BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARK L. SWANSON,	FILED	
Claimant,	AUG 23 2017	File No. 5055114
vs.	WORKERS COMPENSATION	ARBITRATION
PELLA CORPORATION,		DECISION
Employer, Self-Insured, Defendant.		Head Note Nos.: 1402.30, 1802, 1803, 2501, 2907, 4000.2

STATEMENT OF THE CASE

Claimant, Mark Swanson, filed a petition in arbitration seeking workers' compensation benefits from Pella Corporation (Pella), self-insured employer. This matter was heard in Des Moines, Iowa on March 8, 2017, with a final submission date of April 19, 2017.

The record in this case consists of Claimant's Exhibits 1-15, Defendant's Exhibits A-O, and the testimony of claimant.

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.

ISSUES

Whether the injury arose out of and in the course of employment;

Whether the injury is a cause of a temporary disability;

Whether the injury is a cause of a permanent disability; and if so,

The extent of claimant's entitlement to permanent partial disability benefits;

Whether there is a causal connection between the injury and the claimed medical expenses;

Whether defendant is liable for penalty under Iowa Code section 86.13; and

Costs.

FINDINGS OF FACT

The claimant was 53 years old at the time of the hearing. Claimant graduated from high school. He has some post-high school training.

Claimant has worked as a bartender and a cable installer. He also has done some construction. Claimant has been employed with Pella since April of 1989. Since 2008 claimant has also done part-time work with Theisen's Home Farm and Auto. (Exhibit 10, pages 6-8)

For six years before the alleged date of injury claimant worked as operator for Pella. At the time of the alleged injury, claimant worked in the door department. Claimant said that as an operator, he would lift long door panels, called "stiles," out of a cart and put them on a work table. He said he performed this activity approximately 100 times per shift.

Claimant's prior medical history is relevant. Prior to the September 5, 2015 incident, claimant had an August 13, 2013 work injury to his right bicep.

On December 3, 2015, claimant filed a petition regarding this matter, alleging a right upper extremity/right shoulder injury. Defendant Pella admitted the injury to claimant's right upper extremity, but denied liability for the right shoulder injury.

On June 18, 2014, claimant underwent right bicep surgery performed by Christopher Vincent, M.D. (Ex. 1, p. 1)

Claimant was returned to work regarding the August 13, 2013 injury to the right bicep on November 10, 2014 with no permanent restrictions. (Ex. M, p. 98) Claimant was found to have a five percent permanent impairment to the right upper extremity by Dr. Vincent on March 13, 2015. (Ex. O, p. 107)

In an October 19, 2015 report, Jacqueline Stoken, D.O., gave her opinions regarding claimant's condition following an independent medical evaluation (IME) in regards to the August 13, 2013 work injury. Dr. Stoken found that claimant had a ten percent permanent impairment to the right upper extremity. This was based, in part, on a finding that claimant had a nine percent permanent impairment to the right shoulder. (Ex. O)

An arbitration hearing was held regarding the August 13, 2013 injury on June 15, 2016. (Ex. H) The arbitration decision awarded claimant benefits based solely on a loss to the right upper extremity, and not the right shoulder, in part because " . . . claimant denied at hearing" having right shoulder problems regarding the August 13,

2013 injury. Swanson v. Pella Corporation, File No. 5053253 (Arbitration Dec. November 17, 2016).

On September 15, 2015, claimant was lifting a stile. Claimant testified he felt a sharp pain going through his right shoulder and down his arm. Claimant said he was seen, on the same date, by a Pella company nurse. Claimant said the nurse was filling in for the regular company nurse. Claimant testified he was given Advil and returned to work. He said that at the end of his shift his hand and arm were swollen. (Ex. 9; Ex. 12, p. 8)

Claimant testified that approximately two weeks later, the regular company nurse returned and referred claimant to Dr. Vincent for treatment. (Ex. 9)

On September 29, 2015, claimant was evaluated by Dr. Vincent for right shoulder pain. Dr. Vincent noted claimant's bicep repair in June of 2014. Claimant's history, exam and x-rays were "highly suggestive" of an acute right shoulder injury. An MRI was recommended. (Ex. 1, pp. 1-2)

In a recorded statement made on October 22, 2015, by defendant, claimant indicated he hurt his right shoulder at work on September 15, 2015, while moving stiles at work. (Ex. 9)

Claimant's MRI suggested tenosynovitis. An injection to the AC joint was given on November 17, 2015. (Ex. 1, p. 4; Ex. C)

In a December 14, 2015 letter, Dr. Vincent gave his opinions concerning claimant's injury. Dr. Vincent noted claimant reported an acute injury. The MRI showed inflammatory changes around the AC joint and fluid around the proximal long head of the bicep tendon. Dr. Vincent believed the findings in the MRI related to a chronic, and not an acute injury. He did not believe claimant's symptoms were caused by a single traumatic event. Dr. Vincent noted if claimant's condition did not improve, surgery would be a treatment option. (Ex. 1, pp. 9-11)

In a December 21, 2015 letter, defendant employer notified claimant that Pella was denying claimant's claim for workers' compensation benefits based on Dr. Vincent's December 14, 2015 letter. (Ex. E)

In an April 12, 2016 letter, Brian Crite, M.D., indicated he reviewed claimant's medical records. He agreed with Dr. Vincent that claimant suffered from an AC joint arthropathy and bicep tenitis. He also noted claimant's work injury of September 2015 was an acute exacerbation of a pre-existing condition directly related to claimant's work at Pella. (Ex. 8, pp. 1-15)

Dr. Crite also believed that claimant had a Type II superior labrum anterior posterior (SLAP) tear in the right shoulder caused by the September 2015 work injury. (Ex. 8, p. 16)

On June 2, 2016, claimant was evaluated by Jason Sullivan, M.D., for right shoulder pain. Dr. Sullivan reviewed the MRI and opined that it showed a SLAP tear on the right shoulder and AC joint arthrosis. Surgery was discussed and chosen as a treatment option. (Ex. 2, pp. 12-15)

In a June 21, 2016 letter, Dr. Vincent indicated he read Dr. Crite's letter of April 2016 and MRI of claimant's shoulder. Dr. Vincent could not opine that claimant had a SLAP tear as there was no intra-articular contrast done in an MRI. Dr. Vincent opined that based on claimant's presentation and location of pain, he did not believe that claimant sustained a SLAP tear in his work accident of September 2015. (Ex. M, pp. 18-19)

On June 22, 2016, claimant underwent right shoulder surgery consisting of a right arthroscopic bicep tenodesis and debridement of the superior labrum. A distal clavicle excision was also performed. Surgery was performed by Dr. Sullivan. (Ex. 2, pp. 17-19)

Claimant testified he received short-term disability benefits for the time he was off work for his shoulder injury.

In a January 19, 2017 letter, Dr. Vincent gave his opinions of claimant's condition. Dr. Vincent could not relate claimant's AC joint arthrosis, SLAP tear, or rotator cuff issues to the event of September 15, 2015. (Ex. D, pp. 23-24)

In a January 30, 2017 note, Dr. Sullivan found that claimant had a 13 percent permanent impairment to the right upper extremity, converting to an 8 percent permanent impairment to the body as a whole. (Ex. 2, p. 39)

In a January 31, 2017 letter, written by claimant's counsel, Dr. Sullivan agreed that claimant's right shoulder surgery was necessitated by the result of the September 15, 2015 work injury. (Ex. 2, pp. 40-41)

Claimant testified that he did not believe he could return to his job in the stiles section given his problems to his shoulder and arm. Claimant testified that at the time of hearing he was working in the "muntin cell" area. (Ex. 12, p. 8) Claimant testified he bid for and was offered a higher paying job. He said he could not take the job when he learned the job required too much lifting.

At the time of hearing, claimant was still employed with Pella. He said he also continues to work part-time at Theisen's. Claimant testified he continues to have right shoulder pain and his shoulder hurts all the time. He says that he continues to do exercises with his shoulder as shown to him in physical therapy.

CONCLUSIONS OF LAW

The first issue to be determined is if claimant sustained an injury to his right shoulder on September 15, 2015 that arose out of and in the course of employment.

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 Rule of Appellate Procedure 6.14(6).

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

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

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

Claimant contends he injured his right shoulder on September 15, 2015 while lifting and moving stiles. Nursing records from Pella and a statement of claimant taken for Pella support claimant's description of the incident. (Ex. 9; Ex. 12, p. 8)

Claimant did allege a right shoulder injury regarding an August 13, 2013 claim against Pella. An expert retained by claimant for this injury, Dr. Stoken, found that claimant had permanent impairment to the right shoulder for that injury. (Ex. O) The arbitration decision limited claimant's loss, in his August 13, 2013 injury, to the right arm. The decision found the injury did not result in permanent impairment to the right shoulder as claimant denied at hearing having any right shoulder problems. Swanson v. Pella Corporation, File No. 5053253 (Arbitration Dec. November 17, 2016).

Three experts have opined regarding causation of claimant's right shoulder injury. Dr. Vincent opined that claimant's right shoulder problems were not caused by the September 2015 injury. Dr. Vincent also opined that claimant's shoulder problems were ". . . unrelated to his distal bicep tendon tear he sustained in 2013 and it is my impression he had no injury to the shoulder at that time." (Ex. 1, pp. 9-10)

Dr. Crites performed a review of claimant's treatment records. He also reviewed claimant's MRI. Dr. Crites agreed with Dr. Vincent that claimant had a pre-existing, chronic AC arthropathy, but also opined that the September 2015 incident was an acute exacerbation to a pre-existing condition. (Ex. 8, p. 15)

Dr. Crites also noted, that after reviewing the MRI, he believed that there was a Type II SLAP tear that was directly attributed to the September 2015 work injury. (Ex. 8, p. 16)

Dr. Vincent did review Dr. Crites' opinion. Dr. Vincent indicated he could not give an opinion of the existence of a SLAP tear given the MRI that he reviewed. (Ex. 1, p. 22)

Dr. Sullivan treated claimant for an extended period of time and performed claimant's shoulder surgery. He assessed claimant as having a SLAP tear and AC joint arthrosis. He opined that claimant's right shoulder problems were the result of his injury at work in September 2015. (Ex. 2, pp. 34-42)

Dr. Vincent opined claimant's right shoulder injuries were not caused by the 2013 injury. An arbitration decision regarding the 2013 injury also limited claimant's permanent impairment to the upper extremity. Dr. Vincent did not believe the September 2015 incident caused claimant's right shoulder condition. However, Dr. Vincent did not initially opine regarding a SLAP tear to claimant's right shoulder.

Dr. Crites found that the September 2015 incident was an exacerbation of a pre-existing condition to claimant's right shoulder. He also opined that claimant had a SLAP tear caused by the September 2015 incident. Dr. Sullivan, who performed surgery on claimant, corroborated the opinion of Dr. Crites.

Both Dr. Crites and Dr. Sullivan opined that claimant had an exacerbation of a pre-existing condition to the right shoulder as a result of the September 2015 injury. They both also opined that claimant had a SLAP tear as a result of the September 2015 injury. Dr. Vincent initially did not find that claimant had a SLAP tear, and subsequently opined that he could not give an opinion regarding claimant's SLAP tear given his review of claimant's MRI. The record indicates claimant performed repetitive activity with his upper extremity at Pella. Medical records and the recorded statement support claimant's description of his injury. Given this record, claimant has carried his burden of proof he sustained an injury to his right shoulder on September 15, 2015 that arose out of and in the course of employment.

The next issue to be determined is whether the injury is a cause of temporary disability.

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

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

As noted above, claimant's injury of September 15, 2015 is found to have arisen out of and in the course of employment. The parties stipulated in the hearing report the claimant was off work from June 22, 2016 through August 14, 2016. Claimant underwent right shoulder surgery on June 22, 2016. (Ex. 2, pp. 17-18)

In an August 11, 2016 note, Dr. Sullivan found claimant could return to work with restrictions. At hearing, claimant testified he believed he returned to work at Pella following his shoulder surgery on or about August 15, 2016. (Ex. 2, p. 33; Transcript pp. 20, 34, 40) Given this record, claimant has carried his burden of proof he is due temporary benefits from June 22, 2016 through August 14, 2016.

The next issue to be determined is if claimant's injury is a cause of permanent disability.

Claimant injured his right shoulder on September 15, 2015. He underwent surgery for that injury. Dr. Sullivan, who performed claimant's surgery, found that claimant had a permanent impairment to the right shoulder for that injury. (Ex. 2, p. 39) Claimant's credible and unrebutted testimony is that he continues to have right shoulder pain approximately a year and a half after the date of injury, and that he has difficulties with lifting. Given this record, claimant has carried his burden of proof his September 15, 2015 right shoulder injury resulted in a permanent disability.

The next issue to be determined is the extent of claimant's entitlement from the partial disability benefits.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Claimant was 53 years old at the time of hearing. He graduated from high school. Claimant has worked as a bartender and in construction. Claimant has also worked as a cable installer. Claimant has worked at Pella since April of 1989.

Dr. Sullivan found that claimant had an eight percent permanent impairment to the right upper extremity. (Ex. 2, p. 39) There is no contrary opinion. It is found that claimant has an eight percent permanent impairment to the right upper extremity.

Claimant's unrebutted testimony is that he could not return to work at his job in stiles given difficulties with the right shoulder. Claimant credibly testified he bid on and was offered a job in the "value add cell" area that would have paid him between 50 to 60 cents more per hour. Claimant testified he did not accept the job as he believed the job required too much lifting. Claimant credibly testified he has continued pain and difficulties with lifting in his right shoulder.

Claimant has an eight percent permanent impairment to the right shoulder. His unrebutted testimony is that he could not return to his prior job in the stiles area due to difficulty with his shoulder. Claimant's credible testimony is that he turned down a job paying him a higher hourly wage due to the lifting requirements of the job. Claimant is still employed at Pella and was also working part-time at Theisen's. When all relevant factors are considered, it is found that claimant has a 20 percent loss of earning capacity or industrial disability.

The next issue to be determined is whether there is a causal connection between the injury and the claimed medical expenses.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

As detailed above, claimant's right shoulder injury is found to have arisen out of and in the course of employment. Records indicate the costs detailed in the medical bills, found at Exhibits 3-7, relate to claimant's treatment and care that he received for his September 15, 2015 injury. There is no evidence that the bills in the record are not causally connected to the September 15, 2015 injury. There is no evidence in the record that the bills detailed are not fair and reasonable. Given this record, claimant has carried his burden of proof that defendant is liable for the claimed medical expenses.

The next issue to be determined is whether defendant is liable for penalties under Iowa Code section 86.13.

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

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

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

The supreme court has stated:

> (1) If the employer has a reason for the delay and conveys that reason to the employee contemporaneously with the beginning of the delay, no penalty will be imposed if the reason is of such character that a reasonable fact-finder could conclude that it is a "reasonable or probable cause or excuse" under Iowa Code section 86.13. In that case, we will defer to the decision of the commissioner. See Christensen, 554 N.W.2d at 260 (substantial evidence found to support commissioner's finding of legitimate reason for delay pending receipt of medical report); Robbennolt, 555 N.W.2d at 236.
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> (2) If no reason is given for the delay or if the "reason" is not one that a reasonable fact-finder could accept, we will hold that no such cause or excuse exists and remand to the commissioner for the sole purpose of assessing penalties under section 86.13. See Christensen, 554 N.W.2d at 261.
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> (3) Reasonable causes or excuses include (a) a delay for the employer to investigate the claim, Christensen, 554 N.W.2d at 260; Kiesecker v. Webster City Meats, Inc., 528 N.W.2d at 109, 111 (Iowa 1995); or (b) the employer had a reasonable basis to contest the claim—the "fairly debatable" basis for delay. See Christensen, 554 N.W.2d at 260 (holding two-month delay to obtain employer's own medical report reasonable under the circumstances).
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> (4) For the purpose of applying section 86.13, the benefits that are underpaid as well as late-paid benefits are subject to penalties, unless the employer establishes reasonable and probable cause or excuse. Robbennolt, 555 N.W.2d at 237 (underpayment resulting from application

of wrong wage base; in absence of excuse, commissioner required to apply penalty).

> If we were to construe [section 86.13] to permit the avoidance of penalty if any amount of compensation benefits are paid, the purpose of the penalty statute would be frustrated. For these reasons, we conclude section 86.13 is applicable when payment of compensation is not timely . . . or when the full amount of compensation is not paid.

Id.

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

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

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

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

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

Penalty is not imposed for delayed interest payments. Davidson v. Bruce, 593 N.W.2d 833, 840 (Iowa App. 1999). Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 338 (Iowa 2008).

When an employee's claim for benefits is fairly debatable based on a good faith dispute over the employee's factual or legal entitlement to benefits, an award of penalty benefits is not appropriate under the statute. Whether the issue was fairly debatable turns on whether there was a disputed factual dispute that, if resolved in favor of the employer, would have supported the employer's denial of compensability. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

The record indicates that defendant relied upon the opinions of its expert, Dr. Vincent, in denying claimant's claim for benefits for the September 2015 work injury. The record also indicates that defendant gave claimant notice, as required by the law, and the rationale for the denial of benefits. (Ex. E) Based on this record, a penalty is not appropriate in this case.

The final issue to be determined is whether defendant is liable for costs.

Claimant seeks reimbursement of $285.00 for Dr. Sullivan's IME rating. The record indicates there was no rating of an expert retained by defendant prior to the rating given by Dr. Sullivan. As a result, Dr. Sullivan's charge for the IME is not reimbursable as an IME under Iowa Code section 85.36. A review of Dr. Sullivan's bill indicates that there is no breakdown of the costs of the preparation of the report. For this reason, the charge for Dr. Sullivan's IME is not reimbursable as a cost under 876 IAC 4.33. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 845-846 (2015).

Claimant also seeks reimbursement for $1,000.00 for Dr. Crites's report. Dr. Crites reviewed claimant's records from Pella, Dr. Vincent's records, an IME report from Dr. Stoken, claimant's radiology reports, physical therapy records, the operative report, and claimant's statement regarding the injury. Given the extent of records reviewed, and that claimant required an opinion regarding causation due to Pella's denial of the claim, Dr. Crites's bill of $1,000.00 is found reasonable as a cost under 876 IAC 4.33.

ORDER

THEREFORE, IT IS ORDERED:

That defendant shall pay claimant healing period benefits from June 22, 2016 through August 14, 2016 at the rate of five hundred sixty-one and 33/100 dollars ($561.33) per week.

That defendant shall pay claimant one hundred (100) weeks of permanent partial disability benefits at the rate of five hundred sixty-one and 33/100 dollars ($561.33) per week commencing on August 15, 2016.

That defendant shall pay accrued weekly benefits in lump sum.

That defendant shall pay interest on unpaid weekly benefits as ordered above and as set forth in Iowa Code section 85.30.

That defendant shall receive a credit for benefits previously paid.

That defendant shall pay costs as detailed above, including the costs of filing fee and service.

That defendant shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this 23rd day of August, 2017.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFC/srs

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