BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRIAN RAWLINGS, Claimant, vs. G & P TRUCK LINES, Employer, and CONTINENTAL INDEMNITY COMPANY, Insurance Carrier, Defendants.	FILED FEB 28 2018 WORKERS COMPENSATION	File No. 5057925 ARBITRATION DECISION Head Note No.: 1402.10

Claimant Brian Rawlings filed a petition in arbitration on November 29, 2016, alleging he sustained an injury to his back and body as a whole while working for the defendant, G & P Truck Lines ("G & P"), on October 15, 2015. G & P and its insurer, the defendant, Continental Indemnity Co. ("Continental"), filed an answer on December 16, 2016, denying Rawlings sustained a work injury.

An arbitration hearing was held on December 20, 2017, at the Division of Workers' Compensation, in Des Moines, Iowa. Attorneys Sarah Baumgartner and Nathaniel Boulton represented Rawlings. Rawlings appeared and testified. Attorney Caroline Westerhold represented G & P and Continental. Barry Braack and Hershel Preston Montgomery, Jr., appeared and testified on behalf of G & P and Continental. J.D. Slaughter also appeared on behalf of G & P and Continental, but did not testify. Joint Exhibits ("JE") 2 through 4, Exhibits 1 through 3, and Exhibits A through F were admitted into the record. The record was held open through February 9, 2018, for the receipt of the depositions of Rawlings and Sunil Bansal, M.D. and post-hearing briefs. The briefs and depositions were received timely. Rawlings's deposition was marked as Ex. B, and Dr. Bansal's deposition was marked as JE 5. Exhibit B and JE 5 were admitted into the record and the record was closed.

Before the hearing the parties prepared a hearing report listing stipulations and issues to be decided. G & P and Continental raised the affirmative defense of lack of timely notice under Iowa Code section 85.23, and waived all other affirmative defenses.

STIPULATIONS

1. If the injury is found to be the cause of permanent disability, the disability is an industrial disability.

2. At the time of the alleged injury Rawlings's gross earnings were $1,305.07 per week, he was single and entitled to one exemption, and the parties believe his weekly rate is $740.00.

3. Costs have been paid.

ISSUES

1. Did an employer-employee relationship exist between G & P and Rawlings at the time of the alleged injury?

2. Did Rawlings sustain an injury on October 15, 2015, which arose out of and in the course of his employment with G & P?

3. Did Rawlings provide timely notice to G & P under Iowa Code section 85.23?

4. Is the alleged injury a cause of temporary disability during a period of recovery?

5. Is the alleged injury a cause of permanent disability?

6. Is Rawlings entitled to temporary disability benefits from October 15, 2015 through October 3, 2016?

7. If Rawlings has sustained a permanent disability, what is the extent of disability?

8. If Rawlings has sustained a permanent disability, what is the commencement date for permanent partial disability benefits?

9. Is Rawlings entitled to payment of medical expenses?

10. Should costs be assessed against either party?

FINDINGS OF FACT

Rawlings is single and lives in Marshalltown, Iowa. (Transcript, page 21; Exhibit B, p. 6) Rawlings dropped out of high school in the twelfth grade while living in Tacoma, Washington, and obtained a general equivalency diploma in 1982. (Ex. B, p. 13; Tr., pp. 22, 44) Rawlings later returned to school, completed the requirements for his high school diploma, and graduated in 1985. (Ex. B, pp. 13-14; Tr., pp. 22, 44) In the 1990s

Rawlings attended Marshalltown Community College and obtained welding and electrical certifications. (Ex. B, pp. 14-15; Tr., pp. 22-23, 44-45) In 2009 Rawlings obtained a Class A CDL from Indian Hills Community College, which is still valid. (Ex. B, pp. 15, 24; Tr., pp. 23, 45) Rawlings also holds a contractor's license. (Tr., p. 23) At the time of the hearing he was fifty-four. (Tr., p. 21)

From 1995 through 2009, Rawlings was self-employed in residential home repair. (Exs. 1, p. 1; B, p. 31; Tr., pp. 45-46) From 2009 through 2015, Rawlings worked as a truck driver for C.R. England, B.T. Decker Truck Lines, and Mail Contractors. (Ex. 1, p. 1; B, p. 30; Tr., pp. 37-40, 48) Rawlings did not perform any physical work for Mail Contractors and B.T. Decker Truck Lines, C.R. England because he worked with "no-touch loads" with "[d]rop and hook." (Ex. B, pp. 30-31; Tr., p. 48) Rawlings relayed for "drop and hook," he would "crank up the truck and crank it down." (Tr., p. 48)

In July 2011, G & P hired Rawlings as a mail handler driver. (Tr., pp. 23-24, 48-49) Rawlings testified the position required him to push an "OTR" or an aluminum container holding 2,500 pounds of mail "continuously," walk, stand, and bend. (Tr., pp. 24-25) During his deposition on July 31, 2017, Rawlings reported his position with G & P required him to push containers of postal equipment, including mail, engines, and tires, on and off trucks weighing between 100 and 3,000 pounds with a pallet jack with wheels. (Ex. B, pp. 25-26; Tr., p. 25) Rawlings moved up to eighteen containers per load, and he made four trips per day between Des Moines and Marshalltown. (Tr., p. 26) Rawlings relayed postal employees were not allowed on the truck, so he was responsible for loading and unloading the truck. (Ex. B, pp. 26-27) Rawlings testified he would

> [w]ait for the mail to get brought to me. I'd load up the truck. I would haul it to Marshalltown, get out, unlock the gate, back up the dock, go in, unlock the building, unload the truck, load up the truck with any empties that I couldn't get on the night before. Basically, lock the building back up, lock the gate up, and come back down to Des Moines for another load. I'd unload the truck, reload it, go back to Marshalltown. By that time someone would be there and I would unload the truck again. . . And then in the evening, I would basically reload the truck with any extra empties and bring it back down to Des Moines and unload it at the PNDC, which is downtown here.

(Tr., pp. 25-26) Rawlings reported he worked six days per week, except for December, when he worked seven days per week. (Tr., p. 26) Rawlings worked between ten and fourteen hours per day and he was paid $25.53 per hour. (Tr., p. 26)

In January 2015, Rawlings was involved in a motor vehicle accident in his personal vehicle on his way to pick up his mail truck. (Ex. B, p. 43; Tr., p. 54) Following the accident Rawlings sought medical treatment. (Tr., p. 54) On January 13, 2015, Rawlings attended an appointment with James Carmichael, D.C., complaining of neck

and back pain following a motor vehicle accident. (JE 4, p. 1) Dr. Carmichael assessed Rawlings with a cervical sprain/strain, lumbar sprain/strain, and sacroiliac sprain/strain. (JE 4, p. 1) Dr. Carmichael performed an adjustment, applied moist heat to Rawlings's cervical region, and performed "EMS" on the cervical region. (JE 4, p. 2) Rawlings returned for follow-up appointments for neck, low back, and hip pain on February 4, 2015, March 16, 2015, April 3, 2015, May 1, 2015, June 5, 2015, July 8, 2015, and August 28, 2015. (JE 4, pp. 3-9) Dr. Carmichael documented Rawlings was experiencing muscle spasms in his cervical and lumbar spine and performed adjustments and additional treatment. (JE 4, pp. 3-9)

G & P terminated Rawlings's employment on October 10, 2015, for unauthorized use of a company vehicle. (Exs. B, pp. 27-29; D, p. 2; Tr., pp. 49, 69-70) Rawlings recalls his employment ended on October 10, 2015, because it was his birthday. (Ex. B, pp. 27, 33)

Rawlings applied for and received unemployment insurance benefits following a hearing before an administrative law judge. (Ex. D) The decision provides that Rawlings was terminated on October 10, 2015, for unauthorized use of a company vehicle. (Ex. D, p. 1)

In the petition Rawlings alleges he was injured while working for G & P on October 15, 2015. (Tr., p. 52) At hearing Rawlings reported he does not know whether he was injured on that date. (Tr., p. 52) Rawlings testified the accident occurred before his termination, and he believed it occurred on September 29, 2015. (Tr., pp. 56-57) Rawlings reported on the day of his injury, "[a]fter unloading at the post office that evening, I parked the truck back at the terminal. I was getting stuff out of the passenger side of the truck when I fell backwards and landed on the asphalt." (Tr., p. 27) Rawlings relayed he landed on "[m]y lower back, my upper back, my butt, and my right hand was holding the coffee cup, which slammed and hit the ground also." (Tr., p. 27) Rawlings testified he felt short of breath and his shoulder was "killing" him, and he felt pain in general. (Tr., pp. 27-28)

Rawlings reported after he fell he locked up the truck and went into the building in Des Moines to report his work injury to Barry Braack, his supervisor. (Tr., p. 28) Rawlings testified Braack was at the post office and he reported his work injury to Braack when he came in to drop off paperwork. (Tr., p. 28) Rawlings relayed Braack responded with "his favorite comment, which as before was isn't that something." (Tr., p. 28) Rawlings did not request medical treatment from Braack or seek medical treatment that evening. (Ex. B, pp. 38-39; Tr., p. 53) Rawlings testified during his deposition he attended a union dinner that evening following the fall. (Ex. B, pp. 36-37)

During his deposition Rawlings was asked, and responded:

> Q. After the most recent fall in October of 2015, did you keep working after that fall?
>
> A. 2015? Well, that was shortly after, yes, within a few days after I was terminated.
>
> Q. But you kept working in your regular job up until that termination?
>
> A. Yes.

(Ex. B, p. 49)

Braack has worked for G & P as a driver/supervisor for five years. (Tr., pp. 67-68) Braack testified when an employee is injured at work, he ensures the employee receives medical care and he reports the work injury to John Montgomery, in G & P's home office. (Tr., pp. 68-69) Braack denied Rawlings reported he fell from a truck or was injured during his employment with G & P. (Tr., p. 70)

During his deposition Rawlings reported he had two other falls during his employment with G & P, in July and September 2015. (Ex. B, p. 45) Rawlings testified in July 2015 he fell on the post office dock while trying to open the door of his truck. (Ex. B, p. 47) Rawlings relayed he told Braack "I fell off the truck." (Ex. B, p. 47) Rawlings did not seek medical treatment following the July 2015 incident.

Rawlings testified toward the end of September, "I fell between the dock plate and the truck by sliding off the back of the truck trying to open the door. And I reported that to Barry that night when I got back to the main post office here in Des Moines." (Ex. B, p. 45) Rawlings relayed he twisted his ankle and leg, and bruised his leg, but he did not receive medical treatment and his injuries resolved. (Ex. B, pp. 45-46)

On November 16, 2015, Rawlings attended an appointment with Yared Vazquez, M.D., seeking to establish primary care and to obtain a colonoscopy. (JE 2, p. 1) Dr. Vazquez did not document Rawlings complained of any problems with his back. (JE 2, pp. 2-3)

After his termination, Rawlings purchased two homes he intended to remodel and sell. (Exs. 1, pp. 1-2; B, pp. 8-9; Tr., pp. 41, 46) Rawlings worked on patching holes in the drywall before paining the homes. (Ex. B, pp. 9-10) Rawlings testified he could not do the work on the homes because of the pain in his back. (Ex. B, p. 8; Tr., pp. 41-42) Rawlings left Iowa and went to Mississippi to help his brother who is an electrician from January through February 2016. (Exs. 1, p. 2; B, pp. 51-52; Tr., pp. 49-50)

On March 24, 2016, Rawlings attended an appointment with Inman Chiropractic Clinic, complaining of neck and low back pain for one year. (JE 3) Rawlings complained of neck and low back pain during follow-up visit to Inman Chiropractic on March 31, 2016, and of neck, shoulder, and low back pain on April 27, 2016, and May 25, 2016. (JE 3, p. 2)

Rawlings worked with an attorney regarding the January 2015 car accident. Rawlings testified he complained to his attorney concerning his lower back months after receiving treatment for his upper back related to the car accident. (Ex. B, pp. 41-42) Rawlings reported his attorney asked if there was something else that had happened recently at work and she recommended he see a physician and request magnetic resonance imaging. (Ex. B, p. 41)

Rawlings returned to Dr. Vazquez on May 4, 2016, complaining of low back pain. (JE 2, p. 4) Dr. Vazquez documented Rawlings reported having back pain, but "no muscle aches, no muscle weakness, no arthralgias/joint pain, and no swelling in the extremities." (JE 2, p. 5) Dr. Vazquez assessed Rawlings with low back pain, "[s]imple lumbar strain most likely due to overuse," and prescribed baclofen and meloxicam. (JE 2, pp. 5-6)

On August 25, 2016, Rawlings attended a follow-up appointment with Dr. Vazquez complaining of sharp pain radiating to his buttocks. (JE 2, p. 7) Dr. Vazquez noted Rawlings had been involved in a car accident in 2015 and documented Rawlings was complaining of "arthralgias/joint pain and back pain," but he did not report any muscle aches or weakness, or exercise intolerance. (JE 2, pp. 7-8) Dr. Vazquez assessed Rawlings with "[l]ow back pain – Lumbar strain with worsening symptoms. Physical showed tender paraspinal muscles and paresthesias of L4/5 dermatomes." (JE 2, p. 9) Dr. Vazquez continued his medications and prescribed Neurontin. (JE 2, pp. 8-9)

Rawlings returned to Dr. Vazquez on August 29, 2016, to follow up on laboratory tests. (JE 2, p. 10) Dr. Vazquez documented Rawlings's low back pain was "not reviewed" during the visit. (JE 2, pp. 11)

Rawlings's counsel sent a letter to G & P on September 26, 2016, noting Rawlings

> sustained a back injury when he fell at work in October of 2015 as well as in relation to the cumulative effect of his physical work activities leading up to the termination of his employment. It was not until he had an MRI on August 30, 2016, that he discovered that his back issues were of a serious and permanent nature. . . .

(Ex. C, p. 1) Rawlings's counsel sent a copy of the letter to Continental on October 3, 2016. (Ex. C, p. 2)

On October 3, 2016, GoodCents® hired Rawlings as a field technician to conduct home energy audits for Alliant Energy. (Exs. 1, p. 2; B, pp. 19-20; Tr., pp. 42, 50) Rawlings works full-time and he earns $17.00 per hour, plus overtime. (Exs. 1, p. 2; B, p. 22; Tr., pp. 42, 51) Rawlings travels to homes of Alliant Energy Customers, asks each homeowner questions about his or her home, including the sizes of their utilities, which he records on a tablet, and then provides a report on insulation rebates. (Ex. B, p. 20; Tr., pp. 42-43, 50) The position requires Rawlings to walk, stand, and talk with customers. (Ex. B, p. 20) Rawlings travels up to 300 miles per day. (Ex. B, pp. 20-21; Tr., pp. 50-51) Rawlings is able to perform his job duties, but testified he has pain in the evening when he returns home. (Tr., p. 43)

On October 14, 2016, counsel for G & P and Continental sent a letter to Rawlings's counsel, which provides the September 2016 letter was the first notice G & P received of the alleged accident and injury, and requesting a specific date of injury. (Ex. C, p. 3) G & P and Continental notified Rawlings on November 26, 2016, given they had not received any medical information concerning the alleged work accident they would not accept compensability of the alleged claim. (Ex. C, p. 4)

Dr. Bansal, an occupational medicine physician, performed an independent medical examination for Rawlings on June 5, 2017. (Ex. 2) Dr. Bansal reviewed Rawlings's medical records and examined him. (Ex. 2) Dr. Bansal issued his report on November 13, 2017. (JE 5, p. 18) Dr. Bansal noted on October 15, 2015, Rawlings went up the steps of the passenger side of his truck to obtain belongings out of the truck and "he suddenly fell backwards and landed on his back on the pavement." (Ex. 2, p. 3) Dr. Bansal noted Rawlings had preexisting back pain and falls, but after the October 2015 incident his pain did not resolve and was worse than during prior incidents. (Ex. 2, p. 3) Dr. Bansal documented Rawlings was involved in a motor vehicle accident in January 2015, in his personal vehicle and "he had neck and shoulder pain with this accident, but no back pain." (Ex. 2, p. 3)

Dr. Bansal diagnosed Rawlings with a L5-S1 disc protrusion and aggravation of facet arthropathy. (Ex. 2, p. 5) Dr. Bansal opined the fall Rawlings sustained during his employment "coupled with his immediate clinical presentation, is consistent with his L5-S1 disc protrusion and aggravation of his facet arthropathy," and noted Rawlings was not experiencing problems with his back before the injury and he was able to perform his job duties without any difficulty. (Ex. 2, pp. 6-7) Dr. Bansal recommended a referral to a spinal surgeon, but in the absence of further treatment placed Rawlings at maximum medical improvement on June 5, 2017. (Ex. 2, p. 7)

Using Table 15-3 of the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Bansal assigned an eight percent impairment rating. (Ex. 2, p. 7) Dr. Bansal recommended restrictions of no lifting over twenty pounds occasionally, no lifting over fifteen pounds frequently, no frequent bending or twisting, and no prolonged standing or walking greater than sixty minutes at a time. (Ex. 2, pp. 8-9)

On June 20, 2017, Rawlings attended an appointment with Dr. Vazquez reporting acute back pain after using a push mower. (JE 2, p. 14) Dr. Vazquez documented Rawlings reported having "severe pain on left - painful – bilat all the way to his toes '10/10 with walking – 9/10 with sitting.'" (JE 2, p. 14) Dr. Vazquez noted in August Rawlings injured himself at work, and magnetic resonance imaging showed bulging discs and Rawlings reported chronic pain since that time. (JE 2, p. 14) Dr. Vazquez assessed Rawlings with "[p]rolapsed lumbar intervertebral disc – Acute on chronic lumbar pain," administered a ketorolac injection, and prescribed gabapentin and hydrocodone 5/325 three times per day. (JE 2, pp. 14-15)

Dr. Vazquez sent a letter to counsel for G & P and Continental on November 17, 2017, which provides:

> [t]he above patient has been seen for complaints of low back pain. Our records do not indicate any reports by the patient that the complaints and condition were related to any work accident or work activities. Generally, if there is any indication that a patient's complaints are related to their employment we identify the visit as being related to work comp and also have additional paperwork that is completed. I see no indication in Mr. Rawling's records that the visits were ever identified as being work comp and do not see that any paperwork was ever completed for a work related condition. Based upon my review of our patient file for Mr. Rawlings, I see no information or indication that Mr. Rawling's [*sic*] back complaints are in any way related to his work activities or a work accident in October 2015.

(JE 2, p. 16)

CONCLUSIONS OF LAW

I. Employer-Employee Relationship

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

> it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in

> furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. *An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of the employer.*

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

The threshold question in a workers' compensation proceeding is whether an employee-employer relationship existed at the time of the work injury. Parson v. Proctor & Gamble Mfg. Co., 514 N.W.2d 891, 893 (Iowa 1994). Iowa Code section 85.61(11) defines "worker" or "employee" as, "a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer; . . ." Rawlings was an employee of G & P from 2011 through 2015, the question in this case is whether he was an employee at the time of the injury.

Rawlings contends he injured his back while working for G & P on October 15, 2015. G & P and Continental aver the alleged injury did not occur during Rawlings's employment, but occurred after his termination. This dispute raises an issue of credibility. When assessing witness credibility, the trier of fact "may consider whether the testimony is reasonable and consistent with other evidence, whether a witness has made inconsistent statements, the witness's appearance, conduct, memory and knowledge of the facts, and the witness's interest in the [matter]." State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990). Rawlings has an obvious interest in this case. Rawlings's testimony is not reasonable and consistent with the other evidence I believe.

G & P terminated Rawlings's employment on October 10, 2015, for unauthorized use of a company vehicle. (Exs. B, pp. 27-29; D, p. 2; Tr., pp. 49, 69-70) Rawlings admitted his employment ended on October 10, 2015, and recalls the date because it was his birthday. (Ex. B, pp. 27, 33)

Rawlings's petition asserts he sustained an injury to his back and body as a whole while working for G & P on October 15, 2015. Dr. Bansal's report also notes the injury occurred on October 15, 2015. (Ex. 2, p. 3)

In his post-hearing brief Rawlings further avers he sustained an injury while working for G & P on or about October 15, 2015. (Claimant's Brief, p. 1) Rawlings's post-hearing brief does not address the timing of the injury in relation to Rawlings's termination, and instead, focuses on medical causation and extent of disability only. (Claimant's Brief)

Rawlings alleges he reported the October 2015 work injury to Braack the date of the incident, he did not seek medical treatment, and he left to attend a union dinner that evening. (Ex. B, pp. 37-39; Tr., p. 53) No evidence was presented at hearing concerning the date of the union dinner. Braack denied Rawlings reported he fell from a truck or was injured during his employment with G & P. (Tr., p. 70)

During the hearing Braack engaged in appropriate eye contact, his rate of speech was appropriate, he did not engage in any furtive movements, and his testimony was consistent. Rawlings also engaged in appropriate eye contact during the hearing, his rate of speech was appropriate, and I did not observe him engage in any furtive movements. I find Rawlings's testimony throughout this proceeding inconsistent and not credible.

During the hearing Rawlings testified he does not know if his injury occurred on October 15, 2015. (Tr., p. 52) When questioned concerning the date of the accident, Rawlings replied he believes it occurred on September 29, 2015, before his termination. (Tr., pp. 56-57) Rawlings did not mention this date during his deposition on July 31, 2017. (Ex. B)

Moreover, during his deposition, Rawlings testified he experienced three injuries while working for G & P, in July, September, and October 2015. (Ex. B, pp. 45-47) Rawlings testified toward the end of September, "I fell between the dock plate and the truck by sliding off the back of the truck trying to open the door. And I reported that to Barry that night when I got back to the main post office here in Des Moines." (Ex. B, p. 45) Rawlings relayed he twisted his ankle and leg, and bruised his leg, but he did not receive medical treatment and his injuries resolved. (Ex. B, pp. 45-46) This testimony is not consistent with his testimony at hearing that he believed the work injury that is the subject of this dispute occurred in late September 2015.

Rawlings admitted he did not work for G & P after his termination on October 10, 2015. (Ex. B, p. 49) During his deposition Rawlings was asked, and he responded:

> Q. After the most recent fall in October of 2015, did you keep working after that fall?
>
> A. 2015? Well, that was shortly after, yes, within a few days after I was terminated.
>
> Q. But you kept working in your regular job up until that termination?
>
> A. Yes.

(Ex. B, p. 49) At best this testimony is unclear.

At no time prior to the hearing or at the time of the hearing did Rawlings attempt to amend his petition to assert an alternative injury date prior to his October 10, 2015

termination. Rawlings has not established he sustained an injury to his back arising out of and in the course of his employment with G & P. Therefore, the remaining issues, other than costs, are moot.

II. Costs

Rawlings seeks to recover the $504.00 cost of Dr. Bansal's examination, the $1,764.00 cost of Dr. Bansal's report, and the $100.00 filing fee. (Ex. 3, pp. 5-6) Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 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, (8) costs of persons reviewing health service disputes.

A. Independent Medical Examination

After receiving an injury, the employee, if requested by the employer is required to submit to examination at a reasonable time and place, as often as reasonably requested to a physician, without cost to the employee. Iowa Code § 85.39. If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes the evaluation is too low, the employee "shall, upon application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choosing." Id.

Rawlings sought treatment from Dr. Vazquez and a chiropractor on his own. G & P and Continental denied Rawlings's claim. G & P and Continental did not request Rawlings attend an independent medical examination. Rawlings later sought an independent medical examination with Dr. Bansal. Under the statute, Rawlings is not entitled to recover the cost of Dr. Bansal's independent medical examination.

B. Remaining Costs

Rule 876 Iowa Administrative Code 4.33(6) allows for the recovery of the cost of two practitioners' reports. In the case of Des Moines Area Regional Transit Authority v. Young, the Iowa Supreme Court held:

> [w]e conclude section 85.39 is the sole method for reimbursement of an examination by a physician of the employee's choosing and that the expense of the examination is not included in the cost of a report. Further, even if the examination and report were considered to be a single, indivisible fee, the commissioner erred in taxing it as a cost under administrative rule 876-4.33 because the section 86.40 discretion to tax costs is expressly limited by Iowa Code section 85.39.

867 N.W.2d 839, 846-47 (Iowa 2015). Dr. Bansal's bill is itemized. (Ex. 14, p. 72) Using my discretion, I find the $1,764.00 cost of Dr. Bansal's report should be assessed to G & P and Continental.

The administrative rule also expressly allows for the recovery of the filing fee. 876 IAC 4.33(6). Using my discretion, I also assess the $100.00 filing fee to G & P and Continental.

ORDER

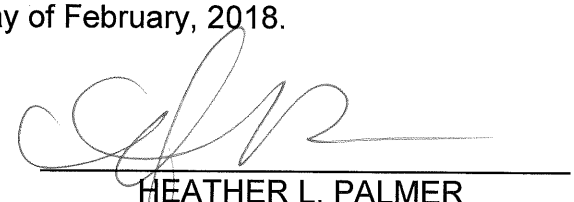
THEREFORE IT IS ORDERED:

Claimant shall take nothing in this proceeding.

Defendants are assessed one hundred and 00/100 dollars ($100.00) for the cost of the filing fee, and one thousand seven hundred sixty-four and 00/100 dollars ($1,764.00) for the cost of Dr. Bansal's report.

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

Signed and filed this 28th day of February, 2018.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Nathaniel R. Boulton
Sarah M. Baumgartner
Attorneys at Law
100 Court Ave., Ste. 425
Des Moines, IA 50309
nboulton@hedberglaw.com
sarah@hedberglaw.com

Caroline M. Westerhold
Attorney at Law
1248 O St., Ste. 600
Lincoln, NE 68508-1499
cwesterhold@baylorevnen.com

HLP/srs

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.