B:1). The claimant included some job descriptions in their exhibits, but these were not for parts manager positions. (Claimant's Exhibit 2:13-16). I found them irrelevant. Mr. Hernandez met the expectations of his job based upon his performance evaluations. (CE 2:17-24).

On January 12, 2017, the claimant was lifting chains into a storage area with Thad Alexander. (Testimony). He unloaded several half chains, and suddenly felt pain in his left shoulder. (Testimony; Defendant's Exhibit A:1). He decided to see what would happen with the pain before seeking treatment. (Testimony). The pain did not go away, so he sought treatment on January 18, 2017. (Testimony).

The claimant reported to St. Luke's Hospital on January 18, 2017. (Joint Exhibit 2:4-5). William Manely, PA-C, of St. Luke's Work Well, examined Mr. Hernandez. (JE 2:5). Mr. Hernandez reiterated to Mr. Manely how the injury occurred. (JE 2:4). He noted that he continued to have pain in his left shoulder. (JE 2:4). The claimant reported that he previously fell onto his left shoulder and treated with physical therapy. (JE 2:4). That injury resolved with no further issues. (JE 2:4). Mr. Hernandez also had a history of a hernia, diabetes, acid reflux, hypertension and arthritis. (JE 2:4; Testimony). Mr. Manely diagnosed the claimant with left shoulder pain and strain. (JE 2:5). Mr. Manely provided restrictions of maximum lifting and carrying 5 pounds on the left, no reaching overhead or across the chest, no forceful pushing or pulling, and no climbing ladders. (JE 2:5). Mr. Manely recommended physical therapy and x-rays of the left shoulder. (JE 2:5). The x-rays were completed, and revealed mild subacromial spurring, but no acute fracture or dislocation. (JE 1:1).

On January 24, 2017, the claimant began physical therapy with Balanced Fitness & Health. (JE 6:34-35). The claimant testified that he had about 100 physical therapy visits between the initial visit and his discharge from care. (Testimony). Mr. Hernandez described the mechanism for his injury. (JE 6:34). He noted that soreness increased in his shoulder since the time of the incident. (JE 6:34). Therapy was performed. (JE 6:35).

Mr. Hernandez returned to Mr. Manely's office on January 30, 2017. (JE 2:6). Mr. Manely reviewed the results of the left shoulder x-ray with the claimant and continued the previously promulgated restrictions. (JE 2:6). The claimant indicated that his pain improved slightly, and that he attended three sessions of physical therapy. (JE 2:6).

Mr. Manely examined the claimant again on February 9, 2017, for his left shoulder complaints. (JE 2:7-8). Mr. Hernandez told Mr. Manely that he attended physical therapy for a total of six visits. (JE 2:7). On the morning of the visit, Mr. Hernandez indicated that he hyperextended his left arm while working on a truck. (JE

2:7). Mr. Manely observed tenderness over the anterior and lateral aspects of the left shoulder upon physical examination. (JE 2:7). Mr. Manely recommended continued light duty and restrictions as previously provided. (JE 2:7). He also ordered an MRI of the left shoulder. (JE 2:8).

On February 16, 2017, Mr. Hernandez had an MRI of his left shoulder. (JE 1:2-3). Larry Burr, M.D. interpreted the MRI results. (JE 1:3). Dr. Burr opined that the MRI showed a partial tear of the supraspinatus tendon with no retraction. (JE 1:3). The MRI also showed an irregularity of the anterior inferior aspect of the inferior glenohumeral ligament, which Dr. Burr opined was degenerative. (JE 1:3). Finally, Dr. Burr observed mild AC joint osteoarthritis. (JE 1:3).

Mr. Manely reviewed the results of the MRI with Mr. Hernandez on February 21, 2017. (JE 2:9). Mr. Hernandez complained of continued pain in the left shoulder. (JE 2:9). Mr. Manely continued the previously provided restrictions, and recommended referral to an orthopedic specialist based upon the lack of progression with conservative care. (JE 2:9).

On February 28, 2017, Matthew White, M.D. examined Mr. Hernandez, for his complaints of left shoulder pain. (JE 3:10-13). Upon physical examination, Dr. White noted that Mr. Hernandez displayed tenderness to palpation over the superolateral and anterior aspect of the left shoulder. (JE 3:12). Testing of the rotator cuff was also painful for the claimant. (JE 3:12). Dr. White reviewed the results of the left shoulder MRI, and diagnosed Mr. Hernandez with left shoulder pain and a partial thickness rotator cuff tear. (JE 3:12). Dr. White injected the claimant's left shoulder with cortisone, prescribed physical therapy, and recommended that the claimant continue under his current restrictions. (JE 3:12-13).

The claimant followed-up with Dr. White on March 29, 2017. (JE 3:14-16). Mr. Hernandez told Dr. White that the previous injection helped "very mildly." (JE 3:14). Physical therapy also provided slight improvement. (JE 3:14). Dr. White and Mr. Hernandez discussed his treatment options. (JE 3:15). The claimant indicated a preference for proceeding with an arthroscopic rotator cuff repair. (JE 3:15).

On July 27, 2017, Mr. Hernandez had a left arthroscopic rotator cuff repair. (JE 4:30-31, 5:32-33). After completing a left shoulder arthroscopic rotator cuff repair, limited debridement, and subacromial decompression, Dr. White diagnosed Mr. Hernandez with left shoulder partial thickness rotator cuff tear, left shoulder small anterior labral tear, and left shoulder impingement. (JE 5:32).

Mr. Hernandez returned to Dr. White's office on August 11, 2017, for a post-operative visit. (JE 3:17-18). Mr. Hernandez reported doing well and working on physical therapy. (JE 3:17). Dr. White recommended that Mr. Hernandez continue physical therapy, and remain in an ultra-sling for another two weeks. (JE 3:18).

On September 8, 2017, Dr. White examined the claimant again. (JE 3:19-20). Mr. Hernandez reported doing well with controlled pain. (JE 3:19). Dr. White observed non-irritable range of motion to the left shoulder. (JE 3:20). Dr. White recommended that Mr. Hernandez continue physical therapy. (JE 3:20).

Mr. Hernandez returned to Dr. White's office on October 31, 2017. (JE 3:21-22). He reported being pleased with his progress since the surgery. (JE 3:21). Dr. White recommended that the claimant continue his physical therapy. (JE 3:22).

On December 12, 2017, Dr. White examined the claimant again. (JE 3:23-25). He reported doing "very well" with no complaints of numbness or tingling. (JE 3:23). The claimant continued improvement with physical therapy. (JE 3:23). Dr. White recommended that Mr. Hernandez continue physical therapy and focus on strengthening or conditioning to return to work. (JE 3:24).

Mr. Hernandez had a therapy visit on January 11, 2018, with Balanced Fitness & Health. (JE 6:36). Mr. Hernandez opined that his shoulder continued to improve "all the time." (JE 6:36). The therapist opined that the claimant's shoulder mechanics continued to improve. (JE 6:36).

On January 18, 2018, Mr. Hernandez reported to Balanced Fitness & Health. (JE 6:37). He told the therapist that his shoulder felt "pretty good," and that he continued to work within his restrictions. (JE 6:37). The therapist recommended that Mr. Hernandez continue therapy until January 31, 2018, when the therapist anticipated discharge. (JE 6:37).

Mr. Hernandez continued reporting that his shoulder felt good on January 22, 2018. (JE 6:38). He had no issues doing "light work" around the house the prior weekend. (JE 6:38). The therapist recommended that Mr. Hernandez continue therapy until late January. (JE 6:38).

On January 25, 2018, the claimant told the therapist that he was "doing pretty good," and that he put filters away at work with no difficulty. (JE 6:39). This included reaching and lifting overhead. (JE 6:39).

The claimant had his final therapy appointment with Balanced Fitness & Health on January 29, 2018. (JE 6:40). Mr. Hernandez reported no issues with his shoulder. (JE 6:40). He could do all of his work duties without difficulty, and told the therapist that he felt he could return to his regular duties without difficulty. (JE 6:40). The therapist provided additional education on a home exercise plan and performed therapy. (JE 6:40). The therapist made a final note: "Robert has been very compliant with therapy and has worked hard at his home exercise and general conditioning. I feel he is ready to return to his regular work duty at this time. He is aware of better body mechanics to utilize to prevent re-injury." (JE 6:40). Mr. Hernandez was discharged from physical therapy. (JE 6:40).

Mr. Hernandez continued treating with Dr. White on January 30, 2018. (JE 3:26-27). Mr. Hernandez reported that he was doing well. (JE 3:26). Dr. White recommended that the claimant transition to a home exercise program for maintenance, take over-the-counter pain medication, and return to full duty work on January 31, 2018, without restrictions. (JE 3:27-28). Dr. White also opined that Mr. Hernandez achieved maximum medical improvement ("MMI"). (JE 3:27).

Dr. White sent a letter to Linn County Risk Management dated March 28, 2018. (JE 3:29). In that letter, he indicated that Mr. Hernandez achieved MMI on January 30, 2018. (JE 3:29). Dr. White further opined that, based upon clinical measurements, and Figures 16-40, 16-43, and 16-46 of the Guides to the Evaluation of Permanent Impairment, Fifth Edition, Mr. Hernandez had a 5 percent impairment to the upper extremity, or a 3 percent whole person impairment. (JE 3:29).

On December 5, 2019, Farid Manshadi, M.D. performed an independent medical examination of Mr. Hernandez. (Claimant's Exhibit 1:7-10). Subsequent to the examination, Dr. Manshadi issued a report of his findings. (CE 1:7-10). In preparing his report, Dr. Manshadi reviewed Mr. Hernandez's job description, and applicable medical records. (CE 1:7). Dr. Manshadi noted the claimant's previous left ankle injury in 2008, a hernia repair in 2003, and a neck injury in 2010. (CE 1:7). Dr. Manshadi performed a previous IME on the claimant in May of 2012 regarding the previously mentioned neck pain. (CE 1:7). Dr. Manshadi mentioned permanent restrictions regarding Mr. Hernandez's neck provided in that IME. (CE 1:7). Mr. Hernandez told Dr. Manshadi that his shoulder would ache with increased activities including pain up to 5 out of 10. (CE 1:9). Mr. Hernandez also reported feeling a loss in strength in his left arm. (CE 1:9).

Dr. Manshadi used a goniometer and measured the claimant's range of motion in his left shoulder. (CE 1:9). Dr. Manshadi found range of motion measurements in the left shoulder as follows: forward flexion to 121 degrees, extension to 40 degrees, abduction to 114 degrees, external rotation to 80 degrees, internal rotation to 42 degrees, and adduction to 52 degrees. (CE 1:9). Dr. Manshadi opined that Mr. Hernandez sustained a left shoulder injury on January 12, 2017, which resulted in a rotator cuff tear. (CE 1:9-10). Dr. Manshadi placed Mr. Hernandez at MMI as of the December 5, 2019, IME. (CE 1:10). Dr. Manshadi assigned an 11 percent impairment rating to the left upper extremity based upon Chapter 16 of the Guides to the Evaluation of Permanent Impairment, Fifth Edition. (CE 1:10). Dr. Manshadi recommended permanent work restrictions of avoiding activity requiring repetitive shoulder height or overhead activities with the left upper extremity. (CE 1:10). He also recommended no lifting more than 10 pounds with the left upper extremity. (CE 1:10).

Dr. Manshadi replied to a "check-box" type letter from claimant's counsel dated May 7, 2020. (CE 1:11-12). Dr. Manshadi indicated that his opinions remained the same even if Mr. Hernandez was lifting 40 to 70 pounds rather than the previously reported 75 pounds. (CE 1:11-12).

Mr. Hernandez returned to working light duty for some time. (Testimony). He eventually returned to full duty work. (Testimony). He reported issues with lifting over his head. (Testimony). His difficulty increased when lifting heavier items, like batteries or boxes of coveralls. (Testimony; CE 3:25). When he had to lift heavier items, he would ask for assistance from other employees. (Testimony). Eventually, in October of 2019, Mr. Hernandez decided to retire. (Testimony). He testified that this was because he felt that he could no longer be effective at his position. (Testimony). Linn County noted that they accommodated him when he needed help lifting, and was happy to continue to do so; however, Mr. Hernandez indicated that it was his decision and

assessment of his own capabilities that led to his retirement. (Testimony). Mr. Hernandez expressed that he wanted to work until he was 70, and would still be working for Linn County if he were not injured. (Testimony).

Mr. Hernandez testified that he has problems with snow removal from his driveway, and that it took him longer than normal to shovel snow. (Testimony). He also uses a riding lawn mower to mow his lawn, and no longer uses a weed eater. (Testimony; CE 3:27). When he did use a weed eater after his accident, he would take 10 minutes on and 10 minutes off while using it. (Testimony). Mr. Hernandez also used to conduct maintenance on his family vehicles. (Testimony). He testified that he can no longer perform oil changes, work on starters or brakes, or perform routine maintenance. (Testimony; CE 3:27). Finally, Mr. Hernandez testified that he cannot carry laundry up or down stairs, and does not lift dishes anymore. (Testimony).

The claimant testified that he has spoken to several potential employers about jobs, but feels that he can no longer perform the physical functions of those jobs due to his left shoulder issue. (Testimony). He has not formally applied for any jobs since retiring. (Testimony). Mr. Hernandez also testified that he could no longer perform his jobs with Linn County, except for perhaps the job that he did some time ago as a surveyor. (Testimony). However due to the advancement of technology since the time he was a surveyor, the claimant felt there may be some issue with him doing this work. (Testimony).

### **CONCLUSIONS OF LAW**

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. 6.904(3).

#### **Extent of Permanent Disability**

In 2017, the Iowa Legislature made significant changes to Iowa Code Chapter 85. Among these was to make the shoulder a scheduled member. These changes apply to injuries that occurred on or after July 1, 2017. The injury in this case occurred on January 12, 2017. This is prior to the implementation of the statutory changes. Additionally, the parties stipulated that the claimant's permanent disability is an industrial disability.

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

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in

employment for which the employee is fitted, and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Although the claimant is closer to retirement age than most workers, proximity to retirement cannot be considered in assessing the extent of industrial disability. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). However, voluntary retirement or withdrawal from the work force unrelated to the injury at issue are considered. See e.g. Copeland v. Boones Book & Bible Store, File No. 1059319 (App. November 6, 1997). Also, a loss of earning capacity due to voluntary choice or lack of motivation to return to work is not compensable. Malget v. John Deere Waterloo Works, File No. 5048441 (Remand Dec. May 23, 2018); Rus v. Bradley Puhmann, File No. 5037928 (App. December 16, 2014); Gaffney v. Nordstrom, File No. 5026533 (App. September 1, 2011); Snow v. Chevron Phillips Chemical Co., File No. 5016619 (App. October 25, 2007); Copeland v. Boones Book and Bible Store, File No. 1059319 (App. November 6, 1997); See also Brown v. Nissen Corp., 89-90 IAWC 56, 62 (App. 1989)(no prima facie showing that claimant is unemployable when claimant did not make an attempt for vocational rehabilitation).

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. Iowa Code section 85.34.

The claimant is 68 years old. He is left hand dominant. We do not know the extent of his education, but he worked for Linn County for 46 years. With Linn County, he worked on a road crew, patching and repairing county roads. He also worked as a surveyor. Eventually, he found his way to the Linn County garage where he worked as a parts runner. He would pick up and deliver automotive parts to the mechanics in the garage. For the last 10 years of his career, Mr. Hernandez worked as the parts manager for Linn County. This required him to maintain inventory, order parts, monitor and record fuel levels, stock parts, and at times, lift heavy objects. The entirety of the evidence in the record is that Mr. Hernandez worked physically demanding jobs, which included a fair amount of lifting, throughout his entire career.

Mr. Hernandez suffered a left shoulder partial thickness rotator cuff tear, left shoulder small anterior labral tear, and left shoulder impingement. These injuries necessitated arthroscopic surgery, which along with lengthy courses of physical therapy, appeared to alleviate Mr. Hernandez's pain. At the conclusion of his treatment, Dr. White released him to work full duty with no restrictions. Dr. Manshadi, after conducting an IME, provided permanent restrictions of avoiding activity requiring repetitive shoulder height or overhead activities with the left upper extremity, and no lifting more than 10 pounds with the left upper extremity.

Mr. Hernandez testified that he has pain and limitation with lifting objects with his left hand around the house. He also testified that it takes him longer to perform yard maintenance, and that he can no longer do automotive work on his personal and/or family vehicles. He further testified that he requested assistance at times when lifting



heavy objects after returning to work. Eventually, Mr. Hernandez chose to retire, as he felt that he could no longer be effective at his position due to his discomfort in lifting heavy objects. Mr. Hernandez testified that he wished to work until age 70, but that he felt he could not physically do so due to his shoulder issues. Linn County noted that they were happy to accommodate Mr. Hernandez should he have continued to work, and that they would have assisted him with lifting heavy items when necessary.

After retirement from Linn County, Mr. Hernandez had conversations with several employers about open positions. However, Mr. Hernandez never applied for a position with these employers. He testified that he felt he could not do those jobs due to his physical limitations. He further indicated that he has not applied for any jobs since his voluntary retirement from Linn County. I am concerned about Mr. Hernandez's motivation to work; however, I would note that he does have permanent restrictions from Dr. Manshadi that could preclude him from working in areas in which he has experience. Mr. Hernandez also testified to his physical limitations and continued pain.

Finally, I would note that Dr. White provided Mr. Hernandez with a permanent impairment rating of 5 percent to the left upper extremity. Dr. White converted this to a rating of 3 percent of the whole person. Dr. Manshadi provided Mr. Hernandez with a permanent impairment rating of 11 percent to the left upper extremity. Dr. Manshadi did not convert the left upper extremity impairment rating to a whole person impairment rating. In reviewing Table 16-3 in the Guides to the Evaluation of Permanent Impairment, Fifth Edition, an 11 percent impairment to the upper extremity converts to a 7 percent impairment to the whole person.

Based upon the evidence in the record, and the factors considered in an industrial disability analysis, I find that the claimant's industrial disability is 25 percent.

### **Costs**

Claimant seeks the award of costs as outlined in Claimant's Exhibit 4. These costs include one hundred and 00/100 dollars (\$100.00) for a filing fee and six and 80/100 dollars (\$6.80) for the costs of service. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code 86.40. 876 Iowa Administrative Code 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, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

Pursuant to the holding in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), only the report of an IME physician, and not the examination itself, can be taxed as a cost according to 876 IAC 4.33(6). The Iowa Supreme Court reasoned, “a physician’s report becomes a cost incurred in a hearing because it is used as evidence in lieu of the doctor’s testimony,” while “[t]he underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition.” Id. (Noting additionally that “[i]n 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.”) The commissioner has found this rationale applicable to expenses incurred by vocational experts. See Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App. Dec., December 17, 2018); Voshell v. Compass Group, USA, Inc., File No. 5056857 (App. Dec., September 27, 2019).

In my discretion, I award the claimant one hundred six and 80/100 dollars (\$106.80) for costs.

### ORDER

THEREFORE, IT IS ORDERED:

That the Defendant is to pay unto the claimant one hundred twenty-five (125) weeks of permanent partial disability benefits at the rate of six hundred twenty-one and 28/100 dollars (\$621.28) per week, commencing on January 30, 2018.

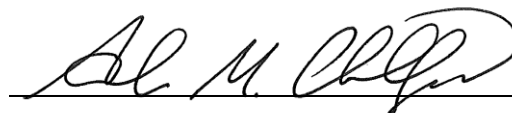
That the Defendant shall reimburse the claimant one hundred six and 80/100 dollars (\$106.80) in costs.

That the Defendant is to be given credit for benefits previously paid, as stipulated.

That the Defendant shall pay accrued weekly benefits in a lump sum together with 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. Apr. 24, 2018).

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

Signed and filed this 3<sup>rd</sup> day of December, 2021.



ANDREW M. PHILLIPS  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Matthew Dake (via WCES)

Elena Wolford (via WCES)

Cory Speth (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.