BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ZINETA CIRIC,

Claimant,

vs.

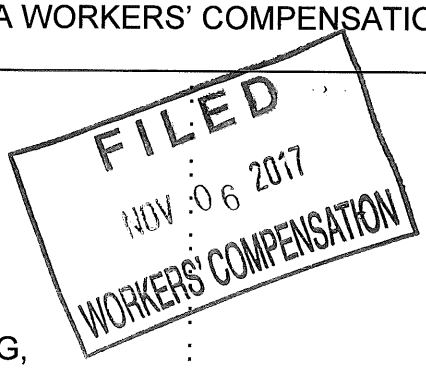
DEE ZEE MANUFACTURING,

Employer,

and

WEST BEND MUTUAL INSURANCE COMPANY,

Insurance Carrier,
Defendants.



File No. 5055883

ARBITRATION

DECISION

Head Notes: 1108, 1108.50

STATEMENT OF THE CASE

Zineta Ciric, claimant, filed a petition in arbitration seeking workers' compensation benefits against Dee Zee Manufacturing, employer, and West Bend Mutual Insurance Company, insurer, for an alleged work injury date of January 11, 2016.

This case was heard on May 23, 2017, in Des Moines, Iowa. The case was considered fully submitted on June 20, 2017, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-5, Claimant's Exhibits 1-11, Defendants' Exhibits A-H, testimony of the claimant and Troy Schultzen.

ISSUES

1. Whether claimant sustained an injury on January 11, 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 defendants are entitled to credit under Iowa Code section 85.38(2) for payment of sick pay/disability;

8. The assessment of costs.

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 stipulate claimant was an employee at the time of her alleged injury. They further agree that if it is found that the defendants are liable for the alleged injury, claimant is entitled to temporary benefits from January 11, 2016, through April 24, 2016 at the rate of $465.71.

At the time of the alleged injury, claimant's gross earnings were $705.00 per week. She was married and entitled to two exemptions. The weekly benefit rate based on those foregoing numbers is $465.71.

The parties agree that if claimant's injury is found to be the cause of a permanent disability, it is industrial in nature.

FINDINGS OF FACT

At the time of the hearing, claimant was a 60-year-old person. Claimant testified that she completed the eighth grade, but vocational specialist Phil Davis, M.S., noted claimant attended Sead Skrgo High School, graduating in 1973. (Joint Exhibit 3:2) Claimant immigrated to the US on or about September 3, 1997. She was approximately 40 at the time of the immigration.

Prior to immigrating, she had training at marketing school to serve as a sales associate. However, she did not hold any full-time employment until she began working for defendant employer. She worked for defendant employer from September 12, 1997 until January 11, 2016.

She has limited English skills. Her computer skills are confined to paying bills and communicating with her family.

Currently she lives with her daughter. Claimant testified that she is not able to maintain her home and has difficulty maneuvering the stairs to reach the laundry facilities.

Upon her entry to the US, she obtained employment for the defendants beginning on September 12, 1997. She worked approximately 40 hours per week, five days a week.

Initially she worked in box packaging and then became a Machinist/Machine Operator. During her 20 years with the company, she worked on approximately six machines which bent and shaped strips of metal. For the past ten years, she worked primarily on HDC, RAS, and the Accurpress.

According to both Troy Wayne Szhulzen, the environmental health and safety director for defendant, and claimant, the metal strips are approximately three to six inches wide and are of varying lengths. The pieces are delivered on a pallet which is placed on a table. Claimant then takes a strip of metal and places it into one of the machines. The RAS machine is operated by pedals and the other two are activated by pressing a button with each hand.

She stood on a mat which she described as a thin, foamy cushion.

Most all of the work was between waist and chest level. The jobs required regular movement, as she would reach for a metal strip, place it in the machine, and then remove the strip and place it on a table.

She testified that every minute she would have to repeat the cycle of twisting and turning. On the other machines, she would operate a pedal and lean over, bending at the lower part of her torso. She also testified that the work was fast and repetitive due to the deadlines imposed by the employer.

There were no specific quotas, but there were deadlines that were given on a weekly basis.

A video was played showing the work on the various machines. Claimant testified that the RAS machine that she worked on had a safety sensor under the rug and that the sensor was repositioned to make it easier to activate the machine, but that the work performed in the video was essentially the same as the work she performed. The old sensor required her to lean closer to the machine to complete the task.

She also worked concurrently as a housekeeper approximately nine hours per week for about five years, ending in January 2016. Claimant testified that she did not have pain during her housekeeping duties, as she was primarily responsible for dusting.

During claimant's testimony, she was visibly uncomfortable.

On or about January 11, 2016, claimant experienced significant back pain half way through her 7 AM to 3:30 PM shift.

She experienced pain in 2004 in her low back, right buttock and right hip. (JE 1) In 2008, an MRI of her lumbar spine was conducted which showed mild degenerative stenosis and minimal degenerative facet arthritis and disc disease in the lumbar region. (JE 1:6)

In 2012, claimant suffered a work-related fall. She suffered pain in the lumbar region and buttocks. She was treated conservatively and returned to full-duty work. (Ex. C:3)

In 2015, she saw Sudeep Gupta, D.O., for complaints of back pain along with leg numbness and weakness. (JE 1:8) On examination, she has bilateral muscle spasms and positive straight leg raise test. (JE 1:9) Medications were prescribed and an injection of an anti-inflammatory was administered. (JE 1:9) The MRI showed progression of the disease previously noted in the 2008 MRI. (JE 1:12)

On the January 8, 2015, Patient Medical History form for Mercy Physical Medicine and Rehabilitation, claimant indicated her low back pain and hip pain has existed for at least eight years. She did not indicate it was a work injury. (JE 2:1)

Claimant presented to Jeffrey Pederson, D.O., on January 11, 2016, for low back and hip pain. (JE 3:1) Again, she gave a history of pain extending as far back as eight years with increasing or worsening symptoms in the most recent two years. (JE 3:1) She also complained of numbness and tingling down her legs and into her feet along with numbness and tingling in her palms. (JE 3:1) For her work, she stated that "she works in a factory and is cutting metal in the standing [sic] for most of the day." (JE 3:1) On examination, she had limited range of motion along with pain. There was moderate tenderness to palpation over the SI joints and the gluteal musculature bilaterally. "Similar tenderness appears to be out of proportion to the amount of pressure being applied." (JE 3:3) She also had mild tenderness over the greater trochanter bilaterally. (JE 3:3)

There was giveaway weakness secondary to back pain but her joints, muscle strength were normal and there was no atrophy. (JE 3:3)

Sensation was decreased to light touch on the lateral aspects of the left lower extremity and left foot as well as on the top of the right foot. (JE 3:3) Patrick testing caused increased back pain bilaterally and there was tightness in the hamstrings and piriformis bilaterally. Passive range of motion of her hips causes her increased pain in her back, lateral hip and gluteal region. (JE 3:3)

Pool and land physical therapy was ordered along with a TENS unit and Gabapentin. (JE 3:4) It was recommended she be seen for pain management and evaluation. (JE 3:4)

As for the etiology, Dr. Pederson wrote, "Difficult to determine specific etiology given her physical exam. She does have degenerative changes and spinal stenosis at L4-5 level on MRI. Patient also has significant myofascial pain on physical exam. I think she would benefit from physical therapy and we'll send her to a half land and half water therapy to work on range of motion and core strengthening." (JE 3:4) She was also sent for a lumbar injection. (JE 3:4)

Christine R. Carstensen, M.D., treated claimant for her back pain at the referral of Dr. Pederson. (JE 5:1) "She does have evidence of spinal stenosis on MRI and complaints of pain with standing and walking. However, the majority of her pain is easily reproducible with minimal palpation or loading of her SIs," wrote Dr. Carstensen. She recommended bilateral SI joint injections. (JE 5:1)

On the disability form filled out on February 2, 2016, Dr. Pederson marked the condition as "not work related." (JE 3:8)

Physical therapy began on January 19, 2016. (JE 4) During therapy, claimant reported pain after approximately 30 minutes of treatment, whether it be on land or in water. (JE 4:5)

Upon her return to Dr. Pederson on February 22, 2016, claimant reported no success with either the physical therapy or the steroid injection. (JE 3:9) The steroid injection was in the bilateral SI joints rather than lumbar region, so Dr. Pederson sent claimant back to Mercy for another injection. (JE 3:11; JE 5:5) Dr. Pederson kept claimant off of work and directed claimant to the State for disability request. (JE 3:11) An EMG test conducted on February 24, 2016, revealed normal results. (JE 3:12)

She returned to Dr. Gupta on February 2016, following an unsuccessful course of physical therapy and the administration of a steroid injection. (JE 1:14) Dr. Gupta modified her medications and instructed her to follow up if necessary.

On March 14, 2016, she was seen by Dr. Pederson. (JE 3:21) He reviewed her MRI which showed central canal stenosis at L4-5 with facet arthropathy and degenerative disc disease. (JE. 3:21) Therapy sessions were reduced to one half of an hour due to pain. (JE 3:21)

Dr. Pederson noted she exhibited Waddell signs but wrote her a disability restriction and allowed her to go back to work with no lifting greater than 15 pounds and no repetitive bending and twisting. (JE 3:23) He offered a surgical referral which claimant turned down. (JE 3:23)

The disability worksheet filled out by Dr. Pederson again marked claimant's disability as non-work related. (JE 3:24) He released her and instructed her to follow up with other care providers. (JE 3:23)

She saw claimant again a month later on March 28, 2016. (JE 1:19) Claimant had back pain, stiffness, decreased range of motion, leg pain and numbness. (JE 1:19) Pool therapy made her feel sick and increased her pain. The epidural had only "some" relief. (JE 1:19) Dr. Gupta recommended a surgical consult. (JE 1:21)

On April 18, 2016, claimant was discharged from physical therapy after she plateaued. (JE 4:6) Jayna Hoover, the therapist, felt that the claimant exhibited "a good prognosis at time of discharge from skilled rehabilitative therapy in conjunction with a home exercise program." (JE 4:5) While active range of motion had not improved over therapy, her pain did decrease to a 2/10 on a ten scale from an 8/10 when she began. (JE 4:6)

She had another injection on April 25, 2016. (JE 5:8) Jolene M. Smith, D.O., who administered the February lumbar injection noted "Her symptoms are most likely consistent to neurogenic claudication resulting from the spinal stenosis at L4-5." (JE 5:8) Dr. Smith recommended a repeat injection. (JE 5:8)

On April 28, 2016, she returned to Dr. Gupta "for routine clinic follow-up of chronic low back pain." (JE 1:23) There is a notation that claimant was seen by Dr. Smith at the pain center and that she underwent an EPSI that reduced her pain by 50-60 percent. (JE 1:23)

She saw Dr. Smith again on June 15, 2016. At that appointment, claimant reported she was still receiving the benefit of the previous epidural and that the Lyrica was helping as well. (JE 5:10) Dr. Smith increased the Lyrica dose to 75 mg b.i.d. (JE 5:10) Claimant described relief upon using a friend's lumbar brace. Dr. Smith advised against regular use, as it can lead to muscle atrophy but did send claimant for a physical therapy fitting. (JE 5:11)

On August 1, 2016, claimant returned for follow up of the back pain. The medical records reiterated that claimant received relief with the injections — at least 50 percent pain reduction. (Ex. 1:26) On examination, she had mid-thoracic muscle tightness and low back pain with range of motion. (JE 1:28) The future treatment plan included referral to physical therapy for thoracic back pain. (JE 1:28)

On April 6, 2017, claimant was seen in follow-up for her chronic back pain. (JE 1:29) On examination, claimant exhibited tenderness at level 1-5 in the left paraspinal and right paraspinal. Flexion, extension and rotation were restricted and painful. Dr. Gupta modified claimant's medications. (JE 1:31)

Claimant underwent an IME with Jacqueline Stoken, M.D., on December 13, 2015. (Ex. 1) Dr. Stoken's report was issued on December 27, 2016. (Ex. 1:1)

Dr. Stoken diagnosed claimant as suffering from non-work related spinal stenosis and cumulative trauma to her low back with chronic, intractable pain. (Ex. 1:8)

She opined that the chronic low back pain was causally related to claimant's work and that the cumulative trauma materially exacerbated claimant's underlying stenosis. (Ex. 1:8) Dr. Stoken does not identify what was the cumulative work trauma and a review of the opinion references only that the claimant began to slowly have back pain that increased over time along with a slip and fall. (Ex. 1:1) A questionnaire filled out by the claimant identifies standing in one spot for 18 years along with heavy lifting as the cause of the back pain. (Ex. 1:1)

Dr. Stoken assigned an 8 percent whole person impairment due to "cumulative trauma to her low back" and "progression of her arthritic low back condition, spinal stenosis, intractable low back pain, and bilateral lower extremity radiculopathy." (Ex. 1:8)

Dr. Stoken recommended medications and/or injections and opined that claimant was unable to work due to the back pain and the medications that affect claimant's cognition. (Ex. 1:8)

On May 4, 2016, Dr. Gupta filled out a checklist opinion letter identifying claimant's work as a substantial contributing cause to the claimant's symptoms in her back and that it is unknown whether claimant could return to work. (Ex. 6)

On May 17, 2016, Dr. Pederson filled out a checklist opinion letter agreeing to the following:

1. It is medically probable Zineta Ciric's work at DeeZee Manufacturing is a substantial contributing cause of the symptoms she is now experiencing in which she is being treated for by medical providers?

   YES _X_ NO _____

2. It is medically probable the work she performed at DeeZee Manufacturing caused the degenerative disc disease wich is present in Zineta to become symptomatic?

   YES _X_ NO _____

3. The symptoms Zineta Ciric is currently experiencing will persist into the indefinite future?

   YES _X_ NO _____

4. Given the current medical condition of Zineta Ciric, she will not be able to do repetitive and/or lifting types of employment for the remainder of her life?

   YES __X__ NO _____

(Ex. 4:1)

On October 24, 2016, claimant underwent an IME with John D. Kuhnlein, M.D. (Ex. C:1) A report was issued on November 4, 2016. (Ex. C:1) Dr. Kuhnlein reviewed a video of the job position and then visited the job site. He concluded that there were no significant lumbar stressors in claimant's position. (Ex. C:2)

According to Dr. Kuhnlein's observations, claimant worked with primarily light parts, weighing under 15 pounds. Claimant testified that she did not know how heavy the pieces of metal she lifted were. The job description identifies the lifting as constant for under 20 pounds and occasional for 21 to 50 pounds. (Ex. E, p. 2) There was no significant bending, and while claimant did stand on her feet for most of the day, she stood on a mat. Further, the standing was not static. After she would operate the foot press, the claimant would then remove the bent metal, place it onto a pallet and then move to the next process.

Dr. Kuhnlein did not observe any continual or even frequent twisting.

> Based on the history obtained, the available medical record, and my review of the actual job itself, her increased back pain is more likely than not related to a natural progression of her disease, and not to her work for DeeZee. There was nothing about the job that would cause a progression of her lumbar injury, even when the pre-existing stenotic condition is taken into consideration. The job was not a substantial more than minor factor in increasing her back pain. It is far more likely that this simply represents a natural progression of her underlying disease, given the lack of lumbar stressors in the work itself.

(Ex. C:9)

Claimant's work did not require her to engage in prolonged static standing, position her body awkwardly, or repetitively bend and twist. She had an adequate cycle time between activities, and even if she did carry multiple pieces at one time, the weights were not sufficient enough to create a lumbar stressor. (Ex. C:9)

Dr. Kuhnlein did agree it was likely the claimant could not re-enter the workforce due to her language barriers as well as the fact that she believes she cannot work. (Ex. C:10)

On March 29, 2017, Cassie M. Igram, M.D., wrote an opinion letter based on a records review. (Ex. B:1) Dr. Igram opined that there was nothing in claimant's description of her work activities that would materially contribute to the progression of the underlying spinal stenosis. "Physical work activities of the nature performed by Ms. Ciric, including her prolonged standing, and frequent bending, twisting and lifting, in my experience do not cause progression or acceleration of stenosis, thinning disks or arthritis in the lumbar spine," he wrote. He continued, "Nor, in my opinion, to a reasonable degree of medical certainty, did Ms. Ciric's work activities light up her underlying spinal condition by causing the condition to become symptomatic. More likely than not, the degenerative condition of Ms. Ciric's spine became symptomatic and her symptoms progressively worsened due to the natural progression of that condition without regard to her physical work activities." (Ex. B:1)

On April 24, 2017, Dr. Pederson filled out another checklist letter stating that his opinion did not change after watching the Ergonomic Assessment video. (Ex. 5) Dr. Stoken signed the same checklist letter on April 25, 2017. (Ex. 2)

Phil Davis, M.S., provided a vocational review of claimant. (Ex. 3:1) The interview took place on February 3, 2017 and the report was issued on February 16, 2017. (Ex. 3:1)

She has worked primarily in unskilled manual labor positions and has few transferable work skills. (Ex. 3:6) He acknowledged that her past work history should be categorized as primarily light physical demand level. Ex. 3:7) Relying on the May 17, 2016, letter of Dr. Pederson, Mr. Davis would place claimant's ability to work in a limited aspect of the sedentary physical demand category. (Ex. 3:6) Less than ten percent of all jobs listed within the Dictionary of Occupational Titles are within the sedentary classification, and given claimant is further limited because of her physical issues as well as the language and education barriers, only 1 percent of those jobs would be within claimant's skill set. Therefore, he concluded claimant was completely disabled. (Ex. 3:7)

Claimant seeks reimbursement and/or repayment of medical expenses. The itemization is in Exhibit 9. Included in the Medical Bills Index in Exhibit 9 are the costs of Dr. Stoken and Mr. Davis' services. Neither is a medical cost and is therefore disallowed. (Ex. 9) The claimant's medical bills are $14,264.10 notwithstanding the expert witness fees.

Claimant is currently receiving Social Security Disability benefits which were paid beginning September 14, 2016, but date back to June 2016. (Ex. 10)

Currently she believes she cannot work. She is in a great deal of pain and on pain medication daily to treat that.

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 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); Dunlavey 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.

Claimant asserts that as a result of the duties and tasks of her job, she developed chronic back pain and/or she exacerbated an underlying spinal stenosis condition.

In support of her claim, she relies on the expert opinions of Dr. Stoken, Dr. Pederson and Dr. Gupta.

Dr. Kuhnlein and Dr. Igram disagree with the aforementioned experts. Dr. Kuhnlein and Dr. Igram both believe that the claimant's work did not present lumbar stressors sufficient to have contributed to claimant's current chronic pain condition. Instead, her condition is the result of a natural disease process.

Dr. Kuhnlein bases his opinion on a video created by defendants, which showed the various processes claimant was required to conduct in the execution of her job along with his own personal observation. Dr. Igram bases his opinion on the review of the video as well.

Dr. Pederson and Dr. Stoken, in a checklist opinion letter, opined that nothing in the video changed their opinions that claimant's chronic back pain is the result of her work.

In her brief, claimant takes issue with the video. First, she argues that the operator in the video was taller and therefore the reach would be different. The assessment also indicates that she worked with another employee whereas claimant testified that she worked alone. The brief also took issue that the RAS machine depicted in the video was not the same as the one claimant used. However, in claimant's testimony, she stated the only difference was the position of the sensors and that the older machine required her to lean closer rather than farther away. She also acknowledged that three employees worked in this area. (Transcript pp. 50-51)

During her cross examination and in follow up on redirect, claimant did not identify major deviations from the way she performed her job and the way in which the job was performed in the video. Having viewed the video and reviewed the testimony, it is found that Dr. Kuhnlein's conclusions are the most well-reasoned.

Dr. Stoken, for example, states that the claimant's chronic back pain stems from years' long work trauma, but fails to identify what the trauma is. Was it standing or bending or reaching or twisting or from a fall? The claimant wrote that she stood for over 19 years, but the video, observations of Dr. Kuhnlein, and even the testimony of the claimant contradicted that. Claimant's job required regular movement as she proceeded from one task to another throughout the day. Further, she was not standing on concrete ground but had a thin, foamy cushion under her feet that was replaced when it wore out.

Dr. Pederson's conclusions were similarly vague, perhaps in part because they were in the form of a checklist. Throughout his medical records, he did not identify claimant's condition as work related. In fact, when he filled out the disability worksheets, he identified the condition as not work-related.

The most consistent and thoughtful opinion comes from Dr. Kuhnlein. Therefore, it is found that claimant's chronic back pain is not work related.

The remaining issues are rendered moot by this finding.

Claimant requests the assessment of costs. Costs are awarded at the discretion of the agency. Given that the finding is for the defendants, no costs are awarded to the claimant.

ORDER

THEREFORE IT IS ORDERED,

Claimant shall take nothing.

Each party shall be responsible for their own costs.

Signed and filed this 6th day of November, 2017.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JGL/sam

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.