

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DONALD BURNS,

Claimant,

vs.

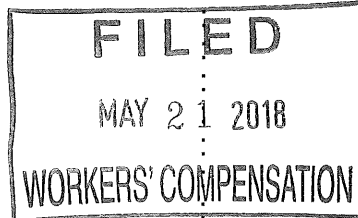
AEROTEK, INC.,

Employer,

and

ACE INSURANCE COMPANY OF N.A.,

Insurance Carrier,
Defendants.



File No. 5065748

ARBITRATION

DECISION

Head Note Nos.: 1100; 1108; 1801;
1803; 2500; 4000

STATEMENT OF THE CASE

Donald Burns claimant, filed a petition in arbitration seeking workers' compensation benefits against Aerotek, Inc., employer, and Indemnity Insurance Co. of N.A., insurance carrier, for an alleged work injury dated June 20, 2016.

This case was heard on March 7, 2018, in Cedar Rapids, Iowa. The case was considered fully submitted on April 4, 2018, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-11, Claimant's Exhibits 1-6, Defendants' Exhibits A-H, and the testimony of Don Burns, Jon Burns, and Stefanie Riesenberg.

ISSUES

1. Whether claimant sustained an injury on June 20, 2016, which arose out of and in the course of employment;
2. Whether the alleged injury is a cause of temporary disability and, if so, the extent;
3. Whether the alleged injury is a cause of permanent disability and, if so;
4. The appropriate commencement date of permanent disability benefits;
5. The extent of claimant's industrial disability;

6. Whether there is a causal connection between claimant's injury and the medical expenses claimed by claimant;
7. Whether claimant is entitled to penalty benefits under Iowa Code section 86.13 and, if so, how much.

STIPULATIONS

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

The parties agree that at the time of the alleged injury claimant was an employee of the defendant employer. They further stipulate that if an injury is found to be the cause of any permanent disability, the disability is industrial in nature.

At the time of the alleged injury, claimant's gross earnings were \$644.15 per week. He was single and entitled to one exemption. Based on the foregoing, the weekly benefit rate is \$398.91.

The defendants waive all affirmative defenses. Prior to the hearing, claimant was paid \$3,183.25 in the form of temporary benefits for which defendants seek a credit against any award of temporary or permanent benefits, depending on the finding regarding the commencement date of permanent partial disability benefits, if any are awarded.

FINDINGS OF FACT

Claimant was a 40-year-old person at the time of the hearing. Per the stipulations, at all material times hereto, he was single and entitled to one exemption.

He is currently on Supplemental Security Income (SSI) due to his severe dyslexia and is entitled to the same check regardless of the work he performs or the money he earns.

His brother, Jon Burns, testified at the hearing. Mr. Burns is a manager at John Deere. He explained that the claimant was diagnosed with extreme dyslexia in school and always struggled with reading. Claimant did graduate with the assistance of teachers, friends and family. Jon Burns testified that claimant relies on others to fill out paperwork for him and will sign his name to almost anything.

Claimant's past work experience included work for his father, stripping antique furniture. He also laid carpet, was an order picker, and worked at a card printing business. (Ex. 4:6-7) He received a welding degree in 2007.

In March 2016, he was placed at Premiere Tooling through the temporary employment agency, Aerotek, the defendant employer.

His position was a press operator and welder. During the first two hours of his shift, he would stamp metal parts for cars, and seats for John Deere tractors. After stamping metal parts, he would weld. He spent most of his time working on rims. He would wipe off the oil from the stamping, pick up a rim, place it onto a jig, tighten nuts, clamp the rim down and flip it around to the automatic welding machine. He did approximately 180 rims a day and each rim weighed approximately 85 pounds.

In the middle of June, he began noticing pain in his back and shoulders, numbness in his wrists, pain in his ankles and legs. He initially told his on-site supervisor that his shoulders hurt. He testified that when he complained, he was told to return to his position. He refused, and was sent to Human Resources at Premier Tooling. Premier Tooling sent claimant to a doctor. Claimant testified he was placed on restricted duty, but testified that he could not do the work because "he was falling apart."

Ms. Riesenberger testified that claimant did not report any injury to defendant employer. She was unaware that claimant was placed on light duty work. It was not until a couple weeks after his direct placement with Premiere Tooling that defendant employer was made aware of the claimant's injury.

Stefanie Riesenberger is an account manager of the defendant employer. One of her clients is Premiere Tooling. She helped to place claimant in a temporary position at Premiere Tooling. She testified that employees such as claimant are instructed to report any injury to someone at defendant employer. (Def. Ex. A:1) Claimant testified he did not recall receiving the Contract Employee Safety Handbook and even if he had, he would not have read it. As his brother testified, it would not have been possible for claimant to read it.

Ms. Riesenberger testified that she did not recall ever talking to the claimant about these policies, but that it would have been the practice to either talk to a new placement in the office or at the placement premises. Claimant does not recall having a discussion about the reporting policies.

Someone from Premier Tooling contacted Ms. Riesenberger that Premiere Tooling would be making an offer of direct employment to claimant. On or about July 6, 2016, a pre-placement physical conducted by Premier Tool placed claimant's abilities in the "medium" work category. (Def. Ex. B:4) According to the medical records, he was able to lift 50 pounds. (JE1:27) When claimant was asked about this preemployment physical completed on July 6, 2016, claimant testified that he "barely" passed because he "took a whole bunch of Tylenol." (Transcript pages 48-49)

His employment switched from defendant Aerotek to Premier Tooling on July 12, 2016. (Def. Ex. B:5) His last paycheck with Aerotek for 18 hours was issued on July 21, 2016. (JE 9:245) Claimant testified that he told someone at Aerotek on June 20, 2016,

that he had a work injury and that he "filled a form out." (Tr. p. 46) In Claimant's Brief, he uses this testimony as support that Aerotek's argument that claimant was not an employee at the time of the injury is without merit. However, defendants do maintain claimant was an employee at the time of June 20, 2016. They stipulated to this fact in the hearing report and it is adopted herein.

It is interesting to note, however, the discrepancy here. Throughout the Claimant's Brief and for much of the testimony of Jon Burns, claimant urges the agency to find that the claimant could not fill out any forms as he was incapable of reading them. Claimant maintains he did not sign any handbook form or employee workbook form or any of the handwritten injury reports or job applications. (See Claimant's Brief, p. 3) It is incongruous for the claimant to maintain that he filled out an injury report on the one hand to prove an injury date, but also put forward the claim that "The hearing record establishes without dispute that none of the handwritten injury reports....were filled out by Don Burns." Id.

On July 21, 2016, claimant presented to Guy M. McCaw, M.D., at the Peosta Family Medicine Clinic for pain in the right shoulder that had been bothering claimant for the past two days. (JE 1:1) Claimant did not recall a specific injury but that the pain came on gradually approximately a month ago in the area of the infraspinatus on the back of the right scapula. Id. Claimant described it as a continuous nagging ache with intermittent episodes of numbness throughout his entire right extremity. Id. During the examination, Dr. McCaw found claimant to have no crepitus, loss of strength and only mild range of motions deficits and some pain along the lower end of the scapula at the infraspinatus. (JE 1:1-2) Claimant was restricted from lifting heavier than 35 pounds and advised to apply ice and heat and take anti-inflammatories. (JE 1:2, 1:4)

He was then seen on July 27, 2016, by Kimberly Deppe, ARNP, for complaints of pain in the shoulder and right arm, as well as the left upper extremity due to overcompensation. (JE 1:5) He related that he had been lifting an 80-pound wheel rim for his shift up to 220 times per day, as well as having to bend and reach. Other duties included welding and grinding. (JE 1:5) Upon request, claimant "easily" demonstrated full range of motion and strength. Id. There were complaints of pain with resisted abduction and adduction and upon palpation over the mid-scapula. Id. Ms. Deppe recommended claimant stretch, use heat and ice and over-the-counter medications. (JE 1:6) She maintained his restrictions of no lifting or carrying over 35 pounds. (JE 1:7)

He returned to the Finley Hospital on August 1, 2016, where he was seen by Peggy Barton, ARNP. At that time, claimant was still reporting that he worked for the temporary agency, Aerotek. (JE 1:9) He described his work tasks as lifting an 80-pound wheel rim 8 hours a day, approximately over 200 times per day. (JE 1:8) He moved slowly from the exam chair to the exam table. He was not able to pinpoint his pain, merely expressed that everything hurt. Id.

Ms. Barton wrote that due to claimant's professed pain and reluctance to move his body, "it was quite an effort to get an exam done." (JE 1:8) She found his pain to be

"generalized and exaggerated." (JE 1:8) He reported being able to engage in his home activities of daily living. Id. Ms. Barton initially suggested moving the restrictions from 35 pounds down to 10 when claimant told her that he could not even run the 5-pound machine he was assigned to. Id.

After further discussion with claimant, Ms. Barton took him off of any right-sided work, limited gripping, and recommended frequent position changes. (JE 1:8) No prescriptions were ordered but she did suggest the use of Aleve twice a day as well as Tylenol as needed. Id.

She spoke with Premier Tooling regarding claimant who referred her to Sarah Morrison at Aerotek. The contact at Premier also indicated that when the claimant arrived at work and was told his assignment, he refused and wanted to leave. Premier offered to send him to a clinic in Peosta, but he refused again, wanting to come to Dubuque as it was closer to home and that he could go to his home after the medical visit. (JE 1:9) When Ms. Barton spoke with Ms. Morrison at the defendant employer, she offered no direction other than claimant was obtaining legal representation. (JE 1:9) Ms. Barton referred claimant to therapy.

X-rays were conducted on August 15, 2016, which showed a normal shoulder. (JE 3) By this date, claimant reported to Ms. Barton that he had not been to work for two weeks. (JE 1:17)

Therapy commenced on August 30, 2016. (JE 4:44) Claimant's primary diagnosis was right shoulder pain with decreased strength and endurance. He was observed to have poor posture and some muscle tightening which was limiting his work-related activities. (JE 4:45, 49) The therapy notes record that claimant had been off work since July 29, 2016. Id. Since that time, claimant developed bilateral wrist and hand pain, left lower back pain, and numbness in the left foot. Id. When claimant was informed that the therapy was focused solely on his right shoulder and not his back, he replied "fine, I will go back to work for 1 day and report LBP if that is what I need to do to get it fixed. I also have a lawyer, so once I tell her, she will take care of everything." (JE 4:45)

Claimant told Dr. Kimelman that his last day of work was July 29, 2016. (Ex. D:10) It is found claimant's last date of work was July 29, 2016 based on the date claimant relayed to the therapist on July 30, 2016 and what he told Dr. Kimelman in 2018.

Claimant described his right shoulder pain as acute, burning, dull, and sharp, and radiating into the right hand. (JE 4:46) He did not verbalize any pain during active motion or before he was prompted when asked. (JE 4:47) He rated his pain a 9/10 on a 10 scale. (JE 4:46) His range of motion was measured to be within functional limits and symmetrical to the left in both motion, and strength. Id. After therapy, claimant was observed to climb onto his motorcycle and drive away despite reporting the intense pain during therapy. (JE 4:50)

During the September 6, 2016 physical therapy visit, the therapy notes indicated:

Pt states he really only has pain when he lifts up something at home such as laundry basket, otherwise no pain. Pt states it is easier for him to ride his motorcycle vs car as his hands don't go numb with the motorcycle is able to keep arm extended. Spends days either just laying in bed or rides bicycle.

(JE 4:56) The therapist found him to be somewhat inconsistent with his reporting to pain. (JE 4:57) During the next therapy visit on September 13, 2016, claimant again reported inconsistent subjective reports of right shoulder pain. He did not complain of any increased pain with the active range of motion and strengthening exercises and he exhibited no increased muscle tightness in the right scapula. (JE 4:65) On September 15, 2016, he reported that his right shoulder was improving but it was still achy and painful to pick up and lift objects. (JE 4:67) The back was the most painful. Id. The therapist noted that the claimant was using the motorcycle again. Id.

On September 15, 2016, claimant returned to Finley Hospital and was seen by Ms. Deppe. (JE1:17) At that time, claimant had been off of work for two weeks and "during the time that he sat at home he began developing some back pain... because of the back pain and stiffness, he found it was necessary to spend most of his day in bed and he continues to have back pain." (JE 1:17) He told Ms. Deppe that other than riding his motorcycle, his time has been spent mainly in bed. Id. He also repeated his complaint of pain in the right shoulder on the medial side of his right scapula traveling into the base of the neck. Id. He did state that he had good range of motion in his arm and shoulder and that the pain was not preventing him from using his arm. Id.

He reported numbness and tingling in the left great toe, but denied any loss of sensation in the lower extremities. (JE 1:17) On examination, he was able to straight leg raise both legs but complained of discomfort in the hips as well as the hamstring area. Id. The hamstrings were noted to be "quite tight." Id. He had complaints of pain in the hip near with adduction to the midline. Id.

Despite the complaints of pain and tightness in the hips, he had no complaints of back pain during the maneuvers. (JE 1:18) He exhibited full range of motion in his shoulder and denied any radicular pain. (JE 1:18) He continued to take his meloxicam. Ms. Deppe advised him to cease use of the motorcycle. (JE 1:18)

Ms. Deppe was unsure of whether they were authorized to treat the back.

During the September 21, 2016 physical therapy visit, claimant reported walking around the block and riding his motorcycle to the Heritage Trail. (JE 4:73) While walking, claimant had increased right shoulder blade pain with shooting pain up towards his shoulder blade. Id. Claimant did not believe he could return to work. Id. During the therapy session, claimant did not complain of pain with exercises. (JE 4:77) The therapist recommended discharge as she was uncertain whether the claimant was

interested in improving. Further, she felt that the subjective reports of increased pain while walking did not correlate to what she observed during therapy. Id. Claimant was not discharged, but instead more therapy sessions were added. (JE 4:80)

Claimant returned on September 22, 2016, to see Ms. Deppe. (JE 1:20) He reported significant low back pain and shoulder pain along with left leg numbness and stumbling. (JE 1:20) He started going on walks, as recommended, but the walking was hurting his shoulder. Id. On examination, his range of motion was full and mostly without pain except on extension and upon palpation to the right scapula on the medial portion. He had full range of motion in his neck. (JE 1:20) Claimant was advised to strictly follow the treatment recommendations, but claimant felt the treatment was not sufficient. (JE 1:20) According to the case manager, claimant was only allowed to be treated for the shoulder and not the back. (JE 1:20)

During the therapy session on October 5, 2016, the therapist noted that the claimant was not reporting pain in the shoulder during exercises. Instead he appeared to be more limited by the lower back pain than any right shoulder pain. (JE 4:83) On October 6, 2018, claimant was seen by Ms. Deppe. (JE 1:24) He complained of pain in the back, hip and foot as well as the shoulder. He said that the majority of his time was spent lying in bed. (JE 1:24) He demonstrated full range of motion of the right shoulder and no pain until palpation over the superior shoulder down the medial side of the scapula. (JE 1:24) Ms. Deppe referred claimant to Christopher G. Palmer, M.D., for an orthopedic consult. Id.

This consult took place on October 11, 2016. (JE 2:39) Dr. Palmer recorded that claimant had good cervical, shoulder, elbow and wrist range of motion along with good strength. (JE 2:39-40) Radiographs showed no abnormalities including little degenerative changes except for some subtle changes in the acromioclavicular joint. (JE 2:40) Dr. Palmer's impression was right shoulder upper extremity pain of questionable etiology. (JE 2:40) He recommended claimant undergo work hardening but if the claimant was unable to participate in that type of activity then claimant should seek out a personal physician to rule out a systemic or neurologic disease. (JE 2:40)

Claimant presented for his tenth physical therapy appointment on October 12, 2016. (JE 4:90) During the visit, claimant repeated his complaints about lower back pain. (JE 4:90) Claimant was encouraged to continue to do home exercises and improve his posture. (JE 4:92)

On October 13, 2016, claimant was seen by Jill Hunt, M.D. (JE 1:27) His historical account of his medical care and injury was inconsistent. At first he maintained he reported his back pain with the shoulder pain, but then later changed and said that his back pain did not start until after he had been lying at home for two days in a row. He reported a weight loss of 65 pounds in four to five months but that he regained that weight since he stopped working. Id. He worried that there was some chemical at the plant that may have adversely affected him. Id. He complained of difficulty sleeping and

that he did very little at home due to pain with activity. He did maintain that he did his home exercises throughout the day and that physical therapy was of no help. Id.

Dr. Hunt's examination revealed full range of motion and full strength in the shoulders and negative cervical or upper thoracic spinal tenderness. (JE 1:28) Claimant had some bilateral lumbar paraspinal tenderness with spasm, as well as sciatic notch tenderness but straight leg raising was negative on both sides. (JE 1:28)

Dr. Hunt referred claimant back to physical therapy for the right shoulder and arm. (JE 1:28)

On October 14, 2016, claimant returned for treatment. (JE 4:98) The treatment session was 78 minutes long and the therapist noted that claimant appeared to be distracted throughout the session. There was not much progress made because of claimant's reports of increased soreness in the low back which claimant maintained limited his ability to perform exercises that may have helped his right shoulder. (JE 4:98) On October 19, 2016, claimant returned for another extensive physical therapy treatment session of 83 minutes. (JE 4:103) He made some progress with strengthening and endurance, but lower back pain was his biggest limitation with lifting and standing. Id. Patient complained of pain in his right scapula but there was no palpable muscle tenderness or tightness. (JE 4:103)

On October 25, 2016, defendant employer filled out an incident report which documented that claimant had reported an injury incurred while putting rims on a welding machine. (JE 11: 253) The report noted pain in the shoulder, back, bilateral wrist, and numbness in the left toe. (JE 11:253)

At the end of the month, claimant returned to Finley Hospital and was seen by Ms. Deppe. (JE 1:30) Claimant maintained he suffered from severe pain in his back which prevented him from therapeutic exercises that might help his shoulder. (JE 1:30) He was attending physical therapy two to three times a week but not engaging in any home exercises. (JE 1:30)

He demonstrated full range of motion at the shoulders without crepitus. He had full extension of his right and left shoulders, was able to reach behind his head and up to the back to mid scapula on both sides without issue. He denied any numbness or tingling in the arms. (JE 1:30) Ms. Deppe ordered more therapy. (JE 1:31)

On November 2, 2016, claimant reported to the therapist that his right shoulder was very sore. (JE 4:117). When asked the cause, claimant replied that he felt it was as a result of the physical therapy. Id.

On November 7, 2016, x-rays were taken of claimant's low back. (JE 1:35, 36) The technologist noted that the patient "injured tailbone and low back 2 months ago." Id. at 35. The x-rays revealed a normal low back and sacrum. (JE 1:35, 36)

Claimant returned to Finley Hospital and was seen by Ms. Barton. (JE 1:37) During this visit, claimant again was convinced that he had been adversely affected by the chemicals in the plant and that he had gone "public" by posting about it on Facebook. (JE 1:37) He also stated that he had lost 65 pounds. Ms. Barton recounted claimant's course of treatment, noted that the therapist had reported no deficits in the right shoulder compared to the left. "He has full range of motion," Ms. Barton wrote, "and his shoulders as far as we are concerned are healed." (JE 1:38) He was released to work without restrictions. (JE 1:38)

On November 9, 2016, claimant was seen in the emergency room for back pain. (JE 4:118) He was prescribed cyclobenzaprine and instructed to follow up with his personal physician. He went to physical therapy that day and reported pain in the right shoulder and bottom part of the shoulder blade. (JE 4:120)

Claimant presented to Kenneth Martin, D.O.'s, office on November 11, 2016, initially informing the clinic staff that he had not seen a doctor before. (JE 5:155) However, upon checking him in, Dr. Martin's staff discovered the previous medical records including the physical therapy notes which indicated that the shoulder issue had largely resolved, but his back pain remained. (JE 5:155) Dr. Martin documented that claimant had pain in the low back, worse with prolonged standing or lying down. (JE 5:155) Claimant told Dr. Martin that he had complained repeatedly about his back to different providers but all had told him there was nothing wrong with his back. (JE 5:155) Dr. Martin felt that there was insufficient objective history to make a diagnosis for the back. Claimant was instructed to return after Dr. Martin had an opportunity to review records. (JE 5:158)

Claimant had a physical therapy appointment that he attended on the same day. (JE 4:120) He reported increased right shoulder blade pain, a pain rating of 5/10 on a 10 scale, intermittent numbness and tingling into the right hand. (JE 4:120) In the clinical notes, claimant was recorded as having no restrictions with range of motion or manual muscle testing of the shoulder and scapula. All his objective testing results were negative. Claimant had only subjective reports of pain. (JE 4:124) Claimant continued to self-limit in therapy due to self-professed back pain, refusing to do certain exercises that were designed to target the shoulder. Id.

On November 15, 2018, claimant returned to Dr. Martin's office. (JE 5:159) Per claimant's statement, his back pain was unchanged. (JE 5: 159) He also maintained a number of other sources of pain. By this time, Dr. Martin had learned of claimant's extensive past therapy records.

His back pain has not changed much. He describes the pain as deep, moderate, no radiation but does feel that he has pain in his hips and butt. Also briefly mentions numbness in his left big toe that comes and goes. He denies any muscle weakness, saddle anesthesia, weakness or altered gait. He does report some trouble sleeping due to the back pain. With regards to the onset of injury, he claims that he hurt his back at work

concurrently with his shoulder and the other areas on his active worker's comp claim, but says that he did not realize this until about 3-4 days after sitting at home following the claim. He says he has discussed this with the physical therapists managing his shoulder claim, but they are not able to directly address this due to the nature of worker's comp and the area not listed in the claim. I was able to review the therapy notes and he appears to have pretty good motion. Plain films have been negative.

(JE 5:159)

Dr. Martin ordered physical therapy for claimant's low back. On examination, claimant exhibited some mild hypertonicity to palpation over the left lumbar paraspinal muscles, resistance due to tight hamstrings during one range of motion test and some pain at the end of the PROM on the left with external rotation. The pain was located in the hip rather than the back. (JE 5:160) Dr. Martin characterized this examination as "pretty benign." (JE 5:162) Dr. Martin was unsure of the back pain etiology and instructed claimant to return after four weeks. Id.

Claimant returned to Dr. Martin's office on November 29, 2016, with complaints of abdominal pain. (JE 5:163) in the notes, Dr. Martin writes as follows:

Just to recap, he does manual labor, did something leading to a shoulder injury at work and started the worker's comp process. After being off for a few days, "doing nothing" as he states, he began to have midline low back pain with symptoms that radiate into his legs. He claimed that physical therapy was unable to address this since he was being sent there per work comp. This appears true per the notes, but PT did make peripheral assessments of his back complaints due to the affect [sic] on evaluating and treating his shoulder complaints. With regard to the shoulder, there did not seem to be any objective problem and he hit the plateau relatively quickly. He has since been discharged from physical therapy. I did take the time to evaluate his back at a previous visit, and physical exam was entirely benign, which correlates with the imaging performed.

(JE 5:163)

Dr. Martin again recommended claimant attend physical therapy for his back, but acknowledged that this may be difficult for the claimant as he did not have insurance outside of his workers' compensation benefits. Claimant returned to Dr. Martin on December 15, 2016, complaining of pain in the lower back. (JE 5:167) This time, Dr. Martin documented claimant exhibiting tenderness, decreased range of motion and spasm in the lumbar back. Id. Claimant's primary areas of complaints were his hips and low back. Id. Dr. Martin did not feel claimant's subjective pain correlated with the physical examination. (JE 5:169) Dr. Martin contemplated repeat imaging and/or blood tests if claimant did not see improvement. (JE 5:169)

Physical therapy for the back pain began on January 2, 2017. (JE 4:126) Claimant reported he just wanted to get better so he could return to work. Therapy was provided and claimant was instructed to return. On January 13, 2017, claimant returned to therapy indicating that traction has helped his lower back pain. (JE 4:135) He felt that physical therapy interaction was helping to improve his condition, but not heal him sufficiently so that he could return to work. (JE 4:35)

Claimant was seen again by Dr. Martin on January 26, 2017. (JE 5:170) Claimant continued his reports of back pain with some radiation into his buttocks and hips. He had been making small gains during physical therapy but reached a plateau. The physical therapist believed the claimant may benefit from advanced imaging or other medical evaluation. (Joint Exhibit 5:170) Given that claimant had failed conservative therapy with rest, over-the-counter medications, prescription medications, topical medications, and therapy, Dr. Martin ordered an MRI of the lower spine for assessment. (JE 5:171) In the meantime, claimant agreed to continue physical therapy.

The MRI showed trace disc bulging at L5 – S1 and L4 – L5. (JE 6:186) On or around February 20, 2017, claimant returned to physical therapy, announcing that his hips were feeling better overall, but that his low back had a constant soreness. (JE 4:143) By February 27, 2017, claimant had been to 18 physical therapy appointments. He reported better pain overall and that while he had pain on a 5 to 6/10 on a 10 scale in his low back, he had not been taking his pain medications. (JE 4:145) On March 2, 2017, the therapist noted that claimant “cont. to have constant 6-7/10 LBP and no real hip pain. Unable to stand for too long of periods of time and trouble with twisting, lifting, etc. and has limited activity level but would like to return to work and be able to do other activities. (JE 4:150) Claimant met 40 percent of his goals. (JE 4:152) Dr. Martin made a referral to Dr. Miller at the Finley Pain Clinic. (JE 5:177)

Claimant was seen by Dr. Miller on March 15, 2017 for complaints of severe lower back pain and shoulder injury. (JE 7:188) Dr. Miller reviewed the MRI which he characterized as “completely normal” with well-spaced disc and good signal and no evidence of disc bulge. (JE 7:188) Dr. Miller prescribed duloxetine and water therapy. (JE 7:188) Claimant returned to Dr. Miller’s office on April 19, 2017, “tearful” about his low back pain, but reported his shoulder pain had resolved. (JE 7:191) Dr. Miller advised claimant that the low back pain was likely a muscle strain and that physical therapy would be beneficial. (JE 7:192) Dr. Miller initiated a lidocaine cream, Cymbalta and a water exercise program. (JE 7:192)

Claimant returned for follow up, unhappy with his medical treatment thus far. He wanted a stronger medication due to others being ineffective and said that physical therapy was not covered by his insurance. (JE 7:194) Dr. Miller continued the Cymbalta and initiated gabapentin. (JE 7:195) Dr. Miller and claimant discussed possible physical therapy and a referral to Iowa City for further evaluation. (JE 7:195)

Claimant was seen on October 5, 2017, at the University of Iowa Hospitals and Clinic for chronic pain in his low back radiating into the left lower extremity. (JE 8:197)

Claimant told Anureet K. Walia, M.D., that he tried various medications with no benefit and again denied doing any physical therapy for the low back. (JE 8:197) There was no mention of the right shoulder pain although in a pain drawing, claimant noted right shoulder pain and pain in the bilateral hands and wrists. (JE 8:203) The cervical spine examination was normal as was the examination of his upper extremities. (JE 8:200-01) He showed normal range of motion in his lower extremities, but some tenderness to lumbar palpation and some restricted range of motion in the lumbar spine. (JE 8:201) Injections were discussed, but Dr. Walia wanted claimant to undergo physical therapy first since claimant denied any type of physical therapy to alleviate his symptoms. (JE 8:201) A subsequent medical record on October 26, 2007 noted that claimant had completed physical therapy in March 2017 and was to be scheduled for radio frequency ablation. (JE 8:204)

The lumbosacral facet arthropathy took place on November 14, 2017. (JE 8:211) Initially, claimant experienced a 70 percent reduction in pain, but directly after the procedure felt a shooting pain in the low back. By 4:00-5:00 p.m., all his pain had returned. (JE 8:217) A second lumbosacral facet injection occurred on December 19, 2017, from which claimant experienced "good relief." (JE 8:226) In January 2018, claimant underwent further radio frequency ablation. (JE 8:230) The January 2, 2018, procedure did not provide any relief. (JE 8:236)

Referral to Dr. Chen's Spine Rehabilitation was considered after the January 2018 failed procedure. (JE 8:240)

On September 10, 2017, claimant underwent an independent medical evaluation with Stanley Mathew, M.D. (Ex 1) Dr. Mathew found tenderness to the right and left shoulder girdle, tenderness of the right trapezius, pain on end of ranges of terminal flexion and abduction of the left shoulder with no functional limitation of range of motion. (Exhibit 1:2) On the right, claimant had limited flexion, abduction, and internal rotation. Additionally, his manual muscle strength testing was lower on the right as compared to the left. (Exhibit 1:2) Dr. Mathew also found a positive Tinel's sign over the right wrist. There was tenderness to lumbar spine and paraspinal muscles, some reduced motion of the lumbar spine, and a mildly antalgic gait. (Exhibit 1:3) It was Dr. Mathew's opinion that claimant's repetitive lifting was the direct cause of his chronic shoulder pain, as well as his left shoulder discomfort and that said injury occurred on or about July 20, 2016. (Ex. 1:3) Dr. Mathew also went on to state that repetitive lifting is a risk factor for chronic low back pain and that lifting 80 pounds over 200 times a day can cause the mechanism of injury that the claimant described. (Ex. 1:3) Dr. Mathew assigned a 12 percent whole person impairment rating as a result of the shoulder and a 5 percent whole person rating as a result of the chronic low back pain. (Ex 1:3)

Claimant was seen on January 15, 2018 by Joshua D. Kimelman, D.O., for an independent medical evaluation. (Ex. D:9) Under History of Present Illness, Dr. Kimelman recorded that claimant initially complained about his shoulder and back and that the medical records which show only a shoulder complaint were incorrect. (Ex. D:10) Claimant reported that his pain was 9 on a 10-scale after Dr. Kimelman explained

that zero was no pain, and 10 was lying on the floor poked in the eye with a sharp stick screaming for an ambulance. Id. Claimant told Dr. Kimelman that he had tingling and numbness in both hands, pain around the inferior border of the right scapula like there was a marble underneath the shoulder blade. Also, claimant maintained he suffered back pain radiating into the left leg as well as some into the right leg. Id. Claimant said his pain had never abated. When he was confronted with the physical therapy notes indicating that his pain was 4 on a 10-scale, the claimant responded that the therapist was lying. (Ex. D:10) In addition to his back, shoulder, and leg pain, claimant reported bilateral ankle pain as well as wrist pain which he alleviated with wrist splints. Id.

Dr. Kimelman noted claimant sat for approximately an hour without apparent discomfort while the history was taken. Claimant walked with a slow but casual gait. He was able to heel and toe walk without evidence of antalgia, loss of balance or weakness. He flexed his toes with knees approximately straight and showed full extension, side bending and rotation. He showed no paravertebral spasm while distracted. Dr. Kimelman was able to reproduce pain with direct palpation on the left SI joint. Claimant demonstrated full range of motion without pain in the right shoulder and had no reproducible symptoms in the cervical spine. There was some pain at 170° of abduction bilaterally at the extremes. He had some discomfort at the inferior pole of the scapula with impingement testing of the right shoulder. Claimant had symmetric weakness with hand grasp bilaterally but no intrinsic atrophy in the upper extremities. He had no signs of carpal tunnel although he did have a complaint of back pain with pseudo-Phelan's test and Phelan's test. He had full range of motion in the elbows. His seated straight leg raising test was negative, in the supine position he complained of back pain with rotation of the left hip. He was able to flex beyond 90° bilaterally and had a negative Patrick's test on the right. He was unable to perform the Patrick's test on the left because of pain in the medial thigh and groin with restriction of the motion of the hip. (Ex. D:11)

Dr. Kimelman's impression was "right shoulder scapulothoracic pain with chronic low back pain and incongruency signs." (Ex. D:12) When asked whether the diagnosis he had made were causally related to the claimant's injuries on June 20, 2016, Dr. Kimelman concluded only that the patient's history was that his shoulder and back started hurting with bending, twisting and lifting that he was doing at Premier Tooling but that there was no impairment. (Ex D:12) When asked whether claimant suffered from any functional disability as defined by the AMA Guides. Dr. Kimelman replied, "not to my knowledge." (Ex. D:12) Dr. Kimelman did agree that claimant could not return to his previous level of lifting and would benefit from a functional capacity evaluation (FCE) to determine appropriate work restrictions. (Ex. D:12) No FCE was conducted.

There are two vocational expert reports in the record. Barbara Laughlin, MA, performed one at the request of the claimant. (Ex. 4) Ms. Laughlin estimated that claimant's occupational loss is between 60 to 76 percent based on the restrictions set forth by Dr. Mathew. (Ex. 4:9) Dr. Mathew's restrictions, per Ms. Laughlin, included no lifting more than 10 pounds, no repetitive pushing and pulling, no repetitive overhead activities, avoidance of squatting, ladders, and heavy-duty machinery. (Ex. 4:3)

Because of claimant's severe dyslexia, several jobs that would be within claimant's physical abilities are not appropriate. Ms. Laughlin felt that claimant could possibly serve as a cabin assembler, machine operator, shipping and receiver, recreational aid, inspector and packager, and cashier. (Ex. 4:15)

On or about November 2016, he was released to full duty work. At hearing, claimant testified he could not return to work because he had not gotten appropriate help for his back injury. Ms. Riesenbergs testified that claimant did not reach out to the staffing firm for employment assistance after his direct placement.

Claimant appeared easily confused during the questioning. He was not consistent in his answers. At one point, he testified he could not ride his motorcycle because of the pain. When asked about the therapist's notes regarding his motorcycle riding, claimant conceded that he did ride it while he was in therapy because his therapist told him to engage in more activity and he considered riding the motorcycle a work out for his legs and back.

Claimant either misunderstood the questions on cross-examination or was deliberately obtuse. For instance, he was asked how an unanticipated weight loss affected him and he replied that he did not know, merely that he hurt. The answer that his body hurt and he was non-functional was given to many questions, regardless of whether that was an appropriate answer.

At one point, he wondered if there were chemicals at the plant that were making him ill. He expressed this concern to Dr. Hunt. (JE 1:27) He repeatedly maintained that he was hurting all over and therefore could engage in no serious activity.

Jon Burns testified that last summer his brother "fell off the face of the earth." He only saw claimant four times in the previous year, but did talk to the claimant on the phone. Claimant has refused to engage in any physical activities with his brother. Prior to 2016, claimant would go on family outings with Jon Burns as many as eight times per summer. Around July 4, 2017, claimant was attempting to sell his motorcycle.

When asked about his current condition, claimant identified the left side of his back as the source of his complaint. Currently, claimant is not working and has not looked for work since his departure from Premier Tooling. He testified that he has difficulty doing many of the activities of daily living due to his pain complaints. He lives alone.

Defendants raise claimant's credibility as an issue. His medical records are replete with questions of whether he was malingering. His pain complaints did not match the objective test results. He would display different range of motion in passive tests versus active tests. He continued to ride his motorcycle to and from physical therapy despite reporting pain levels of 9 out of 10 on a 10 scale. During cross-examination, claimant was evasive and often did not answer the question, instead

falling back on a routine complaint of generalized pain. He told at least two providers-- Dr. Martin and UIHC—that he had never before received treatment or physical therapy.

Based on the foregoing, it is found that claimant was not credible and his testimony will be afforded low weight.

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. 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words “arising out of” referred to the cause or source of the injury. The words “in the course of” refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs “in the course of” employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavy v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical

testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

This is a challenging case in part due to claimant's presentation at hearing, as well as the physical accounts given during his medical visits. The parties agree that claimant was an employee of the defendant employer at the time of the alleged injury. Per the hearing report and from the testimony, the alleged injury date is June 20, 2016. Initially, claimant reported right shoulder complaints. While his testimony was that he reported back pain at the same time but the records do not reflect this and based on the finding of low credibility, the evidence supplied in the records the objective testing results are given greater weight.

At his second visit to Finely Hospital, claimant reported worsening symptoms including new complaints of bilateral wrist cramping, generalized aches and pains and numbness in the big left toe. Claimant was referred to physical therapy which did not result in any long term improvement. X-rays revealed no objective signs of injury.

It was not until September 15, 2016, nearly four months after his initial injury, when claimant reported back pain that developed after sitting at home for two weeks. He repeated this history to Dr. Martin in November 2016. This was also well after he had stopped working. The pain and stiffness was so serious it forced him to spend most of his time in bed but for the times that he rode his motorcycle to and from physical therapy. His physical examination did not match his subjective complaints. For instance, none of the maneuvers performed during the examination on September 15, 2016, elicited any pain complaints.

There is one consistent thread throughout the medical reports and that is claimant had pain in his right shoulder and right scapula, going up into the base of his neck. However, claimant's right shoulder pain resolved by the second physical therapy visit. On September 6, 2016, he reported that he really only had pain when he lifted something at home such as a laundry basket. Dr. Palmer released claimant to work with restrictions but felt claimant would be able to return to full duty release on November 8, 2016. Claimant did not attempt to return to work.

On November 11, 2016, claimant was discharged from physical therapy. At that time, claimant did not complain of pain during active range of motion and had no restrictions on any plane during the range of motion testing.

In follow up visits, he did report pain ongoing in his right shoulder, but again reported it resolved on April 19, 2017. At hearing, claimant maintained that his current pain was focused in his left lower back.

Perhaps claimant did suffer from ongoing shoulder and back pain, among other complaints, but the shoulder strain injury he sustained on June 20, 2016¹, returned to baseline on or about November 11, 2016.

The manifestation date of the shoulder strain is June 20, 2016. There is not sufficient evidence to support a finding that claimant's ongoing complaints of generalized pain, particularly in his low back, arose out of and in the course of his employment. This is primarily based on claimant's own report that his back pain developed after lying in bed for days while he was off work.

¹ Defendants dispute claimant had a compensable injury that manifested on June 20, 2016, instead arguing that the manifestation date was July 21, 2016. They also argue that defendants were not notified of this injury. There was no assertion of any affirmative defense in the hearing report and if the defendants are arguing this, it will not be considered based on the defendants' waiver of such defenses in the hearing report.

Claimant erroneously argues that Dr. Kimelman agreed that claimant suffered chronic injuries to his right shoulder and low back as a result of the work performed at Premier Tooling. Dr. Kimelman only concluded that the claimant's history was that he hurt himself while working. Dr. Kimelman did not make the causal connection between the work injury and claimant's diagnosis of chronic pain.

Even if a generous reading of Dr. Kimelman's opinion would lead one to arrive at the claimant's conclusion, the conclusion and opinion of Dr. Kimelman and that of Dr. Mathew rests solely on the claimant's subjective complaints of pain and dysfunction.

Claimant has been found to have low credibility. His subjective complaints of pain are given lower weight than the objective testing results, the observation of therapists, and his treating medical providers.

Claimant's behavior was not consistent with someone who reported pain levels of 9 out of 10 on a 10 scale while still riding his motorcycle. Further, despite this intense pain, claimant was able to pass a pre-employment physical with Premier Tooling on or about July 6, 2016.

While defendants argue the manifestation date is July 21, 2016, claimant's initial complaint gave a history of month long pain in the right shoulder. The handwritten injury reports also reference the June 20, 2016, injury date. Premier Tooling's Employee Change Notice identifies the original injury date as June 20, 2016. (JE 10:251)

Therefore, it is found that claimant sustained a right shoulder strain on or about June 20, 2016. This work injury resolved on or about November 11, 2016.

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

Claimant was released to full duty work restrictions on November 8, 2016. He was discharged from physical therapy on November 11, 2016. He left his employment with Premier Tooling on or about August 1, 2016. Claimant would be entitled to temporary benefits from August 1, 2016, through November 11, 2016.

Claimant is entitled to reimbursement of medical expenses for treatment he received to his right shoulder from August 1, 2016, through November 11, 2016, when he was discharged from physical therapy.

Claimant was paid temporary benefits from August 1, 2016, through November 6, 2016. (Hearing report) Those benefits ceased without notification or explanation to the claimant.

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

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

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

The supreme court has stated:

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

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

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

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

If we were to construe [section 86.13] to permit the avoidance of penalty if any amount of compensation benefits are paid, the purpose of the penalty statute would be frustrated. For these reasons, we conclude

section 86.13 is applicable when payment of compensation is not timely . . . or when the full amount of compensation is not paid.

Id.

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

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

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

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

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

Claimant's complaints of pain and injury to his right shoulder are fairly debatable. The therapists believed him to be malingering. The objective evidence did not match with the subjective complaints. Claimant's behavior was not consistent with his subjective complaints.

However, defendants are required to communicate the reasons for cessation or termination of benefit payments. Failure to do this exposes the defendants to penalty. It does not appear defendants communicated with claimant over his right to benefits at any time, how the investigation was going, and what the result of the investigation was. Claimant is entitled to 10 percent penalty benefit for the late paid temporary benefits between November 7, 2016, and November 11, 2016.

For all other issues, claimant shall take nothing.

ORDER

THEREFORE, it is ordered:


That defendants are to pay unto claimant ten (10) percent penalty benefits at the stipulated benefit rate for the benefits not paid between November 7, 2016, through November 11, 2016.

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

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 Technology, File No. 5054686 (App. April 24, 2018)).

That each party shall pay their own costs

Signed and filed this 21st day of May, 2018.


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