BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRIAN WEIMERSKIRCH, Claimant, vs. PROGRESSIVE PROCESSING, LLC, Self-Insured Employer, Defendant.	File No. 1655936.01 **ARBITRATION DECISION** Headnotes: 1803

I. STATEMENT OF THE CASE.

Claimant Brian Weimerskirch seeks workers' compensation benefits from the defendant, self-insured employer Progressive Processing, LLC (Progressive). The undersigned presided over an arbitration hearing on April 12, 2022, held using internet-based video by order of the Commissioner. Weimerskirch participated personally and through attorney Jason D. Neifert. The defendants participated by and through Abigail A. Wenninghoff.

II. ISSUES.

Under rule 876 IAC 4.149(3)(*f*), the parties jointly submitted a hearing report defining the claims, defenses, and issues submitted to the presiding deputy commissioner. The hearing report was approved and entered into the record via an order because it is a correct representation of the disputed issues and stipulations in this case. The parties identified the following disputed issues in the hearing report:

1) Did Weimerskirch sustain an injury to his left shoulder that is a sequela to the right-shoulder injury he sustained on April 5, 2018?

2) Did Weimerskirch give timely notice of the alleged injury?

3) Is Weimerskirch entitled to temporary disability or healing period benefits from October 25, 2019, through August 8, 2020?

4) What is the nature and extent of permanent disability, if any, caused by the alleged injury?

5) What is the commencement date for permanent partial disability benefits, if any are awarded?

6) If Weimerskirch is entitled to workers' compensation, what is the weekly rate?

7) Is Weimerskirch entitled to taxation of the costs against the defendants?

III. STIPULATIONS.

In the hearing report, the parties entered into the following stipulations:

1) An employer-employee relationship existed between Weimerskirch and Progressive at the time of the alleged injury.

2) Weimerskirch sustained a right-shoulder injury on April 5, 2018, which arose out of and in the course of his employment with Progressive.

3) The alleged injury is a cause of temporary disability during a period of recovery.

4) The alleged injury is a cause of permanent disability.

5) At the time of the stipulated injury:

   a) Weimerskirch's gross earnings were seven hundred sixty-three and 00/100 dollars ($763) per week.

   b) Weimerskirch was married.

   c) Weimerskirch was entitled to four exemptions.

6) Prior to hearing, the defendants paid to Weimerskirch:

   a) Fourteen thousand four hundred twenty-eight and 96/100 dollars ($14,428.96) in permanent partial disability benefits relating to his right shoulder injury;

   b) Twenty-one thousand twenty-one and 60/100 dollars ($21,021.60) in permanent partial disability benefits relating to his left shoulder injury; and

   c) Nine thousand one hundred sixty-six and 26/100 ($9,166.26) for short-term disability benefits paid.

With respect to the stipulation in 6(c) above, the parties identified as a disputed issue in the Hearing Report Progressive's entitlement to a credit with respect to healing period benefits for short-term disability benefits paid and indicated during the hearing they might be able to reach an agreement regarding the amount of the credit before post-hearing briefs were due. Hrg. Rpt. § 9(c); Hrg. Tr. pp. 6–8. In Footnote 1 of Claimant's Post-Hearing Brief, claimant's counsel detailed the parties' stipulation for

such a credit. The defendants did not address the credit issue in their Post-Hearing Brief. Therefore, this decision adopts the stipulation as detailed in Claimant's Post-Hearing Brief.

The parties' stipulations in the hearing report are accepted and incorporated into this arbitration decision. The parties are bound by their stipulations. This decision contains no discussion of any factual or legal issues relative to the parties' stipulations except as necessary for clarity with respect to disputed factual and legal issues.

IV. FINDINGS OF FACT.

The evidentiary record in this case consists of the following:

- Joint Exhibits (Jt. Ex.) 1 through 7;
- Claimant's Exhibits (Cl. Ex.) 1 through 11;
- Defendants' Exhibits (Def. Ex.) A through G; and
- Hearing testimony by Weimerskirch.

After careful consideration of the evidence and the parties' post-hearing briefs, the undersigned enters the following findings of fact.

Weimerskirch was fifty-three years of age at the time of hearing. (Hrg. Tr. p. 13) He dropped out of high school during his junior year. (Cl. Ex. 5, p. 45; Hrg. Tr. p. 14) He later got his GED. (Hrg. Tr. p. 14) Weimerskirch had not obtained a postsecondary degree or certificate as of the time of hearing. (Hrg. Tr. p. 14)

Weimerskirch worked as a groundskeeper at a trailer home park from 2000 to 2004. (Hrg. Tr. pp. 18–19) He did not have any physical problems performing his job duties. (Hrg. Tr. p. 19) Weimerskirch did not sustain a work injury during this employment. (Hrg. Tr. p. 19) He credibly testified that he could return to this job after the work injury to his right shoulder and sequela to his left. (Hrg. Tr. p. 41)

Weimerskirch worked at Eagle Windows and Door as a laborer. (Hrg. Tr. p. 15; Cl. Ex. 5, p. 49) He and a coworker would work together to put units together in order to fulfill orders. (Hrg. Tr. pp. 15–16) The units were different sizes with different weights. (Hrg. Tr. p. 16) Weimerskirch could not recall the weights. (Hrg. Tr. p. 16) He testified he could not return to this work because it is too physically demanding due to the lifting it involved. (Hrg. Tr. p. 41)

At Eagle Windows and Door, Weimerskirch changed jobs to cutting jams. (Hrg. Tr. p. 17) He had to carry materials that weighed as much as fifty or sixty pounds in this job. (Hrg. Tr. p. 17) Nonetheless, he testified he could return to this job. (Hrg. Tr. p. 42) Weimerskirch did not sustain any work injuries during his time at Eagle Window and Door. (Hrg. Tr. p. 18)

Progressive hired Weimerskirch in 2010 after he passed a preemployment physical. (Hrg. Tr. pp. 19–20) He was a laborer, first as a utility, which meant he filled in for absent workers on the fill line. (Hrg. Tr. p. 20) Weimerskirch worked in multiple rooms on the fill line and had to lift as much as fifty-five pounds as part of his job duties. (Hrg. Tr. pp. 20–25)

On April 5, 2018, Progressive assigned Weimerskirch to help a coworker break apart frozen meat crumbles with a fork. (Hrg. Tr. pp. 25–26) While using the fork in an up-and-down motion, he felt pain in his right shoulder. (Hrg. Tr. p. 26) Weimerskirch reported his injury and Progressive provided care. (Hrg. Tr. p. 26; Jt. Ex. 3)

Weimerskirch underwent conservative care at Finley Occupational Health. (Jt. Ex. 3) After conservative care failed, Finley referred him to an orthopedic specialist. (Jt. Ex. 3, p. 30) After magnetic resonance imaging (MRI) of Weimerskirch's right shoulder showed a high-grade partial-thickness tear of the supraspinatus, Robert Bartelt, M.D., recommended right shoulder arthroscopy and open rotator cuff repair. (Jt. Ex. 4, pp. 31–32) Dr. Bartelt performed the surgery on October 17, 2018. (Jt. Ex. 4, p. 33)

Weimerskirch missed some work following the surgery. (Jt. Ex. 4, p. 34) Dr. Bartelt released him to return to work with the restrictions of no lifting more than two pounds with his right arm, effective January 2, 2019. (Jt. Ex. 4, p. 35; Hrg. Tr. p. 27) Progressive provided work within them. (Hrg. Tr. pp. 27–28)

On January 16, 2019, Weimerskirch was working for Progressive with Dr. Bartelt's lifting restriction in place. (Hrg. Tr. p. 28) Progressive tasked him with sorting and placing on pallets cans of spam that were shrink-wrapped together in groups of twenty-four. (Hrg. Tr. pp. 28–29) Because Weimerskirch could not use his right arm, he was using his left arm to move the cases of spam. (Hrg. Tr. pp. 28–29) He credibly testified he would have used both arms to perform the task had he not been under doctor-prescribed work restrictions following the surgery to repair his right shoulder necessitated by the April 5, 2018 work injury. (Hrg. Tr. p. 29)

For Weimerskirch to handle the packs of Spam without using his right arm, he "tipped it up on end, put [his] four fingers on the bottom and put [his] thumb in between the cans on the very bottom tote in order to lift it up off the pallet." (Hrg. Tr. p. 28; Jt. Ex. 3, p. 39) Weimerskirch felt an onset of excruciating pain in his left shoulder when he went to pick up a case of Spam and was subsequently unable to move his left arm. (Hrg. Tr. pp. 29–30; Jt. Ex. 3, p. 39) He reported the injury and Progressive provided care through a plant nurse. (Hrg. Tr. p. 30) However, Progressive did not initially accept liability for Weimerskirch's left-shoulder injury, so Dr. Bartelt did not provide care concurrently with care for his right shoulder. (Jt. Ex. 3, pp. 39–40)

On March 15, 2019, Dr. Bartelt examined Weimerskirch, noting forward flexion of 160; abduction, 140; external rotation, 80; and internal rotation, 30. (Jt. Ex. 4, p. 37) There is an insufficient basis in the evidence from which to conclude Dr. Bartelt used a goniometer when conducting these measurements. Further, Dr. Bartelt did not measure adduction or extension. (Jt. Ex. 4, p. 37; Jt. Ex. 5, p. 42) He released Weimerskirch to

work without any restrictions relating to his right shoulder injury. (Jt. Ex. 4, pp. 37–38; Jt. Ex. 5, p. 42)

In a letter dated March 15, 2019, Dr. Bartelt opined on permanent disability to the right shoulder thusly:

> We evaluated the patient today. At that point, he was noted to have good function of the shoulder with minor limitations in motion. He noted that he was happy with the improvement in his shoulder. He also noted that he had a new work injury to his left shoulder, which is currently being dealt with and for which he is on restrictions. With respect to the right shoulder injury, we place him at maximal medical improvement as of March 15, 2019. We assign him no permanent work restrictions for his right shoulder. We assign him 7% impairment to the right upper extremity based on motion loss using the AMA Guides to the Evaluation of Permanent Impairment, fifth edition, pages 475 through 479.

(Jt. Ex.5, p. 42)

On June 26, 2019, Weimerskirch returned to Dr. Bartelt, who noted (sic):

> Patient presents with left shoulder pain. He relates this to a work injury from January. He is doing well after right rotator cuff repair. MRI of left shoulder shows a high-grade partial-thickness tear of the rotator cuff. He also has some degenerative changes of the shoulder including degenerative labral tear. We reviewed the symptoms that he has. I think his symptoms are largely attributable to the rotator cuff. He is working full duty. We reviewed the causation of the shoulder problem. I did review records as well as a video of someone performing the job. Based on how the job was performed on the video there is a very little shoulder movement involved. Brian indicates that he was carrying the cases of spam differently with the arm extended from the body. I shared with Brian that rotator cuff tears can happen over time from wear and tear as well as injury. I also shared with him that the job as performed on video would involve very little shoulder movement whatsoever. To address the issue of causation he is always somewhat difficult in the circumstances. I think it is medically possible that his work activities have caused or aggravated the tear. However I think the likelihood of this is probably less than 50%.

(Jt. Ex. 4, p. 41)

On October 10, 2019, Weimerskirch saw David Field, M.D., for the injury. (Hrg. Tr. p. 30; Jt. Ex. 6, pp. 43–44) Dr. Field recommended arthroscopic rotator cuff repair with acromioplasty and bursectomy, which he performed on October 25, 2019. (Jt. Ex. 6, p. 45) Weimerskirch's recovery from left-shoulder surgery did not go well and he experienced ongoing pain and decreased range of motion. (Hrg. Tr. p. 30; Jt. Ex. 6, pp. 47–56)

Because of Weimerskirch's ongoing left-shoulder issues, Dr. Field recommended a second surgery to remove scar tissue and adhesions. (Jt. Ex. 6, p. 57) On June 6, 2020, Dr. Field performed the procedure and Weimerskirch participated in rehabilitation afterward that included physical therapy. (Jt. Ex. 6, pp. 59–63) The surgery and rehabilitation helped improve Weimerskirch's function and reduce his pain. (Jt. Ex. 6, pp. 63–64)

Weimerskirch saw Dr. Fields on July 27, 2020. (Jt. Ex. 6, pp. 63–64) Dr. Fields noted "he has gained full abduction and the pain has diminished considerably." (Jt. Ex. 6, p. 63) "Clinically today he has excellent strength of the external rotations, subscapularis, biceps, and supraspinatus strength is 5/5. He still lacks the last 15-20 degrees of full abduction. Internal rotation is hand to the pocket." (Jt. Ex. 6, p. 63) The evidence does not allow for the finding that Dr. Field used goniometer to measure Weimerskirch's left-shoulder flexion, extension, abduction, adduction, and internal and external rotation. (Jt. Ex. 6, pp. 63–64) Because of Weimerskirch's progress, Dr. Field released him to return to work without restrictions. (Jt. Ex. 6, p. 64) Thus, the evidence establishes Weimerskirch missed work from October 28, 2019, the date of his first surgery with Dr. Fields, through August 8, 2020. (Jt. Ex. 6, pp. 45, 63; Hrg. Tr. pp. 31–33)

After Dr. Field released Weimerskirch to return to full-duty work, Progressive assigned him to the batch room, where he had worked before his right-shoulder injury. (Hrg. Tr. p. 31) Before the right-shoulder injury, Weimerskirch had equipment in his work area known as a Bishman, which is essentially a big table with an airbag under it that helped lift pallets off the ground and spun them to help workers reach product on the pallets. (Hrg. Tr. p. 35–36) After Weimerskirch returned to work in the batch room, this equipment was gone. (Hrg. Tr. p. 35) No longer being able to use a Bishman to help with Weimerskirch's job duties made them more physically demanding because he had to bend or stoop to lift product off pallets. (Hrg. Tr. p. 36)

In March 2021, Weimerskirch quit his job with Progressive to work at Husco. (Hrg. Tr. p. 34) The job at Husco paid less than his job at Progressive and meant he would have lower earnings after the change. One of the motivating factors in Weimerskirch's decision to quit his job at Progressive was the difficulty he had physically performing his job duties after Progressive removed Bishmans, a tool that is effectively a table that raises and lowers to aid in lifting product, from his work station. (Hrg. Tr. pp. 35–37; Ex. A, p. 18)

Husco required Weimerskirch to undergo pre-employment testing as part of the hiring process. (Ex. B, pp. 20–22) He had to show he could lift a crate weighing twenty pounds seven times from floor to waist, lift a crate weighing thirty-five pounds once from floor to waist, carry a thirty-five-pound crate for a distance of eight feet, and push a sled weighing one hundred twenty-five pounds for a distance of thirty feet. (Ex. B, p. 22) Weimerskirch was able to physically perform these activities. (Ex. B, p. 22)

Weimerskirch's job duties at Husco were not as physically demanding as they were at Progressive. (Hrg. Tr. pp. 39–40) Working causes him to experience pain in his shoulders. (Hrg. Tr. pp. 45–47) As a result, Weimerskirch attempts to limit his activities (e.g., lifting above shoulder level) in an effort to limit his pain. (Hrg. Tr. pp. 47) He takes ibuprofen for the pain and ices his shoulders to help reduce it. (Hrg. Tr. p. 48)

Weimerskirch made just under six dollars per hour less at Husco as a starting wage than he was making at Progressive. (Hrg. Tr. pp. 39–40) At the time of hearing, Weimerskirch's hourly wage at Husco was about three dollars less than at Progressive. (Hrg. Tr. p. 40) The evidence establishes Weimerskirch's earnings working at Progressive were higher than his earnings working at Husco.

The defendants contend Weimerskirch lacks credibility because he initially denied hunting and riding a motorcycle in his deposition testimony. (Ex. F, p. 84, Depo. pp. 39–41; Ex. D) While this goes to Weimerskirch's overall credibility, his ability to ride a motorcycle or hunt is not at issue in this case and there is an insufficient basis in the record from which to conclude these activities, to the extent they are described in the evidence, implicate his physical ability in activities of daily living and working, which are assessed under the AMA Guides when determining functional impairment. Overall, Weimerskirch provided credible testimony during the hearing.

Claimant's counsel talked with Dr. Field over the telephone regarding Weimerskirch's injuries and disability. (Cl. Ex. 1, pp. 1–3) He then sent Dr. Field a check-box letter dated May 27, 2021, that summarized Dr. Field's opinions, based on their telephone conversation, in three paragraphs. (Cl. Ex. 1, pp. 1–3) Dr. Field signed after each opinion paragraph, affirming his agreement with it, and dated his signatures May 27, 2021. (Cl. Ex. 1, pp. 2–3)

By adopting the opinions in the check-box letter, Dr. Field indicated he believes Weimerskirch's January 16, 2019 work injury was a contributing factor in necessitating the treatment he provided from October 10, 2019. (Cl. Ex. 1, p. 2) He also affirmed his expert opinion that "it is more likely than not that Mr. Weimerskirch's prior right shoulder injury was a contributing factor in producing his left shoulder injury inasmuch as Mr. Weimerskirch would not have been lifting the cases of meat with only one arm had the right shoulder not been injured and restricted." (Cl. Ex. 1, p. 2) Dr. Field also indicated Weimerskirch reached maximum medical improvement (MMI) from his left-shoulder injury on July 27, 2020, and he did not provide an impairment rating at the time because no one requested one. (Cl. Ex. 1, p. 2)

Claimant's counsel also discussed Weimerskirch's injuries and disability with Dr. Bartelt by telephone. (Cl. Ex. 2, p. 4) He summarized his understanding of Dr. Bartelt's opinions in a check-box letter dated June 22, 2021. (Cl. Ex. 2, pp. 4–6) Dr. Bartelt signed the opinions, indicating his agreement with them and dated his signatures June 25, 2021. (Cl. Ex. 2, pp. 4–5)

Dr. Bartelt clarified his nurse practitioner saw Weimerskirch on February 1, 2019, which is when he described his left-shoulder injury and affirmed he provided no treatment for the left-shoulder injury because he was not authorized to do so. (Cl. Ex. 2, p. 4) Dr. Bartelt also affirmed that prior to Weimerskirch's June 26, 2019 appointment, he was shown video of an individual performing with both hands the job duties Weimerskirch was performing at the time he injured his left shoulder while working for Progressive. (Cl. Ex. 2, p. 5) The video showing performance of the duties in question with both hands, instead of just the left arm as Weimerskirch performed them, "most influenced the opinion [he] gave on that date that [Weimerskirch's] work activities were not more than a 50 percent contributor in producing [Weimerskirch's] left shoulder injury." (Jt. Ex. 2, p. 5)

In the check-box letter, Opinion Paragraph Three states:

> During our conversation, I shared with you that Mr. Weimerskirch was actually performing this duty one-handed. In order to accomplish this, he was tilting the cases of meat to the side, placing them on the floor, and then lifting them upwards using only his left hand to locations that were up to shoulder level. This type of activity would be much more stressful on the shoulder than what you were shown on the video. Assuming that this description of the activities he was performing on the date in question is accurate, you believe his one-handed duties on January 16, 2019 were more than likely a contributing factor in producing his left shoulder rotator cuff tear.

(Cl. Ex. 2, p. 5)

Dr. Bartelt signed this opinion, signifying his agreement with it. (Cl. Ex. 2, p. 5) He also handwrote the additional comment "if he was lifting the cases one handed to shoulder height." (Cl. Ex. 2, p. 5) This reiterated his past and current understanding of the mechanism of injury to the Weimerskirch's left shoulder.

Thus, the weight of the evidence demonstrates someone provided Dr. Bartelt with video of someone moving shrink-wrapped packs of SPAM in a way that was different from how Weimerskirch did so using only his left arm on January 22, 2019. The video caused Dr. Bartelt to have an incorrect understanding of how Weimerskirch injured his left shoulder on January 22, 2019. This mistaken belief underpinned his June 2019 causation opinion. In contrast, the opinion in the check-box letter adopted by Dr. Bartelt is more persuasive as it is based on a more accurate understanding of the mechanism of injury.

Claimant's counsel arranged for Weimerskirch to undergo an IME with David Segal, M.D., J.D., on October 16, 2020. (Cl. Ex. 3) As part of the IME, Dr. Segal also performed a records review. (Cl. Ex. 3, pp. 32–41) Dr. Segal then issued an IME report, dated December 9, 2020, with his findings and opinions. (Cl. Ex. 3)

On the question of causation with respect to Weimerskirch's left-shoulder injury, Dr. Segal opined:

> Were it not for the work-related injury of April 5, 2018, Mr. Weimerskirch would not have needed to work under restrictions in January of 2019. Were it not for the restrictions, Mr. Weimerskirch would not have had the work injury on January 16, 2019, because he was using only his left arm for a two-handed task. The diagnoses listed above for Mr. Weimerskirch's left shoulder as well as the symptoms that continue the need for past and future treatment are directly caused by the work injury of January 16, 2019, which occurred because of the work injury of April 5, 2018.
>
> ****
>
> The awkward and heavy l[ifitng] of the 18-pound packaged cases with only the left arm placed abnormal stressors on the left shoulder. Mr. Weimerskirch demonstrated for me the manner in which he needed to lift those cases (see attached photos), and the stress would have primarily focused on the left shoulder. While there may have been underlying degenerative or repetitive microtrauma, one specific lift using the left arm on January 16, 2019, either caused the left impingement syndrome, distal tear of supraspinatus tendon with full-thickness component and SLAP tear, or caused permanent aggravation of preexisting asymptomatic anatomic conditions including moderate hypertrophic degenerative change in the acromioclavicular joint, glenohumeral degenerative change, and degenerative fraying of the labrum.

(Cl. Ex. 3, pp. 23, 24–25)

The defendants arranged for Weimerskirch to undergo an IME with Robert Broghammer, M.D., on August 16, 2021. (Ex. C, p. 35) Dr. Broghammer performed an in-person examination of Weimerskirch and a records review. (Ex. C, pp. 51) He then issued a report dated August 31, 2021, with opinions on causation and disability. (Ex. C, pp. 35–56)

On the question of what caused Weimerskirch's left-shoulder injury, Dr. Broghammer opined the following question with the following answer:

> *4. Do you find that Mr. Weimerskirch suffered a work-related injury to his left shoulder? If yes, please explain the date of injury, mechanism of injury, and diagnosis.*
>
> Yes, it does appear that based upon review of the medical records, including the MRI that was completed within a couple of months after the alleged injury, that Mr. Weimerskirch did suffer an injury to the left shoulder on or about January 16, 2019. The MRI completed a few months after demonstrated an acute/subacute injury consistent with the timeframe

> that MR. Weimerskirch reports. In addition, there was fluid present on the MRI which is seen in acute and subacute injuries, not chronic injuries. My diagnosis for this would be an aggravation of a more likely than not pre-existing partial rotator cuff tear and degenerative labrum.

(Ex. E, pp. 52–54)

The defendants have not articulated any specific shortcomings with respect to Dr. Segal's records review, examination of Weimerskirch, or his measurements of Weimerskirch's physical ability. Rather, they attack his credibility generally. The defendants have included among their exhibits a settlement agreement In the Matter of the Statement of Charges Against David H. Segal, M.D., Respondent, before the Iowa Board of Medicine (Board). (Ex. E, pp. 68–73)

The Board alleged Dr. Segal engaged in professional incompetency with respect to the use of blood patch to manage postoperative spinal fluid leaks after surgery, his patients experienced excessive infections following neurostimulator placement and he failed to appropriately manage the infections, failed to establish coverage arrangements for his patients when he was absent, and maintained pre-signed prescriptions which were intended to be completed and issued at a later time. (Ex. E, p. 69) Dr. Segal "filed an Answer denying the allegations." (Ex. E, p. 69) He then entered into the settlement agreement with the Board "to resolve the contested charges." (Ex. E, p. 69)

Under the agreement, the Board cited Dr. Segal for the above allegations and warned him that future violations of the law and rules governing the practice of medicine in Iowa may result in further disciplinary action against his medical license. (Ex. E, p. 70) He agreed to pay a civil penalty of five thousand dollars. (Ex. E, p. 70) Dr. Segal also agreed he will not engage in surgery under his Iowa medical license, which is in line with action he had previously taken due to his diagnosis of Parkinsonism. (Ex. E, pp. 70–71)

The agreement states that Dr. Segal "continues to provide non-surgical medical services including, but not limited to, medical consultations, medical records reviews, and independent medical examinations." (Ex. E, p. 70) It also states that while Dr. Segal had voluntarily agreed "he will not engage in the practice of surgery under his Iowa medical license," his "license is otherwise without restriction." (Ex. E, p. 71) Thus, the Board concluded it was appropriate to allow Dr. Segal to maintain his Iowa medical license for the purpose of performing medical consultations, medical records reviews, and independent medical examinations.

The Board has an intimate knowledge of the standards applicable to perform medical services under an Iowa medical license. It deals with myriad complaints against physicians and has expertise in how to address them. With respect to Dr. Segal, the Board voluntarily entered into an agreement that expressly allows him to practice medical records reviews and IMEs under his Iowa medical license. The undersigned accepts the Board's conclusion, as memorialized in the agreement, that Dr. Segal is

qualified to perform these activities as a practicing physician under the standards that apply to practicing physicians in Iowa.

Further, in an affidavit, Dr. Segal asserts he still denies the charges against him and entered into the settlement agreement with the Board because he could not afford the litigation that would be required to fight the charges leveled against him. (Cl. Ex. 4, pp. 42–43) The agreement contains no express admission of negligence or wrongdoing by Dr. Segal. The evidentiary record is insufficient from which to conclude Dr. Segal has committed malpractice that undermines the credibility of the opinions he expressed in the IME report in this case.

For the above reasons, the undersigned finds that the agreement between the Board and Dr. Segal does not undermine Dr. Segal's credibility in a way that per se disqualifies him from providing expert opinions in a workers' compensation case before the agency, which typically involves the performance of medical records reviews and IMEs. The Board has deemed Dr. Segal capable of being a practicing physician in Iowa so long as he does not perform surgery, which he voluntarily gave up in May 2016 because of his Parkinsonism diagnosis. It is therefore appropriate to assess the credibility of Dr. Segal's opinions against the rest of the evidentiary records in the case.

The evidentiary record in this case also includes a decision, Matter of Segal, 2014 NY Slip Op 08591 (App. Div., Dec. 9, 2014), from disciplinary proceedings instituted by the Departmental Disciplinary Committee of the First Judicial Department in the State of New York. (Ex. E, pp. 64–67) The defendants contend this shows Dr. Segal was a practicing attorney in New York who had his law license suspended multiple times. (Def. Brief, p. 3) The defendants posit it was Dr. Segal having his law license suspended in New York in 2014 that motivated him to move to Iowa and become a practicing neurosurgeon. (Def. Brief, p. 3)

The record in this case shows Dr. Segal was continually in practice as a doctor from 1997 (when he completed his residency) to 2016 (when he voluntarily stopped performing surgery because of his Parkinsonism) and that he moved to Iowa in 2009 to be closer to his wife's family, who are from Center Point. (Cl. Ex. 4, p. 42) After Dr. Segal stopped his clinical practice, he attended the University of Iowa College of Law and received his J.D. degree in May 2019. (Cl. Ex. 4, p. 42) He worked for a law firm in Nevada in 2019 and 2020 while also performing IMEs and writing expert reports. (Cl. Ex. 4, p. 43) Further, the attorney disciplined in New York was almost seventy years of age in 2014 and Dr. Segal was fifty-three years of age in 2020. (Ex. E, p. 65; Cl. Ex. 4, p. 42) There is an insufficient basis in the record from which to conclude the nearly 70-year-old Attorney Segal disciplined in New York in 2014 is the Dr. Segal who performed an IME of Weimerskirch in this case and did not obtain his JD degree until 2019.

In this case, Dr. Segal performed a records review and examination of Weimerskirch before issuing a detailed report. His opinion on causation is in line with those of Weimerskirch's treating physicians, Dr. Bartelt and Dr. Field. Their reasoning is compelling and persuasive. Moreover, Dr. Broghammer's opinion on causation does not call the opinions of Weimerskirch's treating physicians and Dr. Segal into question. Dr.

Broghammer opined he believed Weimerskirch's performance of work activities on January 16, 2019. Thus, Dr. Broghammer does not directly address the question of whether Weimerskirch's left-shoulder injury of January 16, 2019, is a sequela to his initial right-shoulder injury. The weight of the evidence in this case establishes Weimerskirch's left-shoulder injury would not have occurred but for his right-shoulder injury and the resulting surgery and work restrictions, which required him to perform job duties using only his left arm.

Chapter 16 of the AMA Guides addresses the upper extremities. AMA Guides, p. 433. Section 16.4i sets forth the framework for assessing shoulder motion impairment. Id. at p. 474. The process requires using a goniometer to measure flexion, extension, abduction, adduction, and internal and external rotation. Id. Under the AMA Guides, "The shoulder has three functional units of motion, each contributing a relative value to its function." Id. Flexion and extension make up one such unit, abduction and adduction another, and internal and external rotation is the third. See id.

The AMA Guides contain pie charts with impairment curves for each functional unit of motion. Id. at 475–79, Figures 16-40, 16-43, 16-46. To determine the impairment of an individual's shoulder, the examining physician must perform and record the actual range-of-motion measurements, then apply the various impairment pie charts in the AMA Guides. Id. at 475. To correctly use Figure 16-40, one must measure both flexion and extension and to correctly use Figure 16-43, one must measure both abduction and adduction. See id. at 475–79. "The upper extremity impairment resulting from abnormal shoulder motion is calculated from the pie charts by *adding* directly the upper extremity impairment values contributed by each motion unit." Id. at 475 (emphasis in original). Failure to measure and include each range-of-motion measurement results in an incomplete assessment of the shoulder's range of motion that makes it impossible to correctly utilize the charts in the AMA Guides for determining the functional impairment of a shoulder. See id. at 475–79.

With respect to Weimerskirch's right shoulder, the record shows Dr. Bartelt did not follow the framework in the AMA Guides when opining on his permanent functional impairment. March 15, 2019, was the date of Dr. Bartelt's final examination of Weimerskirch before opining on functional impairment. (Jt. Ex. 4, pp. 37, 42) During the exam, he recorded forward flexion, abduction, and external and internal rotation; however, the evidence does not show Dr. Bartelt measured Weimerskirch's right-shoulder extension or adduction, as required by the AMA Guides. (See Jt. Ex. 4, p. 37; see also AMA Guides, § 16.4i, p. 474). For these reasons, Dr. Bartelt's opinion on the permanent functional impairment to Weimerskirch's right shoulder is not based on the framework in the AMA Guides. This makes Dr. Bartelt's opinion on the question unpersuasive.

Dr. Broghammer measured: flexion, 115; extension, 36; abduction, 84; adduction, 24; internal rotation, 55; and external rotation, 70. (Ex. C, p. 51) He then cited to the AMA Guides. (Ex. C, p. 52) On the question of permanent disability to Weimerskirch's right shoulder, he then opined:

> It appears that an impairment rating was already completed by Dr. Bartelt and I would agree with his impairment rating of 7% to the right upper extremity. I would not utilize today's measurements as they did not appear to be reliable and were markedly different than those obtained by Dr. Bartelt in 2019. This could be due to lack of effort, intentional misrepresentation, or possibly other intervening factors which have occurred to further compromise the range of motion of the right shoulder.

(Ex. C, p. 52)

The AMA Guides expressly require an examining physician to measure an individual's flexion, extension, abduction, adduction, internal rotation, and external rotation using a goniometer. As found above, there is insufficient evidence in the record to establish Dr. Bartelt used a goniometer during the 2019 examination. Further, the record shows he did not measure extension or adduction, which means even if he did use a goniometer, he did not have all of the measurements necessary to assess functional impairment of Weimerskirch's right shoulder under the AMA Guides.

Dr. Broghammer does not acknowledge or discuss Dr. Bartelt's failure to use measurements of Weimerskirch's right-shoulder extension and adduction. Instead, he offered potential explanations for the difference between the measurements by Dr. Bartelt and the ones he conducted during his examination of Weimerskirch. There is an insufficient basis in the evidence from which to conclude any of the suppositions Dr. Broghammer volunteered in his report are anything more than possibilities. Rather, the evidence shows it is most likely that Dr. Bartelt's impairment rating is off base because he did not measure or consider extension or adduction as required by the AMA Guides. In adopting Dr. Bartelt's impairment rating, Dr. Broghammer adopted an impairment rating reached without following the AMA Guides. Therefore, Dr. Broghammer's opinion on Weimerskirch's right-shoulder impairment is not credible.

Dr. Field did not opine on Weimerskirch's permanent functional impairment to the left shoulder. Dr. Broghammer addressed the question of permanent disability to the left shoulder as follows:

> It should be noted that like the right shoulder, the left shoulder range of motion was markedly diminished possibly due to lack of effort, secondary gain or other intervening factors. In fact, the range of motion measurements completed on today's evaluation were even worse than those of Dr. Segal. I therefore would opine that the range of motion measurements are not reliable particularly when the worker was noted to have lacked only 15-20 [degrees] of motion when last seen by Dr. Field in July 2020. Furthermore, in my medical opinion, the 60 [degrees] of internal rotation demonstrated on the left is not consistent with the other significantly limited range of motion measurements.

> Taking all of this into consideration, I would therefore arbitrarily assign a 10% left upper extremity impairment for the limited motion of the left shoulder and surgery. It is clear based on the medical records that the worker did have some increased difficulty with the left shoulder after surgery with some ongoing stiffness which was diagnosed as adhesive capsulitis by Dr. Field. This markedly improved by the July 2020 timeframe and the worker was released by Dr. Field. Given the increased difficulty in my medical opinion it is appropriate to have a slightly higher impairment to the left upper extremity than to the right.

(Ex. C, p. 53)

As found above, there is no indication Dr. Field used a goniometer to conduct measurements of Weimerskirch's right-shoulder range of motion. While Dr. Field made observations about Weimerskirch's range of motion, he did not record any measurements of flexion, extension, abduction, adduction, external rotation, or internal rotation. The lack of measurements make Dr. Broghammer's conclusion that Weimerskirch's range of motion is without a baseline established by a complete set of measurements using a goniometer, Dr. Broghammer's opinion that Weimerskirch's range of motion is "markedly diminished possibly due to lack of effort, secondary gain or other intervening factors" is unpersuasive. As is his "arbitrarily assign[ed]" ten percent impairment rating.

Dr. Segal measured Weimerskirch's flexion, extension, abduction, adduction, and internal and external rotation for both shoulders. (Cl. Ex. 3, p. 26) He documented these measurements in his IME report. (Cl. Ex. 3, p. 26) Dr. Segal then used Figures 16-40, 16-43, and 16-46 in the AMA Guides to determine Weimerskirch had a functional impairment based on range of motion to his right shoulder of eleven percent (seven percent to the whole person, using Table 16-3) and to his left shoulder of sixteen percent (ten percent to the whole body, using Table 16-3). (Cl. Ex. 3, p. 26) Using the Combined Values Chart on pages 604 and 605, they equal a whole person functional impairment of sixteen percent.

Dr. Segal also found Weimerskirch had weakness in his left shoulder on examination that was independent of pain. (Cl. Ex. 3, p. 26) Dr. Segal followed page 507 of the AMA Guides and used Table 16-35 on page 510 to assign impairment for weakness. (Cl. Ex. 3, p. 26) He concluded Weimerskirch had an eighteen percent impairment to his left shoulder and eight percent to his right. (Cl. Ex. 3, p. 26)

The AMA Guides allow for an examining physician to add to an individual's impairment level for loss of strength, "[i]n rare cases, if the examiner believes the individual's loss of strength represents an impairing factor that has not been considered adequately by other methods in the *Guides*." AMA Guides, § 16.8a, p. 508. They further provide (sic), "Decreased strength *cannot* be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts (eg, thumb amputation) that prevent effective application of maximal force in the region being evaluated." Id. (emphasis in original).

As found above, Weimerskirch has a functional impairment in each shoulder based on decreased range of motion under the AMA Guides. As discussed below, Weimerskirch continued to experience ongoing pain in his shoulders at the time of hearing. For these reasons, it is inappropriate under section 16.8 of the AMA Guides to give Weimerskirch any impairment rating for loss of strength and Dr. Segal's impairment rating for loss of strength in both shoulders is rejected.

Further, section 16.8c states with respect to manual muscle testing of shoulder strength, "Results of strength testing should be reproducible on different occasions or by two or more trained observers. Id. at p. 509. The evidence shows Dr. Segal examined Weimerskirch and tested his strength on one occasion and that no other trained observers tested his strength. This reinforces the finding that Dr. Segal's impairment rating based on loss of strength is unpersuasive because it was made in contradiction to the criteria and process set forth in the AMA Guides.

On Weimerskirch's pain, Dr. Segal cited to Section 18.3 of the AMA Guides, which deals with pain, to note the organ and body system impairment does not adequately address impairment when there is excess pain and the individual has a medical condition verified by objective means that causes pain. (Cl. Ex. 3, p. 26) He then opined:

> For Mr. Weimerskirch, the operation does appear to have been successful in relieving some symptomatology, which does make it a successful operation; however, there is residual symptomatology. Pain in the right shoulder reaches 6/10 daily with certain routine positions and activities. Lifting overhead or using force overhead increases his right shoulder pain the most. Pain in the left shoulder averages 5–6/10 at work and reaches 10/10 daily with certain routine positions and activities. Lifting overhead or using force overhead increases his left shoulder pain the most. This pain with lifting is not accounted for or addressed in the range of motion or motor weakness measurements.
>
> Therefore, Mr. Weimerskirch fits the criteria for assigning a pain-rated impairment pages on page 573, section 18.3d, Item C, which states: "If the individual appears to have pain-related impairment that has increased the burden of his or condition *slightly*, the examiner may increase the percentage found in A by up to 3%," and "A" is the impairment rating without the inclusion of the pain that increases the burden of the condition even slightly. This is clearly the case when there is normal range of motion after shoulder surgery; however, there is severe pain with lifting. This increased burden is not accounted for in the range of motion measurements, and therefore Mr. Weimerskirch shoulder be given an **additional 3% whole person impairment (WPI) for each shoulder.**

(Cl. Ex. 3, pp. 26–27) (emphasis in original).

The AMA Guides state that its impairment ratings "include allowances for the pain that individuals typically experience when they suffer from various injuries or diseases." § 18.3, p. 570. It therefore follows, "Organ and body system ratings of impairment should be used whenever they adequately capture the actual [activities of daily living (ADL)] deficits that individuals experience." Id. at § 18.3a, p. 570. Under the AMA Guides, Chapter 18 should be used to evaluate an individual's pain-related impairment:

- When there is excess pain in the context of verifiable medical conditions that cause pain;
- When there are well-established pain syndromes without significant, identifiable organ dysfunction to explain the pain, or
- When there are other associated pain syndromes. Id. at 570–71.

Dr. Segal makes the conclusory assertion that Weimerskirch experiences pain that increases "with certain routine positions and activities" and specifically identifies lifting or using force overhead. He does not explain the basis for his conclusion that the range-of-motion impairment rating—which is based on measurements of flexion, extension, adduction, abduction, and internal and external rotation—does not adequately capture Weimerskirch's pain with "routine positions and activities" or exerting force overhead. Therefore, Dr. Segal's opinion with respect to Weimerskirch's impairment caused by pain is unpersuasive and is not adopted.

The evidence establishes it is more likely than not Weimerskirch has sustained permanent functional impairment to his right shoulder of eleven percent to the right upper extremity due to the April 5, 2019 work injury to his right shoulder and of sixteen percent to the left upper extremity because of the sequela to his left shoulder.

With respect to permanent work restrictions, neither Dr. Segal nor Dr. Field assigned Weimerskirch any and Dr. Broghammer adopted their opinions. However, Weimerskirch had been off work for some time when both Dr. Bartelt and Dr. Field released him to return to work full duty. In contrast, Dr. Segal examined Weimerskirch after he had been working full duty for an extended period of time. Dr. Segal noted this in his IME report and that Weimerskirch had been, "working and managing at his current job with compensatory maneuvers that he learned by trial and error." (Cl. Ex. 3, p. 28) Because Weimerskirch was able to get by at his job, Dr. Segal assigned the following permanent work restrictions that would apply if he needs to look for a new job:

- Occasionally lifting to waist height 31 to 50 pounds;
- Occasionally lifting to shoulder height 26 to 40 pounds;
- As tolerated repetitive lifting within the weight limits;
- Occasionally lifting overhead 11 to 20 pounds;
- No repetitive lifting overhead;
- Occasionally carrying 26 to 40 pounds;
- Occasionally pushing and pulling with 21 to 40 pounds of force;

- Rarely pushing and pulling with greater than 40 pounds of force;
- No using torque-type tools or screw guns one handed with his left hand
- Rarely use forceful grip; and
- Take breaks as needed. (Cl. Ex. 3, p. 28)

Under these restrictions, "occasionally" means between zero and two and one-half hours per day or zero to one-third of the workday. (Cl. Ex. 3, p. 29)

Thus, Dr. Segal's assigned work restrictions are in line with what the results of the pre-employment functional testing Husco required Weimerskirch to undergo before starting employment with the company. Dr. Segal's assessment is also in line with Weimerskirch's credible hearing testimony regarding his ongoing symptoms. For these reasons, Dr. Segal's work restrictions are most persuasive and are adopted.

V. CONCLUSIONS OF LAW.

In 2017, the Iowa legislature amended the Iowa Workers' Compensation Act. See 2017 Iowa Acts, ch. 23. The 2017 amendments apply to cases in which the date of an alleged injury is on or after July 1, 2017. Id. at § 24(1); see also Iowa Code § 3.7(1). Because the injury at issue in this case occurred after July 1, 2017, the Iowa Workers' Compensation Act, as amended in 2017, applies. Smidt v. JKB Restaurants, LC, File No. 5067766 (App. Dec. 11, 2020).

A. Sequela.

An employer covered by the Iowa Workers' Compensation Act must "provide, secure, and pay compensation according to the provisions of this chapter for any and all personal injuries sustained by an employee arising out of and in the course of the employment, and in such cases, the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury." Iowa Code § 85.3(1). "[W]here an accident occurs to an employee in the usual course of his employment, the employer is liable for all consequences that naturally and proximately flow from the accident." Oldham v. Scofield & Welch, 266 N.W. 480, 482, opinion modified on denial of reh'g, 222 Iowa 764, 269 N.W. 925 (Iowa 1936). This includes, but is not limited to, a mental health condition caused by a work injury. See Coghlan v. Quinn Wire & Iron Works, 164 N.W.2d 848, 852–53 (Iowa 1969).

"[T]he burden of proof is on the claimant to prove some employment incident or activity was a proximate cause of the health impairment on which he bases his claim." Anderson v. Oscar Mayer & Co., 217 N.W.2d 531, 535 (Iowa 1974). "[A] possibility is insufficient; a probability is necessary." Id. The claimant must prove causation by a preponderance of the evidence. See, e.g., St. Luke's Hosp. v. Gray, 604 N.W.2d 646, 652 (Iowa 2000) (citing Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 150 (Iowa 1996)).

"'Whether an injury has a direct causal connection with the employment or arose independently thereof is essentially within the domain of expert testimony.'" IBP, Inc. v. Harpole, 621 N.W.2d 410, (Iowa 2001) (quoting Dunlavey v. Econ. Fire & Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995)). The agency, "as the fact finder, determines the weight to be given to any expert testimony." Sherman v. Pella Corp., 576 N.W.2d 312, 321 (Iowa 1998). The agency must weigh the evidence in a case and accept or reject an expert opinion based on the entire record. Dunlavey, 526 N.W.2d at 853. The agency may accept or reject an expert opinion in whole or in part. Sherman, 576 N.W.2d at 321.

Here, the parties agree Weimerskirch sustained a work injury to his right shoulder on April 5, 2018. The evidence shows the injury required surgery and work restrictions that limited Weimerskirch's use of his right arm. On January 22, 2019, Weimerskirch was lifting shrink-wrapped packages of SPAM using only his left arm in accordance with the work restrictions limiting the use of his right arm that were necessitated by the April 5, 2018 work injury and surgery to repair it when he injured his left shoulder.

Weimerskirch's treating physicians, Dr. Bartelt and Dr. Field opined his right-shoulder injury, resultant surgery, and the work restrictions they necessitated were a factor in causing his left-shoulder injury. Dr. Segal opined similarly. Dr. Broghammer did not address the question of what, if any, causal link exists between Weimerskirch's initial right-shoulder injury and left-shoulder injury. No expert in this case expressly opined Weimerskirch's right-shoulder injury was not a substantial factor in causing his subsequent left-shoulder injury.

As found above, the weight of the evidence establishes a substantial factor in causing Weimerskirch's left-shoulder injury on January 22, 2019, was his right-shoulder injury and the work restrictions prescribed because of it. Weimerskirch has met his burden of proof. The evidence establishes his left-shoulder injury is a sequela to his right-shoulder injury.

B. Healing Period Benefits.

Temporary benefits compensate an employee for lost wages until the employee is able to return to work. Mannes v. Fleetguard, Travelers Ins. Co., 770 N.W.2d 826, 830 (Iowa 2009). An injured employee is entitled to temporary total disability (TTD) or healing period (HP) benefits when the employee is unable to work during a period of convalescence caused by a work injury. Iowa Code §§ 85.33(1), 85.34(1). Whether an employee's injury causes a permanent disability dictates whether the employee's temporary benefits are considered TTD or HP. Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 200 (Iowa 2010) (citing Clark v. Vicorp Rests., Inc., 696 N.W.2d 596, 604–05 (Iowa 2005)). If there is a permanent disability, the benefits are considered HP; if not, they are TTD. See id.

As discussed below, Weimerskirch has sustained a permanent disability. Consequently, Weimerskirch's benefits for time off work are considered healing period benefits under the Iowa Workers' Compensation Act. Under Iowa Code section 85.34(1):

> If an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of this section, the employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

The evidence shows Weimerskirch was off work from October 28, 2019, the date of his first surgery with Dr. Field, through August 8, 2020, when Dr. Field released him to return to work full duty and did so. Weimerskirch's return to work is the first of the alternative events identified in the statute that ends his entitlement to HP benefits. Therefore, he is entitled to forty weeks and five days (40.71 weeks) of healing period benefits at the weekly rate of five hundred fifteen and 32/100 dollars ($515.32), subject to the credit for short-term disability benefits.

C. Bifurcated Litigation Process.

After reaching MMI, Weimerskirch returned to work with Progressive earning the same, and later more, than what he was earning when he was injured on April 5, 2018. He then voluntarily quit his job. With Weimerskirch's new employer, his earnings were less than they were at Progressive.

Workers' compensation is "a creature of statute." Darrow v. Quaker Oats Co., 570 N.W.2d 649, 652 (Iowa 1997). This means an injured employee's "right to workers' compensation is purely statutory." Downs v. A & H Const., Ltd., 481 N.W.2d 520, 527 (Iowa 1992). And "it is the legislature's prerogative to fix the conditions under which the act's benefits may be obtained." Darrow, 570 N.W.2d at 652.

The "broad purpose of workers' compensation" is "to award compensation (apart from medical benefits), not for the injury itself, but the disability produced by a physical injury." Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, (Iowa 2010). Under Iowa Code section 85.34(2), the method of compensating permanent partial disability caused by a work injury is generally based on whether the injury is to a body part itemized in the statutory schedule. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404, 407 (Iowa 1994). "Scheduled permanent partial disabilities . . . are 'arbitrarily' compensable according to the classifications of section 85.34(2) without regard to loss of earning capacity." Id. (quoting Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 14–15 (Iowa 1993)).

Before 2017, permanent partial disability to an unscheduled body part caused by a work injury was "compensated by the industrial disability method which takes into account the loss of earning capacity." Id. (citing Mortimer, 502 N.W.2d at 14–15); see also Mannes v. Fleetguard, Inc., 770 N.W.2d 826, 830 (Iowa 2009) (quoting Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824, 831 (Iowa 1992)). An industrial disability analysis was used regardless of whether the injured employee returned to work with the defendant-employer or the level of earnings at the time of hearing relative to the date of injury. Mannes v. Fleetguard, Inc., 770 N.W.2d 826, 830 (Iowa 2009) (quoting Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824, 831 (Iowa 1992)); see also Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 158 (Iowa 1996); Arrow-Acme Corp. v. Bellamy, 500 N.W.2d 92, 95 (Iowa Ct. App. 1993). With the 2017 amendments, the legislature carved out an exception to this longstanding general rule and created a mandatory bifurcated litigation process on the issue of permanent disability under certain circumstances. See 2017 Iowa Acts ch. 23, § 8 (now codified at Iowa Code § 85.34(2)(*v*)).

The Iowa Workers' Compensation Act now articulates an exception and the circumstances triggering the bifurcated litigation process as follows:

> If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity. Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee's earning capacity caused by the employee's permanent partial disability.

Iowa Code § 85.34(2)(*v*).

The question presented here is whether section 85.34(2)(*v*) requires Weimerskirch to follow the bifurcated litigation process to obtain a determination of what, if any, industrial disability he has sustained due to his unscheduled work injury. Weimerskirch believes it does not. The defendants did not address how the statute applies in this case.

While the legislature has not empowered the agency to interpret the Iowa Workers' Compensation Act, the agency necessarily must do so when performing its quasi-judicial function as the tribunal responsible for providing the exclusive remedy in contested case proceedings under the Act. See Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 518–19 (Iowa 2012); see also Iowa Ins. Inst. v. Core Group of Iowa Ass'n

for Justice, 867 N.W.2d 58, 68 (Iowa 2015); Martinez v. Pavlich, Inc., File No. 5063900., (App. July 30, 2020) . To determine Weimerskirch's entitlement to PPD benefits at present, it is necessary to first determine whether he must use the bifurcated litigation process under the statute given the timing of him quitting his job at Progressive. Therefore, this decision must interpret section 85.34(2)(*v*).

One sentence of section 85.34(2)(*v*), read alone, states that an injured employee is entitled only to PPD benefits for functional impairment if the employee "returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury." Iowa Code § 85.34(2)(*v*). The sentence contains no express requirement that the injured worker remain employed with the defendant-employer after returning to work at the requisite earning level. But the analysis of this statutory provision does not end with the punctuation at the end of this individual sentence.

Iowa statutes are interpreted as a whole, not in part. See, e.g., Doe v. State, 943 N.W.2d 608, 610 (Iowa 2020). When interpreting the text of a provision in the Iowa Code, we must "take into consideration the language's relationship to other provisions of the same statute and other provisions of related statutes. Id. Taking the broader view of the statutory scheme at issue here, the next sentence in section 85.34(2)(*v*) states an injured employee who "returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer" may seek reopening of the agency award or an agreement for settlement on the question of permanent disability.

The analysis necessarily includes more than just the text of section 85.34(2)(*v*) as the agency's review-reopening process under Iowa Code section 86.14(2) is also implicated. Review-reopening is a process by which a determination of workers' compensation is revisited due to a change in the claimant's condition. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 391–95 (Iowa 2009) Thus, the legislature has mandated a bifurcated litigation process on the question of permanent disability using the agency's review-reopening process after the occurrence of the events identified in section 85.34(2)(*v*) because the defendant-employer's discharge of the claimant *after* the agency awards benefits for permanent functional impairment or approves a settlement on that question creates a change in condition that triggers reopening of the determination of permanent disability for application of the traditional industrial disability analysis. See Kohlhaas, 777 N.W.2d at 391–95.

Moreover, the Commissioner considered section 85.34(2)(*v*)'s bifurcated litigation requirement in Martinez v. Pavlich, Inc., File No. 5063900 (App. July 30, 2020). In Martinez, the claimant voluntarily quit employment with the defendant-employer and accepted a position with a different employer at higher pay. Id. The Commissioner opined:

> [W]hen the two new provisions . . . are read together, as they are set forth in the statute, it appears the legislature intended to address *only the*

> *scenario* in which a claimant initially returns to work with the defendant-employer or is offered work by the defendant-employer at the same or greater earnings but is later terminated by the defendant-employer.

Id. (emphasis added). Put otherwise, the statute requires a bifurcated litigation process on permanent disability only under the circumstances its text expressly identifies.

Reinforcing the Commissioner's reading is the traditional statutory construction principle of *expressio unius est exclusio alterious*, which holds that legislative intent is expressed by exclusion and inclusion alike with the express mention of one thing implying the exclusion of another. Kucera v. Baldazo, 745 N.W.2d 481, 487 (Iowa 2008). In section 85.34(2)(*v*), the text expressly requires a bifurcated litigation process only when:

1) The claimant returns to work or is offered work with the defendant-employer after the work injury at the same or higher earnings level as at the time of the injury;

2) The agency makes a determination of permanent functional impairment or approves a settlement on that question; and

3) The defendant-employer later discharges the injured employee.

The statute contains no mention of any other circumstances that mandate a bifurcated litigation process to determine the extent of permanent disability. The legislature could have included such language in the statute but did not. This establishes that the requirement for a bifurcated ligation process only applies when the defendant-employer discharges the claimant after the agency issues an award or approves the parties' agreement for settlement on the question of permanent disability based on the functional impairment caused by the work injury.

Relatedly, the Iowa Workers' Compensation Act "is not to be expanded by reading something into it that is not there." Downs, 481 N.W.2d at 527 (citing Cedar Rapids Cmty. Sch. Dist. v. Cady, 278 N.W.2d 298 (Iowa 1979)). Because the statutory text does not include an express requirement for a bifurcated litigation process when the employment relationship between the claimant and defendant-employer ends before hearing, it would be erroneous to expand the circumstances under which section 85.34(2)(*v*) requires such a process by reading something into its text that is not there. Compounding the legal error that such an interpretation would constitute is the fact it would undermine an important purpose of the Iowa Workers' Compensation Act.

In Zomer v. West River Farms, Inc., 666 N.W.2d 130 (Iowa 2003), the Iowa Supreme Court considered the Commissioner's authority to reform a workers' compensation insurance policy. Even though the court's opinion construed the scope of the Commissioner's authority under section 85.21, its reasoning applies here. Id. at 132–33. The court drew on longstanding precedent as the foundation of its holding:

> The fundamental reason for the enactment of this legislation is to avoid litigation, lessen the expense incident thereto, minimize appeals, and afford an efficient and speedy tribunal to determine and award compensation under the terms of this act.
>
> "It was the purpose of the legislature to create a tribunal to do rough justice—speedy, summary, informal, untechnical. With this scheme of the legislature we must not interfere; for, if we trench in the slightest degree upon the prerogatives of the commission, one encroachment will breed another, until finally simplicity will give way to complexity, and informality to technicality."

Id. at 133 (quoting Flint v. City of Eldon, 183 N.W. 344, 345 (1921) (citation omitted)).

The court concluded a "bifurcated litigation process" that is drawn out "is a far cry from the efficient and speedy remedy envisioned by the general assembly when it adopted the workers' compensation act." Id. at 133–34. The court held it would be erroneous "to read into the statute a limitation on the [C]ommissioner's authority to decide claims for compensation, particularly when to do so would defeat one of the primary purposes of the statute—the provision of a prompt and adequate remedy." Id. Applying Zomer here, expanding the mandatory bifurcated litigation process under section 85.34(2)(*v*) requires reading something into the statutory text that is not there and would result in a more drawn-out process that would hinder the agency's ability to provide a prompt and adequate remedy, which would defeat one of the primary purposes of the Iowa Workers' Compensation Act.

Lastly, reading the requirement for a bifurcated litigation process to apply only under the circumstances expressly stated in section 85.34(2)(*v*) is also consistent with Iowa Supreme Court precedent requiring the agency and courts to "apply the workers' compensation statute broadly and liberally in keeping with its humanitarian objective: the benefit of the worker and the worker's dependents." Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 257 (Iowa 2010). Applying the statute as written allows a claimant to receive a final determination on permanent disability when the issue is ripe for determination. Getting such a determination via a single contested case proceeding before the agency means the claimant will receive payment of all PPD benefits to which the claimant is legally entitled sooner in time and without having to go through litigation of a second contested cast proceeding. Therefore, the result of adhering to the statutory text is beneficial to the injured worker and the worker's dependents.

Circling back to the agency appeal decision in Martinez, the Commissioner specifically considered whether the statute mandates a bifurcated litigation process when the claimant quits employment with the defendant-employer and then gets a job with a different employer with higher earnings. File No. 5063900 (App. July 30, 2020). The Commissioner held reading the statute to require a bifurcated litigation process when the claimant quits employment with the defendant-employer and obtains a new job with higher earnings before hearing would cause absurd results:

> For example, [such an] interpretation would seemingly "reset" claimant's entitlement to benefits and limit them to functional loss any time a claimant returns to work or is offered work at the same or greater wages by any employer. This would make it virtually impossible for defendants to know when to volunteer benefits using the industrial disability method. Furthermore, using claimant's interpretation, a claimant entitled to benefits under subsection 85.34(2)(v) (2019) might be better off not seeking employment after being terminated by a defendant-employer because he or she would potentially risk entitlement to benefits under the industrial disability analysis should a different employer offer the same or greater earnings than the claimant was receiving at the time of the injury. Certainly the legislature did not intend to discourage claimants from seeking gainful employment after a work injury.

Id. The Commissioner then concluded, "though claimant in this case was earning greater wages at the time of the hearing than he was when he was injured, I conclude his earlier voluntary separation from defendant-employer removed claimant from the functional impairment analysis and triggered his entitlement to benefits using the industrial disability analysis." Id.

On judicial review, the district court disagreed with the Commissioner's interpretation of section 85.34(2)(*v*). See Pavlich Inc. et al v. Martinez, Ruling on Petition for Judicial Review, Case No. CVCV060634 (Iowa D. Ct. Polk Co., Apr. 21, 2022). Nonetheless, the district court affirmed the Commissioner's determination of permanent disability. See id. Thus, the district court's analysis of whether section 85.34(2)(*v*) mandates a bifurcated litigation process when the claimant quits employment with the defendant-employer and obtains a job with higher earnings before the hearing is *obiter dicta* and does not control in this case on the question of whether Weimerskirch must go through the bifurcated litigation process outlined in section 85.34(2)(*v*). See Nixon v. State, 704 N.W.2d 643, 648 n. 5 (Iowa 2005) (citing Boyles v. Cora, 232 Iowa 822, 847, 6 N.W.2d 401, 413 (1942)). As Deputy Grell persuasively concluded, "[U]ntil a definitive interpretation is provided by the Iowa appellate courts, [a presiding deputy is] bound by the precedent of this agency found in Martinez." Dague v. Unisys Corporation, File No. 1645503.02 (Arb., Mar. 28, 2022).

For these reasons, section 85.34(2)(*v*) does not require a bifurcated litigation process on the question of a claimant's permanent disability when the employment relationship between the claimant and defendant-employer ends before the agency hears the case. The requirements identified in the statute that trigger the bifurcated litigation process on permanent disability are not met under these circumstances, which means the agency may determine the extent of industrial disability just as it did before the 2017 amendments. Because Weimerskirch quit his job with Progressive before the hearing in this case, this decision will determine what, if any, industrial disability he sustained because of the work injury.

D. Permanent Disability.

"In this state, the right to workers' compensation is purely statutory." Downs v. A & H Const., Ltd., 481 N.W.2d 520, 527 (Iowa 1992) (citing Caylor v. Employers Mut. Casualty Co., 337 N.W.2d 890, 893 (Iowa App. 1983)). The "broad purpose of workers' compensation" is "to award compensation (apart from medical benefits), not for the injury itself, but the disability produced by a physical injury." Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, (Iowa 2010) (citing 4 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 80.02, at 80–2 (2009)).

The Iowa Workers' Compensation Act "divides permanent partial disability into either a scheduled or unscheduled loss." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993) (citing Iowa Code §§ 85.34(2). Compensation for work injuries to body parts listed in the schedule are limited to functional disability over a number of weeks set by the statutory schedule. Id. Injuries to body parts not included in the statutory list are considered unscheduled and to the body as a whole. Id. Disability caused by such injuries is deemed to the whole body and compensation is based on industrial disability, the impact on the injured worker's earning capacity. Id. Consequently, the maximum amount of compensation to which an injured worker is entitled under the statute can "differ radically" depending on whether the worker's injury is to a scheduled member or the body as a whole. Id.

"'The very purpose of the schedule is to make certain the amount of compensation in the case of specific injuries and to avoid controversies . . . .'" Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404, 407 (Iowa 1994) (quoting Dailey v. Pooley Lumber Co., 10 N.W.2d 569, 571 (Iowa 1943)). "'The schedule brings a windfall to the worker in some cases and gross hardship to the worker in others.'" Id. at 409 (Lavarto, J., concurring specially) (quoting Graves v. Eagle Iron Works, 331 N.W.2d 116, 119–20 (Iowa 1983 (McCormick, J., concurring specially)). Thus, the legislative purpose of the statutorily prescribed schedule is not so much beneficence to the worker, though that sometimes is the result, as cost certainty and limiting controversies resolved by litigation. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181, 188 (Iowa 1980) (citing Cedar Rapids Cmty. Sch. Dist. v. Cady, 278 N.W.2d 298, 299 (Iowa 1979); Wetzel v. Wilson, 276 N.W.2d 410, 411-12 (Iowa 1979); and Hoenig v. Mason & Hanger, Inc., 162 N.W.2d 188, 190 (Iowa 1968)) ("The primary purpose of the workers' compensation statute is to benefit the worker and his or her dependents, insofar as statutory requirements permit.").

Before 2017, the shoulder was not included in the statutory list of scheduled members. See Second Injury Fund v. Nelson, 544 N.W.2d 258, 269 (Iowa 1995) (citing Lauhoff Grain Co. McIntosh, 395 N.W.2d 834, 837–39 (Iowa 1986) and Alm v. Morris Barick Cattle Co., 38 N.W.2d 161, 163 (Iowa 1949)). Instead, shoulder injuries such as the one at issue in this case were considered unscheduled injuries under Iowa law. Alm, 38 N.W.2d at 163; Westling v. Hormel Foods Corp., 810 N.W.2d at 252 (Iowa 2012). Permanent partial disability caused by shoulder injuries that occurred before July 1, 2017, was considered industrial. Id.; Westling, 810 N.W.2d at 252. Compensation

was therefore based on the loss of earning capacity the worker suffered due to the work-related shoulder injury. Id.; Westling, 810 N.W.2d at 252.

In 2017, the legislature enacted a bill that made multiple changes to the statutory framework governing workers' compensation in Iowa. See 2017 Iowa Acts ch. 23. As part of the 2017 amendments, the legislature expanded the schedule by adding the shoulder to the codified list of scheduled members. 2017 Iowa Acts ch. 23, § 7 (now codified at Iowa Code § 85.34(2)(*n*)). Under the statute, as amended, work injuries to the shoulder that occur on or after July 1, 2017, are treated as scheduled member injuries and the award of benefits is consequently limited in the interest of cost certainty and limiting controversies to the injured employee's functional impairment.

Here, Weimerskirch sustained an initial injury to his right shoulder and a sequela injury to his left shoulder. His permanent disability is therefore determined based on his bilateral shoulder injuries. In Carmer v. Nordstrom, Inc., File No. 1656062.01 (App. Dec. 29, 2021), the Commissioner considered which paragraph of section 85.34(2) applies to a bilateral shoulder injury and concluded the "catch-all" provision in section 85.34(2)(*v*) governs and not section 85.34(2)(*n*). Therefore, Weimerskirch must be compensated industrially under the Iowa Workers' Compensation Act for the permanent disability resulting from his bilateral shoulder injuries. See id.; see also Sallis v. City of Waterloo, File No. 1643953.01 (App., Aug. 29, 2022). The factors considered when determining industrial disability are: functional disability, age, education, qualifications, work experience, inability to engage in similar employment, earnings before and after the injury, motivation to work, personal characteristics, and the employer's inability to accommodate the functional limitations. See id.; Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 526 (Iowa 2012); IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 632–33 (Iowa 2000); Ehlinger v. State, 237 N.W.2d 784, 792 (Iowa 1976).

As found above, the weight of the evidence establishes Dr. Segal followed the AMA Guides when opining on the permanent functional impairment Weimerskirch has sustained to his shoulders due to lost range of motion. This makes his opinion most persuasive. The record shows it is more likely than not Weimerskirch has sustained a permanent functional impairment to the whole body of sixteen percent.

The work injury, sequela, and resulting functional impairment also gives rise to the following permanent work restrictions:

- Occasionally lifting to waist height 31 to 50 pounds;
- Occasionally lifting to shoulder height 26 to 40 pounds;
- As tolerated repetitive lifting within the weight limits;
- Occasionally lifting overhead 11 to 20 pounds;
- No repetitive lifting overhead;
- Occasionally carrying 26 to 40 pounds;
- Occasionally pushing and pulling with 21 to 40 pounds of force;
- Rarely pushing and pulling with greater than 40 pounds of force;
- No using torque-type tools or screw guns one handed with his left hand
- Rarely use forceful grip; and

- Take breaks as needed. (Cl. Ex. 3, p. 28)

Following these restrictions would limit Weimerskirch's ability to return to some of the past jobs he has held. While he testified he could physically perform the work cutting lumber at Eagle Window and Door and the maintenance duties at the trailer park, he would be physically unable to perform the duties of one of his jobs at Eagle Window and Door or working in the cook or batch room at Progressive.

Age fifty-three at the time of hearing, Weimerskirch has obtained a GED. He has not earned a postsecondary degree or credential. There is an insufficient basis in the record from which to conclude he is a good candidate to do so. As of the time of hearing, Weimerskirch intended to keep working at Husco, despite his lower earnings there than at Progressive, and there is no indication he plans to retire early.

After careful consideration of these factors, the weight of the evidence establishes Weimerskirch has sustained a thirty-five percent industrial disability from the work injury to his right shoulder and sequela to his left shoulder. He is entitled to one hundred seventy-five (175) weeks of permanent partial disability benefits at the weekly rate of five hundred fifteen and 32/100 dollars ($515.32), subject to the stipulated credit amount for Progressive's previous payment of permanent partial disability benefits.

E. Rate.

The parties stipulated Weimerskirch's gross earnings on the stipulated injury date were gross earnings were seven hundred sixty-three and 00/100 dollars ($763) per week. They also stipulated she was married and entitled to four exemptions at the time. Based on the parties' stipulations, Weimerskirch's workers' compensation rate is five hundred fifteen and 32/100 dollars ($515.32), per week.

F. Costs.

"All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commission." Iowa Code § 86.40. "Fee-shifting statutes using 'all costs' language have been construed 'to limit reimbursement for litigation expenses to those allowed as taxable court costs.'" Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 846 (Iowa 2015) (quoting City of Riverdale v. Diercks, 806 N.W.2d 643, 660 (Iowa 2011)). Statutes and administrative rules providing for recovery of costs are strictly construed. Id. (quoting Hughes v. Burlington N. R.R., 545 N.W.2d 318, 321 (Iowa 1996)).

Rule 876 IAC 4.33 allows the agency to tax "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." Agency rules do not authorize taxation of the cost of a conference call with a treating physician. As an administrative rule that provides for recovery of costs, Rule 876 IAC 4.33 is strictly construed. Young, 867 N.W.2d at 846 (quoting Hughes v. Burlington N. R.R., 545 N.W.2d 318, 321 (Iowa

1996)). Therefore, Weimerskirch is not entitled to taxation against Progressive of the costs associated with doctor conferences.

However, the assessment of costs includes "the reasonable costs of obtaining no more than two doctors' or practitioners' reports." 876 IAC 4.33.

> A "report" is a "formal oral or written presentation of facts or a recommendation for action." Black's Law Dictionary 1492 (10th ed.2014). The word "obtain" is used as a modifier in the rule and means "[t]o bring into one's own possession; to procure, esp[ecially] through effort." Id. at 1247. Thus, the concept of obtaining a report for a hearing is separate from the concept of a physical examination. A "physical examination" is "[a]n examination of a person's body by a medical professional to determine whether the person is healthy, ill, or disabled." Id. at 680. The concept of "obtaining" a report is separate from the process of "obtaining" an examination. Our legislature recognized as much by separately authorizing the commissioner to appoint "a duly qualified, impartial physician to examine the injured employee and make report." Iowa Code § 86.38. A medical report for purposes of a hearing is aligned with a prehearing medical deposition. In the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition.

Young, 867 N.W.2d at 845–46.

Because Weimerskirch prevailed on the questions of permanent disability and entitlement to healing period benefits, the following costs are taxed against the defendants:

- One hundred five and 80/100 ($105.80) for attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions and transcription of the deposition, 876 IAC 4.33(1), 4.33(2);
- Thirteen dollars and 92/100 dollars ($13.92) for the service by certified mail of the original notice and petition, id. at 4.33(3);
- Three hundred dollars ($300.00) for the check-box letter, which is effectively a doctor report, id. at 4.33(6); and
- One hundred dollars ($100.00) for the filing fee to initiate this case, id. at 4.33(7).

VI. ORDER.

Based on the above findings of fact and conclusions of law, it is ordered:

1) The defendants shall pay to Weimerskirch forty and 71/100 (40.71) weeks of healing period benefits at the weekly rate of five hundred fifteen and 32/100 dollars ($515.32).

2) The defendants shall pay to Weimerskirch one hundred seventy-five (175) weeks of permanent partial disability benefits at the rate of five hundred fifteen and 32/100 dollars ($515.32) per week from the stipulated commencement date.

3) The defendants shall pay accrued weekly benefits in a lump sum.

4) The defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

5) The defendants shall be given credit for benefits previously paid for the stipulated amounts of:

    a) Fourteen thousand four hundred twenty-eight and 96/100 dollars ($14,428.96) for permanent partial disability benefits paid relating to his right shoulder;

    b) Twenty-one thousand twenty-one and 60/100 dollars ($21,021.60) for permanent partial disability benefits paid relating to his left shoulder; and

    c) Nine thousand one hundred sixty-six and 26/100 dollars ($9,166.26) for short-term disability benefits paid between October 25, 2019, and August 8, 2020, applied to the healing period benefits to which Weimerskirch is entitled.

6) The defendants shall file subsequent reports of injury as required by Rule 876 IAC 3.1(2).

7) The defendants shall pay to Weimerskirch the following amounts for the following costs:

    a) One hundred five and 80/100 ($105.80) for attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions and transcription of the deposition;

    b) Thirteen dollars and 92/100 dollars ($13.92) for the service by certified mail of the original notice and petition;

    c) Three hundred dollars ($300.00) for the check-box letter, which is effectively a doctor report; and

d) One hundred dollars and 00/100 ($100.00) for the filing fee.

Signed and filed this 21st day of October, 2022.

BEN HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Jason D. Neifert (via WCES)

Abigail A. Wenninghoff (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.