

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ERIC COTTON,

FILED

Claimant,

MAY 09 2019

File No. 5064087

vs.

WORKERS COMPENSATION

ARBITRATION

ANNETT HOLDINGS, INC., d/b/a
TMC TRANSPORTATION,

DECISION

Employer,
Self-Insured,
Defendant.

Head Note Nos.: 1402.20, 1402.40,
1803, 1803.1, 2206, 3001

Claimant Eric Cotton filed a petition in arbitration on June 5, 2018, alleging he sustained a traumatic and cumulative injury to his right foot, right leg, left foot, left leg, back, spine, and altered gate affecting his body as a whole while working for the defendant, Annett Holdings, Inc., d/b/a TMC Transportation ("TMC"), on February 7, 2017. TMC filed an answer on June 20, 2018, admitting Cotton sustained an injury to his lower extremity, but denying he sustained other injuries, an injury to the body as a whole, and a cumulative injury.

An arbitration hearing was held on March 13, 2019, at the Division of Workers' Compensation, in Des Moines, Iowa. Attorney Corey Walker represented Cotton. Cotton appeared and testified. Attorney Sasha Monthei represented TMC. Christina Pender appeared and testified on behalf of TMC. Joint Exhibits ("JE") 1 through 11, including JE 1a, 1b, and 2a, Exhibits 12 through 22, and Exhibits A through L were admitted into the record. The record was held open through April 10, 2019, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

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

STIPULATIONS

1. An employer-employee relationship existed between Cotton and TMC at the time of the alleged injury.
2. Cotton sustained an injury to his right ankle/leg while working for TMC on February 7, 2017.
3. The alleged injury to Cotton's right ankle/leg is a cause of temporary disability during a period of recovery.

4. The alleged injury to Cotton's right ankle/leg is a cause of permanent disability.
5. The commencement date for permanent partial disability benefits, if any are awarded, is March 10, 2018.
6. At the time of the alleged injury Cotton was married and entitled to four exemptions.
7. TMC has agreed to pay the cost of the independent medical examination.
8. Prior to the hearing TMC paid Cotton 24.2 weeks of compensation at the rate of \$574.45 per week.

ISSUES

1. What is the nature of the injury; did Cotton sustain an injury to his back while working for TMC or only an injury to his right ankle/leg?
2. If Cotton sustained an injury to his back while working for TMC, is the alleged injury a cause of temporary disability during a period of recovery?
3. If Cotton sustained an injury to his back while working for TMC, is the alleged injury a cause of permanent disability?
4. What is the extent of disability?
5. What is the rate?
6. Is Cotton entitled to additional temporary benefits based on an incorrect rate calculation?

FINDINGS OF FACT

Cotton lives in Uniontown, Pennsylvania. (Transcript, page 9) Cotton grew up in Pennsylvania, where he graduated from high school. (Exhibits 16, page 206; A, p. 16; Transcript, p. 9) In high school Cotton earned B and C grades. (Tr., p. 10) Cotton enrolled in college, but dropped out of school the first semester. (Tr., p. 9; Ex. A, p. 16) At the time of his work injury Cotton was married with two children. (Tr., p. 9) At the time of the hearing he was forty-five and divorced. (Tr., p. 9)

After graduating from high school Cotton worked for a number of employers. (Ex. 16) Cotton worked in retail with customers stocking shelves, building furniture and delivering furniture to customers, loading trucks, providing customer service by telephone, replacing and repairing street signs, running reports, delivering appliances and merchandise, engaging in collections and repossessions, installing auto glass and repairing auto glass for customers, and engaging in business telephone sales. (Ex. 16, pp. 208-10)

In 2016, Cotton attended AAA School of Trucking, and he received a CDL. (Exs. 16, p. 206; A, p. 17; Tr., p. 10) TMC hired Cotton as a road flatbed truck driver in September 2016. (Ex. 16, p. 208; Tr., p. 12) While working for TMC, Cotton was responsible for pickup and delivery of merchandise for customers, and securing and protecting products being transported for customers. (Ex. 16, p. 208)

On September 16, 2016, Cotton underwent pre-employment testing for TMC with Todd Schemper, PT, DPT with Kinetic Edge Physical Therapy, and Roberta Baldus, PA-C with Medix. (JE 1B) Cotton testified during the testing he had to lift steel and lumbar tarps weighing eighty to 120 pounds. (Tr., pp. 13-14) Cotton successfully completed the testing. (JE 1B) Cotton reported he had a history of headaches, but he did not report he had a history of neck or back problems, or bone, muscle, joint or nerve problems. (JE 1B, p. 23) Cotton testified during the hearing that at the time he underwent the pre-employment testing he was not having any back pain. (Tr., p. 16)

Contrary to his representations to TMC, Cotton had received treatment for neck or back problems in the past. On January 25, 2002, Cotton attended an appointment with Garret Breakiron, D.C., complaining of neck, mid-back, and lower back problems following a car accident on December 31, 2001, and reporting he had a back ache and spinal curvature. (JE 1, pp. 1-3) Dr. Breakiron diagnosed Cotton with an acute mild cervical dorsal strain, an acute mild lumbosacral sprain/strain, recommended spinal adjustments, home exercises, and released Cotton to full duty. (JE 1, p. 4)

Dr. Breakiron issued a letter on February 27, 2002, noting Cotton had been under his care since January 25, 2002, for injuries to his cervical and lumbar spine following a car accident on December 31, 2001, and noting he remained symptomatic and was continuing treatment. (JE 1, p. 6) Cotton testified he did not have any permanent limitations after he received chiropractic care. (Tr., p. 11) No evidence was presented to the contrary.

On December 22, 2010, Cotton was involved in another car accident. (JE 1, p. 14) Cotton again sought chiropractic treatment from Dr. Breakiron, complaining of bilateral cervical stiffness and aching, headaches, bilateral mid-back pain, and bilateral low back pain. (JE 1, p. 14) Dr. Breakiron diagnosed Cotton with cervical vertebral unit dysfunction, acute moderate cervical strain, cervicgia, straightening of the cervical lateral curve, an acute thoracic strain, and an acute lumbar strain, and recommended spinal adjustment, exercise rehabilitation, and home exercises. (JE 1, p. 14) There was no evidence Cotton received any ongoing treatment for his cervical, thoracic, or lumbar spine.

On April 1, 2015, Cotton went to the Uniontown Hospital Emergency Room, complaining of constant bilateral lumbar pain after lifting at Safelite Auto Glass. (JE 1A, p. 17) Cotton described the pain as sharp and achy, exacerbated by movement, and reported he was experiencing muscle spasms. (JE 1A, pp. 17-20) Cotton reported he received some chiropractic adjustments following the injury, and he made a full recovery. (Tr., pp. 11-12) Cotton also injured one of his hands while working for Safelite Auto Glass. (Ex. A, pp. 23-24) There was no evidence presented at hearing

Cotton complained of or received treatment for ongoing back pain after his treatment until his work injury on February 7, 2017.

Cotton testified on February 7, 2017, he was at a port near Camden, New Jersey working for TMC to pick up a set of steel coils. (Tr., pp. 16-17) It had been raining that day and Cotton testified as he was finishing securing the last coil with chains "I ended up slipping, went off the trailer, and that's whenever I landed on my foot and my back." (Tr., pp. 16, 65-66) Cotton reported he felt a lot of pain and shock that he was off the trailer, he got his composure and stood up, and he was not able to put any pressure my his right foot, so he hobbled back to the trailer. (Tr., p. 17) Cotton testified the trailer was four and one-half feet off the ground and he fell on a cement parking lot. (Tr., pp. 17, 64)

Cotton was transported to Cooper University Hospital for treatment. (JE 2; Tr., pp. 17-18) Hospital staff documented Cotton had a chief complaint of right foot pain after jumping off a tractor trailer and landing on his right foot. (JE 2, p. 28) Hospital staff diagnosed Cotton with a closed, nondisplaced fracture of the body of the right calcaneus. (JE 2, p. 30) While at the hospital, staff noted Cotton reported he had fallen from a trailer bed "approximately 5-6 feet on to 'mostly [his] right ankle but [his] left as well.'" (JE 2, p. 36) Cotton received a computerized tomography scan of his right foot. (JE 2, p. 53) The reviewing radiologist listed an impression of a comminuted fracture of the calcaneus. (JE 2, p. 53)

Henry Dotch, D.O., an orthopedic surgeon examined Cotton and documented Cotton stated he was working on a truck when he slipped and fell backwards approximately five feet down onto his right heel. (JE 2, p. 39) Dr. Dotch noted Cotton reported immediate pain in his right heel, and some mild pain in his left heel, but he denied having pain in his cervical, thoracic, or lumbar spine and denied having numbness and tingling. (JE 2, p. 39) Dr. Dotch listed an impression of a right minimally displaced tongue type calcaneus fracture, placed Cotton into a splint, and ordered him to follow up with a provider. (JE 2, p. 40) The hospital released Cotton that evening and he stayed the night in a hotel. (Tr., p. 19) The next day TMC arranged for Cotton to fly back to Pittsburg, and arranged for medical care. (Tr., p. 19)

On February 16, 2017, Cotton attended an appointment with Ryan McMillen, D.P.M., arranged by TMC. (JE 3, p. 67) Dr. McMillen examined Cotton and reviewed his imaging, assessed Cotton with a displaced fracture of the body of the right calcaneus, and discussed surgical and nonsurgical options with Cotton. (JE 3, pp. 69-70) Cotton elected to proceed with surgery. (JE 3, p. 70) Dr. McMillen restricted Cotton from working, and he performed an open reduction and internal fixation ("ORIF") of the right intra-articular comminuted calcaneal fracture on February 20, 2017. (JE 3, pp. 71-73) Cotton presented to the emergency room the day after surgery complaining of stabbing pain in the bottom of his right heel. (JE 4, p. 119) An emergency room physician examined Cotton, replaced his splint and Ace wraps, and discharged him. (JE 4, p. 120)

Cotton returned to Dr. McMillen for follow-up care. (JE 3) On February 22, 2017, Dr. McMillen placed Cotton in a Cam boot, and ordered him to remain nonweightbearing. (JE 3, p. 77) During an appointment on April 6, 2017, Dr. McMillen prescribed physical therapy, and restricted Cotton from working. (JE 3, pp. 83-85) During an appointment on May 11, 2017, Dr. McMillen documented Cotton was complaining of irritation of the sural nerve and he prescribed Neurontin, explained that if Cotton's pain persisted he would refer him to a pain specialist, informed Cotton he should discontinue using crutches and wean himself off the Cam boot, and restricted Cotton from working. (JE 3, pp. 88-90)

On July 5, 2017, Cotton began receiving pain treatment from Tammy Flemming, CRNP, and Edward Heres, M.D., an anesthesiologist specializing in pain management with the UPMC Pain Management Clinic ("Dr. Heres's group"). (JE 5, pp. 122-26) Flemming and Dr. Heres increased Cotton's gabapentin prescription. (JE 5, pp. 122-26)

On July 7, 2017, Cotton returned to Dr. McMillen. (JE 3, p. 91) Dr. McMillen noted he was walking with an antalgic gait. (JE 3, p. 92) As documented during his previous exams, Dr. McMillen noted Cotton's lumbar spine was negative with straight leg raising. (JE 3, p. 93) Cotton reported he was experiencing significant swelling in his right lower extremity at the end of the day. (JE 3, p. 93) Dr. McMillen told Cotton it would be fine for him to increase his activities, ordered additional physical therapy, and restricted him from working. (JE 3, pp. 93-95)

On July 27, 2017, Cotton attended an appointment with Mark Hofbauer, D.P.M. (JE 6, p. 148) Dr. Hofbauer documented Cotton complained of pain on the lateral aspect of his right foot extending from the incision site of the right ankle down toward his toes along the cutaneous sural nerve, and trouble walking. (JE 6, p. 148) Dr. Hofbauer documented Cotton "walks with a limp and uses a cane for assistance with ambulation," examined him, assessed Cotton with a status post calcaneal ORIF, and right foot sural neuritis, and recommended he continue physical therapy and pain management. (JE 6, pp. 148-49) Dr. Hofbauer injected the sural nerve around the scar formation and prescribed topical neuropathic pain cream. (JE 6, p. 149)

Cotton returned to Dr. Hofbauer on August 8, 2017. (JE 6, p. 150) Dr. Hofbauer examined Cotton, assessed him with sural nerve entrapment neuritis with pain and some occasional swelling, an antalgic gait, and "some difficulty walking." (JE 6, p. 150) Dr. Hofbauer recommended Cotton discontinue using the cane, prescribed an ankle stabilizing brace, decreased his Neurontin, and prescribed antineuritic pain cream. (JE 6, p. 150)

On August 21, 2017, James Sardo, M.D., performed a records review only for TMC, without examining Cotton. (JE 7) Dr. Sardo opined Cotton had not reached maximum medical improvement, agreed with Dr. McMillen pain management is medically necessary for Cotton, recommended consideration of additional testing of the right lower limb, including electromyography to rule out a sural nerve injury or tarsal tunnel syndrome, a CT scan, and repeat x-rays, and recommended modified work. (JE 7, pp. 153-54)

During an appointment on September 6, 2017, Dr. McMillen noted Cotton had received a nerve block that provided him with relief for approximately a week, but no sustainable relief. (JE 3, p. 97) Dr. McMillen noted Cotton had intermittent pain that is aching and stabbing with numbness, aggravated by using stairs and by walking. (JE 3, p. 97) Dr. McMillen released Cotton to return to sedentary work, with standing one to four hours per day, sitting one to three hours per day, and occasional bending, squatting, climbing, and overhead work. (JE 3, p. 102) Cotton testified in the fall of 2017 he returned to light duty work for TMC with local charities. (Tr., p. 29)

Charles Gennaula, M.D., performed a nerve conduction study of Cotton's right lower extremity on September 25, 2017. (JE 8, p. 155) Dr. Gennaula found there was "evidence for a focal right sural mononeuropathy," but found the study was otherwise unremarkable and presented no evidence of polyneuropathy, radiculopathy, or other focal mononeuropathy. (JE 8, p. 155)

On October 3, 2017, Cotton returned to Dr. McMillen following electromyography and Dr. McMillen documented he informed Cotton he had mononeuropathy. (JE 3, p. 103) Dr. McMillen recommended Cotton continue with light duty, with restrictions of lifting, carrying, pushing and pulling up to twenty pounds maximum and ten pounds frequently, and walking and standing on occasion, and discussed long-term follow up with pain management. (JE 3, pp. 103, 106) Dr. McMillen noted Cotton's gait is "antalgic, steady, and well balanced." (JE 3, p. 105)

Cotton testified he told Dr. Heres's group he was experiencing low back pain. (Tr., p. 24) During an appointment on October 10, 2017, with Dr. Heres's group, Cotton complained of low back pain and bilateral foot pain. (JE 5, p. 133) Dr. Heres's assistant noted Cotton's Neurontin had been discontinued and he was taking Cymbalta. (JE 5, p. 133) Dr. Heres increased Cotton's Cymbalta. (JE 5, p. 136) Cotton testified he had pain in both of his feet after the fall, soreness after the initial impact, but reported he only had problems with one foot. (Tr., p. 25)

Between April 2017 and November 2017 Cotton attended more than eighty sessions. (JE 2a) On November 10, 2017, during his eighty-second physical therapy visit Cotton reported he had not returned to work and was not doing much to aggravate his foot and his pain had improved. (JE 2a, p. 61) During his eighty-fifth visit, the physical therapist documented Cotton was wearing a stability brace to improve his feeling of stability during ambulation, his standing and walking tolerance had improved, except for hard/concrete surfaces, it was difficult for him to walk, his ankle was weak, and he was rarely using a cane. (JE 2a, p. 65) The physical therapist documented Cotton had returned to modified work duty typically consisting of paper work and computer work, and mostly sitting. (JE 2a, p. 66) The therapist found Cotton could lift forty pounds floor to waist, thirty-five pounds waist to overhead, carry twenty-five pounds thirty feet, and push and pull thirty-five pounds fifteen feet. (JE 2a, p. 66) The physical therapist opined Cotton would not be able to perform his full duties at TMC safely per his job description based on testing results. (JE 2a, p. 66)

Cotton testified he told the physical therapist that he was experiencing back problems, but “they were not able to do anything because it was not on my actual scrip [sic].” (Tr., p. 29) Cotton reported the physical therapist showed him some stretches to do on a day-to-day basis. (Tr., p. 29)

On December 6, 2017, Cotton attended a follow-up appointment with Dr. McMillen. (JE 3, p. 107) Dr. McMillen documented he told Cotton he believed his calcaneal fracture had completely healed, recommended Cotton continue with pain management and continue with light duty work, and discussed a referral to plastic surgery to see if anything could be done concerning his sural nerve issues. (JE 3, pp. 107, 111) Dr. McMillen noted Cotton’s gait was “antalgic, steady, and well balanced,” he had limited range of motion of in his hindfoot with “[e]quinus contractures present,” and that he continued to take tramadol, gabapentin, and ibuprofen 800 milligrams for pain. (JE 3, pp. 109-10) Dr. McMillen diagnosed Cotton with neuralgia of the right foot. (JE 3, p. 111) Cotton testified he has not seen Dr. McMillen since December 2017. (Tr., pp. 22, 74)

On February 2, 2018, Cotton returned to Dr. Heres’s group, complaining of low back pain and foot pain. (JE 5, p. 143) Cotton reported the only medications that had worked for him were Iodine and a compound cream, which only partially alleviated his pain. (JE 5, p. 143) Cotton complained of shooting and throbbing sharp pain across his foot, with numbness and weakness that interferes with his activities of daily living and work. (JE 5, p. 143) Cotton relayed his pain was better with relaxation, lying down, and worse with standing, walking sitting, bending, and twisting. (JE 5, p. 143) Dr. Heres prescribed Cymbalta and Iodine. (JE 5, p. 145)

TMC sent Cotton for a functional capacity evaluation on February 8, 2018. (JE 9) The physical therapist found the evaluation was valid and Cotton could complete activities in the medium physical demand level, demonstrating the ability to occasionally lift up to forty pounds, lift floor to waist thirty-five pounds, lift waist to shoulder and carry up to forty pounds, push and pull thirty-five pounds, frequently sit, stand, walk, reach at desk level, reach at floor level, hand objects, and occasionally climb stairs, balance, stoop, kneel, crouch, and crawl. (JE 9, p. 159) The physical therapist documented “[d]eficits identified during testing include pain of right foot and ankle with all weight bearing. Changes in gait pattern of flat foot gait of right, decreased stride length, and noted weight shift to the left. He was also observed to use a cane following FCE.” (JE 9, p. 159) The physical therapist determined Cotton did not demonstrate the ability to function as a company driver based on the job description provided by TMC, due to Cotton’s inability to perform the stated material handling requirements. (JE 9, p. 159)

In February 2018, Dr. Heres recommended additional physical therapy for Cotton. (JE 3, p. 112) Dr. McMillen apparently responded to a check the box letter from TMC, indicating he agreed with Dr. Heres that Cotton would benefit from ongoing physical therapy, and also recommended Cotton move into an advanced work hardening program. (JE 3, p. 113) The letter is not signed or dated.

Cotton testified the medications Dr. Heres's group prescribed did not provide any permanent relief for him. (Tr., p. 26) He relayed the cream he rubbed on his foot helped, but TMC stopped paying for the cream. (Tr., p. 26)

Joseph Grady II, M.D., an occupational medicine physician, conducted an independent medical examination for TMC on March 9, 2018. (JE 10) Dr. Grady reviewed Cotton's medical records and examined him. (JE 10) Dr. Grady assessed Cotton with a status post ORIF of comminuted calcaneus fracture, and posttraumatic sural nerve neuropathy, and opined he had reached maximum medial improvement as of March 9, 2018, and found he did not need additional invasive treatment, but recommended he continue to receive the topical medication for the discomfort associated with the nerve injury. (JE 10, pp. 175, 177) With respect to permanent restrictions, Dr. Grady deferred to the February 8, 2018, functional capacity evaluation, which he noted was valid, and showed "[Cotton] would be limited to occasional activities of stair climbing, balancing, stooping, kneeling, crouching, and crawling with frequent standing, sitting, or walking and with [the] ability to lift and carry up to 40 pounds on an occasional basis." (JE 10, pp. 175-76)

Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Grady opined:

by Table 17-11 on page 537 of the Guides, he has a seven percent (7%) impairment of the right lower extremity for his right ankle extension and a zero percent (0%) impairment rating for plantar flexion. By Table 17-12 on page 537 of the Guides, there is a two percent (2%) impairment of the right lower extremity for right hindfoot inversion and a zero percent (0%) impairment rating for eversion. By Table 17-14 on page 537 of the Guides, there would be a zero percent (0%) impairment rating for the range of motion of the toes of the right foot. Therefore, there would be a total of a nine percent (9%) impairment of the right lower extremity for the range of motion loss of the involved area.

There is no specific ratable impairment for the injury utilizing Table 17-33 on page 537 of the 5th Edition of the AMA Guides. There was no skin loss, weakness, or amputation noted.

With regards to the sural nerve injury, by Table 16-10 on page 482 of the Guides, I would classify his sensory component of the sural nerve as a Grade 1 sensory abnormality for roughly a 90% sensory deficit. Multiplying that by the value for the sensory component of the sural nerve on Table 17-37 on page 552 of the Guides would give a two percent (2%) impairment of the right lower extremity. It is noted there is no motor component of the sural nerve. There was no dysesthesia on examination today. The two percent (2%) impairment of the right lower extremity would be combined by the Combined Values Chart with the nine percent (9%) impairment of the right lower extremity for the range of motion loss to give a total of an eleven percent (11%) impairment of the right lower extremity.

The eleven percent (11%) impairment of the right lower extremity would be converted by Table 17-3 on page 527 of the Guides to a four percent (4%) impairment of the whole person.

(JE 10, p. 176)

On March 30, 2018, TMC sent another check the box letter to Dr. McMillen, asking for his opinions. (JE 3, pp. 115-18) A response is provided, which includes an impairment rating, but it is not signed or dated by Dr. McMillen,. (JE 3, pp. 115-18) Given it is not signed or dated, I do not find the opinion persuasive.

TMC sent Cotton a boat driver job description on March 30, 2018, with gross pay yielding between \$900.00 to \$1,500.00 per week. (Ex. G) The job description provided that the driver had to be able to lift fifty pounds above the driver's head. (Ex. G, p. 3) Cotton testified he wanted the boat division job, but it was not offered to him. (Tr., pp. 34-35)

TMC sent Cotton to work hardening. (Tr., pp. 103) With the work hardening Cotton was not able to lift fifty pounds above his head, which was required for the boat division position. (Tr., pp. 101-03)

On April 17, 2018, Cotton's attorney sent an e-mail to TMC's attorney asking whether TMC had work available for Cotton within his work restrictions. (Ex. 18, p. 215) TMC's attorney responded on April 20, 2018, and stated TMC did not have any available positions at that time that would accommodate Cotton's permanent restrictions. (Ex. 19, p. 216) Cotton has not returned to work for TMC and testified he was terminated. (Ex. 16, p. 208; Tr., p. 33)

On July 5, 2018, Cotton attended an appointment with Timmy Truong, D.P.M., complaining of sharp, shooting pain while walking following his work injury. (JE 11, p. 180) Dr. Truong examined Cotton and diagnosed him with a status post right ORIF with mild post-traumatic arthritis to the subtalar joint, right foot pain, neuralgia and neuritis, and secondary osteoarthritis of the right foot and ankle. (JE 11, p. 182) Dr. Truong documented there was no further treatment indicated from a surgical standpoint, and that Cotton had exhausted all other conservative treatment options. (JE 11, p. 183)

In July 2018, Cotton moved to Florida where he trained as a sales associate for a car dealership until September 2018. (Ex. 16, p. 207) Cotton left the position because of the pay and accepted a training job in cellular sales working on commission in Florida. (Ex. 16, p. 207; Tr., pp. 36-37) Cotton moved back to Pennsylvania to be closer to his family and accepted a position in cellular phone sales where he works on commission. (Ex. 16, p. 207)

FTS, a fracking company, hired Cotton on December 17, 2018, as a field parts clerk, and agreed to pay him \$16.00 per hour. (Exs. 16, p. 207; J, p. 1) Cotton continued to work for FTS at the time of the hearing. Cotton testified he works roughly forty hours per week, and earns \$640.00 per week, which is less than he earned

working for TMC. (Tr., pp. 38, 41) The position description states the position requires the ability to lift at least fifty pounds. (Ex. J, p. 5) Cotton fills out paperwork and enters information into a database for the mechanics to keep track of the parts inventory. (Tr., pp. 39-40) Cotton is responsible for computer work and stocking the shelves in the trailer where he works with parts. (Tr., p. 40) Cotton relayed he is able to perform most of his work and he has had to lift heavier items exceeding his lifting restrictions a “couple times” and he has been able to obtain assistance from other coworkers. (Tr., pp. 39-40) Cotton can take breaks as he needs to elevate his foot. (Tr., pp. 40-41) FTS assigned Cotton to work in Ohio, eighty miles from his home. (Tr., pp. 51, 58)

John Kuhnlein, D.O., an occupational medicine physician with Medix, conducted an independent medical examination for Cotton on December 12, 2018, and issued his report on February 5, 2019. (Ex. 13) Dr. Kuhnlein examined Cotton and reviewed his medical records and a surveillance video. (Ex. 13) Dr. Kuhnlein diagnosed Cotton with a minimally displaced comminuted calcaneal fracture with February 20, 2017, ORIF, initial hypotension from possible vasovagal reaction, resolved, sural neuritis, chronic right foot pain and ankle pain, and low back pain complaints. (Ex. 13, p. 193) On the issue of causation with respect to Cotton’s low back pain, Dr. Kuhnlein opined:

[g]ait changes can cause low back pain, and low back pain was mentioned in the record about the same time as the very short surveillance video was obtained, although not followed up by the pain specialist. It is more likely than not that the low back pain developed as a sequela to the gait change from the right foot injury. The video is only two minutes long, and only shows short distances of ambulation, so it is difficult to know what to make of the presented video other than the gait was different than what was seen here for about 2-1/2 minutes.

(JE 13, p. 194) Dr. Kuhnlein recommended found Cotton reached maximum medical improvement when he was released from word hardening on April 16, 2018, and recommended Cotton pursue nonsurgical treatment for his pain, exercise for his low back, and use ice or heat on his low back when necessary for pain. (JE 13, p. 194)

Using the AMA Guides, Dr. Kuhnlein opined:

[t]he DRE method is indicated according to pages 379-380. Turning to Table 15-3, page 384, I would place Mr. Cotton between DRE Lumbar Category I and II and assign 2% whole person impairment.

Turning to Tables 17-11, 17-12, and 17-13, Page 537, and when comparing the right to the unaffected left ankle, I would assign 9% right lower extremity impairment for decrements in ankle range of motion. Turning to Table 17-37, Page 552, I would assign an initial 2% right lower extremity impairment for the sensory deficit in the sural nerve distribution. However, this value must be multiplied by the modifier from table 16-10, page 482. I would use the 25% modifier. When these values are multiplied together (2% x25%) and rounded according to the instructions

on page 20, this is a 1% right lower extremity impairment for the sensory deficit. Using the Combined Values Chart on page 604, when these values are combined (9% x1%) this is a 10% right lower extremity impairment. Turning to Table 17-3, page 527, this would convert to a 4% whole person impairment if indicated.

Turning to the Combined Values Chart on Page 604, when these values are combined (4% x2%) this is a 6% whole person impairment.

(Ex. 13, pp. 194-95)

Dr. Kuhnlein opined that given his physical examination, Cotton could pass a DOT physical examination, and recommended Cotton follow up within three months to see how he does. (Ex. 13, p. 195) Dr. Kuhnlein recommended material handling restrictions of lifting forty pounds floor to waist occasionally, forty pounds waist to shoulder occasionally, and twenty pounds over the shoulder occasionally because of the "moment arm" phenomenon in the lumbar spine with lifting activities. (Ex. 13, p. 195) Dr. Kuhnlein recommended nonmaterial handling restrictions of sitting, standing or walking on an as needed basis for comfort, occasional stooping, squatting, bending, and crawling, work on ladders or at heights, and noted Cotton may need assistance when rising from a kneeling position. (Ex. 13, p. 195)

TMC produced Exhibit K, which contains two minutes and twenty-three seconds of surveillance showing Cotton walking twice on August 27, 2018 and twice on September 4, 2018. Like Dr. Kuhnlein, I did not see Cotton limping in the video. The video is very brief and shows limited walking. (Ex. K)

Dr. McMillen completed a check the box letter from counsel for TMC on March 7, 2018, agreeing during the course of his treatment Cotton did not inform Dr. McMillen he allegedly sustained a back injury as a result of the work accident or inform Dr. McMillen he was experiencing back pain. (Ex. L, pp. 1-2) Dr. McMillen also agreed during the course of his treatment it did not appear to Dr. McMillen that Cotton had a back injury or that he was experiencing back pain, and if Cotton informed him he had a back injury or he was experiencing back pain Dr. McMillen would have noted that fact in Cotton's visit notes. (Ex. L, p. 2)

Cotton testified he disagreed with Dr. McMillen's assertions because he did tell Dr. McMillen's office he was experiencing back pain. (Tr., p. 24) At hearing Cotton's attorney asked Cotton and he responded:

Q. And did you discuss with Dr. McMillen that you were having back pain?

A. I had mentioned it to him before on occasions.

Q. And what was his response?

- A. That he was a foot doctor, that he doesn't – he only handles the foot.

(Tr., pp. 22-23)

Cotton first started wearing an ankle brace in August 2017. (JE 6, p. 150) At the time of the hearing he was still wearing an ankle brace on his right lower extremity. (Tr., p. 27)

Cotton testified his past work involved customer service work, dispatching at a call center, sales, and installing auto glass. (Tr., p. 44) Cotton reported he would have a difficult time returning to the auto glass installation work because of his restrictions. (Tr., p. 44)

Cotton reported he has right foot pain "pretty often" that interrupts his sleep at times. (Tr., pp. 21, 42) Cotton testified the outside of his right foot is numb and "every time I take a step, because there was also a buildup of what's the early stages of arthritis that has come about." (Tr., pp. 21-22)

Cotton reported he has low back pain "[p]retty much daily" and foot pain every day. (Tr., pp. 44-45; Ex. A, p. 45) Cotton testified his right lower extremity injury has affected the way he walks, which he reported causes "[s]harp pains. . . like a piercing, like a sharp pain; and then there's a lot of times the majority of the day it's just – you just feel a constant like a pull." (Tr., pp. 47-48)

Before his work injury Cotton enjoyed playing sports in the front yard with his children, lifting weights, and running which he can no longer do. (Tr., pp. 45-47) Cotton relayed when he was going to the gym he weighed 190 pounds, and after his injury his weight peaked at 244 pounds. (Tr., p. 45) Cotton reported that at the time of the hearing he weighed 210 pounds. (Tr., p. 45) At the time of his pre-employment physical Cotton weighed 216 pounds. (Tr., p. 95)

CONCLUSIONS OF LAW

I. Applicable Law

This case involves several issues, including nature and extent of disability, rate, and interest under Iowa Code sections 85.34, 85.36, 85.61 and 535.3. In March 2017, the legislature enacted changes (hereinafter "Act") relating to workers' compensation in Iowa. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code section 85.34 apply to injuries occurring on or after the effective date of the Act. This case involves a work injury occurring before July 1, 2017, therefore, the provisions of the new statute involving extent of disability Iowa Code section 85.34 do not apply to this case. The calculation of interest is governed by Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest

Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is 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.

II. Nature of the Injury - Sequela

The parties stipulated Cotton sustained an injury to his right lower extremity while working for TMC on February 7, 2017. Cotton avers he sustained sequela lumbar back pain caused by his work injury. TMC rejects his assertion, alleging Cotton is not a credible witness because his medical records do not document he was complaining of lumbar back pain, and Dr. Kuhnlein's causation opinion is flawed.

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 his employer.

Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979) (quoting Bushing v. Iowa Ry. & Light Co., 208 Iowa 1010, 1018, 226 N.W. 719, 723 (1929)).

The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997). "In order for a cause to be proximate, it must be a 'substantial factor.'" Ayers, 731 N.W.2d at 17. A probability of causation must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569

N.W.2d 154, 156 (Iowa Ct. App. 1997). The cause does not need to be the only cause, “[i]t only needs to be one cause.” Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 64 (Iowa 1981).

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

It is well-established in workers’ compensation that “if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or ‘lighted up’ by an injury which arose out of and in the course of employment resulting in a disability found to exist,” the claimant is entitled to compensation. Iowa Dep’t of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

a disease which under any rational work is likely to progress so as to finally disable an employee does not become a “personal injury” under our Workmen’s Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

Dr. Kuhnlein, an occupational medicine physician retained by Cotton to conduct an independent medical examination, is the only physician in this case who has offered an opinion on whether Cotton sustained permanent low back pain caused by the original work injury. Dr. Kuhnlein opined based on his examination of Cotton and review of his medical records that “[i]t is more likely than not that the low back pain developed as a sequela to the gait change from the right foot injury.” (JE 13, p. 194) His opinion is unrebutted; I also find his opinion persuasive.

Cotton has a history of low back pain dating back to 2002, following a car accident. (JE 1) Cotton was involved in two car accidents in 2001 and 2010. (JE 1) He also received treatment following an injury while working for Safelite Auto Glass in 2015. (JE 1A) Cotton testified at hearing that following these injuries his back pain resolved and he did not receive any additional treatment. Cotton’s medical records support his assertion. TMC also conducted pre-employment testing of Cotton that he

passed, which showed he had the ability to lift over 100 pounds. I do not find Cotton's low back pain was ongoing.

TMC alleges Cotton is not a credible witness and he should not be believed. 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). Cotton has an interest in the outcome of his case. At hearing I had the opportunity to observe him testify under oath. Cotton's eye contact was direct, the rate of his speech was normal, and he did not engage in any furtive movements. I found him to be a credible witness.

Contrary to TMC's assertion, Cotton's medical records document ongoing problems with his gait and complaints of back pain to the group treating his chronic pain. At the hospital following the incident Cotton reported to Dr. Dotch, the orthopedic surgeon, he slipped and fell backwards approximately five feet down onto his right heel, and relayed he had immediate pain in his right heel and some mild pain in his left heel. (JE 2, p. 39) Cotton's records show he denied having pain in his cervical, thoracic, or lumbar spine and denied having any numbness or tingling at the hospital. (JE 2, p. 39)

TMC referred Cotton to Dr. McMillen, a podiatrist, for follow-up care for his right ankle and foot. (JE 3) Dr. McMillen first noted Cotton was walking with an "antalgic gait" on July 7, 2017, six months after the injury, but also noted his lumbar spine was negative with straight leg raising. (JE 3, pp. 92-93)

Dr. Hofbauer, also a podiatrist, examined Cotton on July 27, 2017, and again noted Cotton "walks with a limp." (JE 6, p. 148) A few weeks later, on August 8, 2017, Dr. Hofbauer again noted Cotton had "some difficulty walking," he had an "antalgic gait" and he prescribed an ankle stabilizing brace and antineuritic pain cream. (JE 6, p. 150) Nearly two months later, Dr. McMillen again noted Cotton's gait was "antalgic, steady, and well balanced" during an appointment on October 3, 2017. (JE 3, p. 105)

After several months of treatment, Dr. McMillen referred Cotton to Dr. Heres for pain management. (JE 5) Several practitioners within Dr. Heres's practice group provided pain management services to Cotton. (JE 5) During an appointment on October 10, 2017, with Dr. Heres's group, Cotton complained of low back pain and bilateral foot pain. (JE 5, p. 133) The records do not show Dr. Heres's practice group addressed Cotton's complaint of low back pain.

During an appointment on December 6, 2017, Dr. McMillen again documented Cotton's gait was "antalgic, steady, and well balanced," and noted he had limited range of motion in his hindfoot with "[e]quinus contractures present." (JE 3, pp. 109-10)

Cotton again complained of low back pain and foot pain to Dr. Heres's group on February 2, 2018. (JE 5, p. 143) Cotton's records do not show Dr. Heres's practice group addressed Cotton's complaints of low back pain. (JE 5, p. 143)

A few days later TMC sent Cotton for a functional capability evaluation. (JE 9) The physical therapist documented “[d]eficits identified during testing include pain of right foot and ankle with all weight bearing. Changes in gait pattern of flat foot gait of right, decreased stride length, and noted weight shift to the left.” (JE 9, p. 159)

Cotton testified he reported his low back pain to Dr. McMillen and to Dr. Heres’s practice group. Dr. McMillen, a podiatrist specializing in the foot and ankle, denied Cotton reported he had low back pain during treatment and that if Cotton had complained about back pain he would have documented it. I do not believe Cotton repeatedly told Dr. McMillen he was experiencing back pain. While Dr. McMillen’s records do not document complaints of low back pain, the records from Dr. Heres’s practice group document complaints of low back pain, and multiple providers documented gait changes consistent with Dr. Kuhnlein’s examination.

TMC also relies on surveillance video to support its argument. I reviewed the brief surveillance video obtained by TMC, Exhibit K. The video is two minutes and twenty-three second long, briefly showing Cotton walking twice on August 27, 2018, and twice on September 4, 2018. Like Dr. Kuhnlein, I did not see Cotton limping on the video. Again, as observed by Dr. Kuhnlein, the video only shows Cotton walking short distances. I do not find the video helpful, or persuasive. Based on all the record evidence, including Dr. Kuhnlein’s un rebutted opinion, I find Cotton has established he sustained sequela low back pain caused by the work injury. I also find the condition is permanent based on Dr. Kuhnlein’s un rebutted opinion and Cotton’s testimony at hearing.

III. Rate

The parties stipulated at the time of his work injury Cotton was married and entitled to four exemptions. The parties do not agree on the amount of Cotton’s gross earnings per week. Cotton avers the week of December 24, 2017, should be excluded from the rate calculation. TMC contends the week of December 24, 2017 should be included in the rate calculation.

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

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

Id. The term “gross earnings” is defined as “recurring payments by the employer to the employee for employment, before any authorized or lawfully required deduction or

withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits." Id. § 85.61. Weekly earnings for employees paid on an hourly basis

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

Id. § 85.36(6). Thus under the statute, overtime is counted hour for hour, and shift differential, vacation, and holiday pay are also included.

TMC and Cotton both agree during the fourteen weeks before the work injury Cotton received the following wages:

Week	Pay Begin Date	Pay End Date	Pay at Normal Hourly Rate
1	1/28/17	2/3/17	1,229.10
2	1/21/17	1/27/17	767.68
3	1/14/17	1/20/17	978.27
4	1/7/17	1/13/17	663.18
5	12/31/16	1/6/17	1,017.47
6	12/24/16	12/30/16	658.56
7	12/17/16	12/23/16	956.17
8	12/10/16	12/16/16	913.17
9	12/3/16	12/9/16	630.09
10	11/26/16	12/2/16	869.23
11	11/19/16	11/25/16	731.51
12	11/12/16	11/18/16	936.14
13	11/5/16	11/11/16	861.17
14	10/29/16	11/4/16	1,000.00

(Ex. 22, p. 228) Cotton found the sum, excluding the week of December 24, 2016 through December 30, 2016, was \$11,553.18, for average weekly gross income of \$888.71, and based on his married status and four exemptions, Cotton's weekly rate is \$589.75. (Ex. 22, p. 228) TMC found the sum, including the week of December 24, 2016 through December 30, 2016, was \$11,211.74, for average weekly gross income of

\$862.44, and based on his married status and four exemptions, Cotton's weekly rate is \$574.45. (Ex. B, p. 1)

The record supports Cotton's wages varied during the thirteen weeks prior to the work injury. Looking at Cotton's wage records, the pay he received for the week of December 24, 2016 through December 30, 2016 of \$658.56 is similar to the weeks of January 7, 2017 through January 13, 2017 of \$663.18, and December 3, 2016 through December 9, 2016 of \$630.09. I find the week of December 24, 2016 through December 30, 2016 representative. The week of December 24, 2016 through December 30, 2016 should be included in the rate calculation for the thirteen weeks before the work injury. Cotton's rate is \$574.45 per week. Given this finding, Cotton is not entitled to any additional temporary disability benefits based on an incorrect rate.

IV. Extent of Disability

Permanent partial disabilities are divided into scheduled and unscheduled losses. Iowa Code § 85.34(2). If the claimant's injury is listed in the specific losses found in Iowa Code section 85.34(2)(a)-(t), the injury is a scheduled injury and is compensated by the number of weeks provided for the injury in the statute. Second Injury Fund v. Bergeson, 526 N.W.2d 543, 547 (Iowa 1995). "The compensation allowed for a scheduled injury 'is definitely fixed according to the loss of use of the particular member.'" Id. (quoting Graves v. Eagle Iron Works, 331 N.W.2d 116, 118 (Iowa 1983)). If the claimant's injury is not listed in the specific losses in the statute, compensation is paid in relation to 500 weeks as the disability bears to the body as a whole. Id.; Iowa Code § 85.34(2)(u). "Functional disability is used to determine a specific scheduled disability; industrial disability is used to determine an unscheduled injury." Bergeson, 526 N.W.2d at 547. Given I found Cotton has sustained an unscheduled sequela injury, his compensation is determined industrially.

"Industrial disability is determined by an evaluation of the employee's earning capacity." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 852 (Iowa 2011). In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee's "ability to be gainfully employed." Id. at 138.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(u).

As discussed above, Dr. Kuhnlein's opinion regarding causation and extent of Cotton's sequela condition is un rebutted. Dr. Kuhnlein opined Cotton has sustained a six percent whole person impairment. (Ex. 13, p. 195) He also recommended material

handling restrictions of lifting forty pounds floor to waist occasionally, lifting forty pounds waist to shoulder occasionally, and lifting twenty pounds over the shoulder occasionally because of the "moment arm" phenomenon in the lumbar spine with lifting activities. (Ex. 13, p. 195) Dr. Kuhnlein recommended nonmaterial handling restrictions of sitting, standing or walking on an as needed basis for comfort, occasional stooping, squatting, bending, and crawling, work on ladders or at heights, and noted Cotton may need assistance when rising from a kneeling position. (Ex. 13, p. 195) I find Dr. Kuhnlein's restrictions appropriate.

At the time of the hearing Cotton was forty-five. (Tr., p. 9) Cotton is a high school graduate. (Exs. 16, p. 206; A, p. 16; Tr., p. 9) Cotton was articulate at hearing. I find he is capable of retraining. Cotton has worked for a number of employers and he has experience using a computer and running reports. Cotton has worked in retail with customers stocking shelves, building furniture and delivering furniture to customers, loading trucks, customer service by telephone, replacing and repairing street signs, running reports, delivering appliances and merchandise, collections and repossessions, installing auto glass and repairing auto glass for customers, and business telephone sales in Pennsylvania. (Ex. 16, pp. 208-10)

TMC, a large trucking company, determined it could not accommodate Cotton's permanent restrictions. At the time of his work injury Cotton earned average weekly gross income of \$862.44. Cotton is now earning \$640.00 per week from his current employer. Cotton has worked in retail with customers stocking shelves, building furniture and delivering furniture to customers, loading trucks, providing customer service by telephone, replacing and repairing street signs, running reports, delivering appliances and merchandise, engaging in collections and repossessions, installing auto glass and repairing auto glass for customers, and engaging in business telephone sales in Pennsylvania. (Ex. 16, pp. 208-10) While Cotton testified he could not return to his work installing and repairing auto glass, he could return to retail sales, telephone sales, and other office work. There was no evidence presented at hearing Cotton is unmotivated to work, or that work exceeding his current pay is available in his community consistent with his permanent work restrictions. Considering all of the factors of industrial disability, I find Cotton has sustained a twenty-five percent industrial disability. Cotton is entitled to 125 weeks of permanent partial disability benefits at the rate of \$574.45 per week, commencing on the stipulated commencement date of March 10, 2018.

ORDER

IT IS THEREFORE ORDERED, THAT:

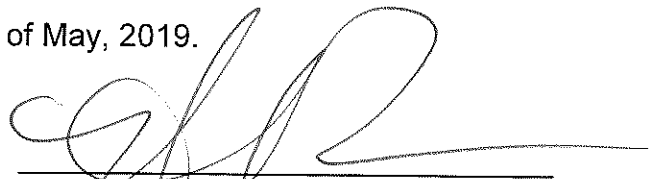
Defendant shall pay the claimant one hundred twenty-five (125) weeks of permanent partial disability benefits at the weekly rate of five hundred seventy-four and 45/100 dollars (\$574.45), commencing on the stipulated commencement date of March 10, 2018.

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. Sanchez v. Tyson, File No. 5052008 (Apr. 23, 2018 Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue).

Defendant shall receive a credit for all benefits paid to date.

Defendant 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 9th day of May, 2019.


HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.