

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RODNEY REMA,

Claimant,

vs.

TRANSCO RAILWAY PRODUCTS, INC.,

Employer,

and

CHUBB INSURANCE,

Insurance Carrier,
Defendants.File Nos. 21001855.01
21012426.01

ARBITRATION DECISION

Head Note No.: 1108

STATEMENT OF THE CASE

The claimant, Rodney Rema, filed two petitions for arbitration on August 16, 2021, against Transco Railway Products, employer, and Chubb Insurance, insurance carrier. The claimant was represented by John Pieters. The defendants were represented by James Ballard.

The matter came on for hearing on September 2, 2022, before Deputy Workers' Compensation Commissioner Joe Walsh in Des Moines, Iowa via Zoom videoconferencing. The record in the case consists of Joint Exhibits 1 through 3; Claimant's Exhibits 1 through 7; and Defense Exhibits A through E.¹ The claimant testified at hearing. Delayne Johnson served as the court reporter for the proceedings. The matter was fully submitted on October 3, 2022, after helpful briefing by the parties.

ISSUES AND STIPULATIONS

The parties submitted the following issues for determination and stipulations:

The parties have stipulated that the claimant was employed by the employer. The parties have further stipulated that he sustained an injury to his left shoulder which arose out of and in the course of his employment on February 21, 2020. The defendants dispute that any body part, other than the left shoulder, was injured on that date. The claimant alleges that he sustained an injury which arose out of and in the

¹ The First Reports of Injury (FROI) for both claims were mistakenly included in Claimant's Exhibit 3, pages 5-6) While no party objected to these documents, FROIs are specifically prohibited from being considered "evidence" in a workers' compensation claim under Iowa Code section 86.10. The undersigned did not consider these documents in rendering this decision.

course of his employment on June 1, 2020. The defendants dispute this. The defendants stipulate that the February 21, 2020, work injury was a cause of temporary and permanent disability in his left shoulder, however, deny any other body parts were damaged in this injury. Temporary disability benefits are no longer in dispute.

The claimant is seeking permanent partial disability benefits for both injury dates. The nature and extent of the February 21, 2020, injury is disputed and the defendants contend that claimant is not entitled to any permanency benefits for the alleged June 2020 work injury. The parties have stipulated that the commencement date for permanent disability benefits, if any are owed, is January 31, 2022.

The parties have stipulated to all elements of the rate of compensation and affirmative defenses are waived.

The claimant is seeking the past medical expenses set forth in Claimant's Exhibit 7. These bills are disputed primarily on the basis of medical causation.

The parties have stipulated that 28 weeks of compensation have been paid at the stipulated rate. Furthermore defendants assert that they are entitled to a credit under Iowa Code section 85.34(7), for apportionment of claimant's preexisting disability.

FINDINGS OF FACT

Claimant Rodney Rema was 62 years old as of the date of hearing. (Transcript, page 13) He testified live and under oath at hearing. I find his testimony to be credible.

Mr. Rema has worked for Transco Railway (hereafter, Transco) in Oelwein, Iowa since approximately 2012. He sustained a traumatic injury which arose out of and in the course of his employment to his right shoulder in May 2017. He quickly underwent surgery in June 2017, and had a normal recovery period. In February 2018, Benjamin Torrez, M.D., rated his right shoulder at 5 percent of the right upper extremity. Mr. Rema filed a workers' compensation petition for this injury and eventually amended his petition to include a claim for his left shoulder as well. Dr. Torrez did not rate his left shoulder. In May 2018, he underwent an independent medical examination by Farid Manshadi, M.D., who assigned a 22 percent right upper extremity impairment and a 2 percent impairment of the left upper extremity. In August 2018, the parties settled the claim for his bilateral shoulders on a commutation for approximately 30 percent industrial.² This settlement was approved by the agency on August 20, 2018. (Defendants' Exhibit D, pages 21-23)

Following his recuperation from this injury on May 8, 2018, Mr. Rema was assigned a new job for Transco as a Material Handler. He worked in shipping. In essence, he loaded and unloaded various parts for Transco. He described his work activities in detail at hearing, as well as in his deposition which is in evidence. From the

² This settlement was achieved under Iowa Code section 85.34(2)(u) (2015), since the injury occurred prior to the 2017 legislative amendments to section 85.34(2).

time he took this position through February 2020, Mr. Rema did not receive any medical treatment for his work injury. He performed all aspects of the position without accommodations. It appears he worked without any formal restrictions. Based upon his description, some of this work was quite heavy. He did not take prescription medications. Mr. Rema testified that his left shoulder was essentially asymptomatic during this period.

On February 21, 2020, Mr. Rema sustained an injury which arose out of and in the course of his employment with Transco. On that date he was unloading a pallet of coupler knuckles, which weigh approximately 85 pounds. A finger in his left hand became stuck and he sustained a pulling-type injury while swinging the part causing an immediate stabbing, burning pain in his left shoulder. (Tr., pp. 17-18) While he immediately reported this incident to his safety director, he did not seek medical treatment. (Tr., p. 19) Even so, he testified that he had consistent pain in his left shoulder and began favoring his left shoulder. He used his right arm more to compensate for the pain and symptoms in his left shoulder. He testified that he sustained a second traumatic injury.

He testified that he sustained a second traumatic injury to his left shoulder on June 1, 2020. He again experienced a sudden onset of pain in his left shoulder while handling bottom outlet valves. Again, he immediately reported the incident to his safety director, Mary Wheaton. The defendants have denied this claim. The only real evidence in the record is that this incident did, in fact, happen. He testified that while he did not seek treatment immediately following this incident, the left shoulder pain was more consistent and severe and he continued to favor it thereafter. He testified that by October 2020, the pain in his left shoulder had become so intense that he had to seek treatment.

Mr. Rema's first medical treatment occurred on November 24, 2020, when he saw his family medical clinic. The following is documented:

Patient works on railroad cars, mechanical maintenance, the parts involved can be quite heavy and yet be small enough that to [sic] person can not share the load. He was transferring a part which she [sic] describes as a knuckle, estimated weight upwards of 70 lb, using 2 hands, from a location to his right to her location or truck to his left, when he felt something given [sic] that left shoulder. This occurred on February 21 of this year, he did make report to his employer your [sic] and his direct supervisors in particular. He did not seek medical treatment at that time and was working through the injury and did feel that things were improving he had a 2nd incident at the end of May and since the [sic] his pain had worsened but remained relatively manageable, as of October 27 however pain has gotten considerably worse with the various movements it can be a 10 of 10. He also describes significant limitation of movement.

(Jt. Ex. 1, p. 12) X-rays were taken of the left shoulder and some pain medications were prescribed. An orthopedic consultation was recommended.

A few days later, on November 30, 2020, he was examined by the company authorized physician Steven Olson, D.O. For this evaluation Mr. Rema filled out an Intake Form where he described the February 2020, work injury and described his symptoms. (Jt. Ex. 2, p. 26) Dr. Olson gave a restriction of no use of the left arm. (Jt. Ex. 2, p. 29) He was initially placed in a sling which caused further pain in the left shoulder. He continued to follow up with Dr. Olson. In December, the work comp nurse noted that his right shoulder was irritated from overuse. (Jt. Ex. 2, p. 31) Dr. Olson's office provided treatment for the right shoulder and right elbow in February 2021, diagnosing "strain of muscle(s) and tendon(s) of the rotator cuff of right shoulder." "The cause of this problem is related to work activities." (Jt. Ex. 2, p. 36)

On February 20, 2021, Mr. Rema returned to Benjamin Torrez, M.D., who had performed his successful right shoulder surgery in June 2017. Dr. Torrez recounted the history of Mr. Rema's February 2020, work injury, without mentioning the second injury in June 2020. (Jt. Ex. 3, p. 46) Dr. Torrez performed a full workup of the left shoulder, with very little evaluation or mention of the right side, other than noting the prior surgery he performed (Jt. Ex. 3, pp. 46-48) He was given restrictions for the left side and an injection. The injection did not help much and in February 2021, Dr. Torrez recommended surgery for the left shoulder. (Jt. Ex. 3, p. 5) In February 2021, Dr. Torrez also noted a full thickness tear in the right rotator cuff and discussed possible surgical intervention for this as well. (Jt. Ex. 3, p. 54)

Surgery was authorized and performed on the left shoulder only on February 26, 2021. (Jt. Ex. 3, p. 60) He had a difficult recovery undergoing a manipulation under anesthesia in April 2021, as well as an injection. In August 2021, Dr. Torrez placed Mr. Rema at maximum medical improvement and assigned a 7 percent left upper extremity impairment as a result of the work injury. (Jt. Ex. 3, p. 79)

Thereafter, Dr. Torrez provided a series of expert opinion letters relating to Mr. Rema's right shoulder condition. In September 2021, Dr. Torrez responded to a letter from defense counsel. (Jt. Ex. 3, pp. 80-81) Defense counsel essentially asked Dr. Torrez to confirm that his right shoulder condition was not work-related. "My notes from our conference indicate Mr. Rema did not report to you that his right shoulder and elbow were related to his work duties, . . ." (Jt. Ex. 3, p. 80) In response, Dr. Torrez provided a lengthy response, setting forth a great deal of the treatment history, ultimately opining the following: "He [Mr. Rema] did report injury because of compensation for the left shoulder that we were currently evaluating, but the right elbow issues do not appear to be related to a workers' comp claim." (Jt. Ex. 3, p. 83)

In January 2022, Mr. Rema underwent an IME from Dr. Manshadi, who had evaluated him similarly for his 2017 work injury. Dr. Manshadi took history, reviewed appropriate records and performed an examination of both of Mr. Rema's bilateral shoulders. (Cl. Ex. 3) He offered the following expert opinion:

After reviewing the provided medical records and evaluation and examination and interview of Mr. Rodney Rema, it is my professional opinion that he sustained a left shoulder rotator cuff tear as well as a biceps tendon tear, status post left shoulder arthroscopic rotator cuff repair. Currently he remains with left shoulder pain with reduced range of motion and weakness.

Mr. Rema also currently has right-sided shoulder pain with reduced range of motion as a sequela to the left shoulder injury due to overcompensation. He remains with reduced active range of motion of the right shoulder as well.

Currently both shoulder injuries are new.

(Cl. Ex. 5, pp. 16-17)

Dr. Manshadi provided impairment ratings on each side: 10 percent (8 percent new) of the left upper extremity and 15 percent of the right side. (Cl. Ex. 5, p. 17)

Next Dr. Torrez responded to an inquiry from claimant's counsel. In February 2022, Dr. Torrez responded fairly clearly. "As it relates to his right shoulder, I believe there is a reasonable degree of medical certainty that his right shoulder condition is in fact a sequela injury to his left shoulder." (Jt. Ex. 3, p. 86)

On February 21, 2022, Mr. Rema was evaluated by another orthopedist, Matthew Bollier, M.D., for purposes of a defense IME. (Def. Ex. A) Dr. Bollier took history, reviewed records, and performed an examination of Mr. Rema's right shoulder. He prepared a report containing numerous expert opinions.³ Dr. Bollier utilized the AMA Guides to the Evaluation of Disease and Injury Causation, 2nd Edition, to call into question the entire concept of "favoring" or "overcompensation injuries." (Def. Ex. A, pp. 4, 10) He seemed to rely almost exclusively on this. There was very little discussion of Mr. Rema's actual circumstances or clinical history of his development of symptoms.

In April 2022, Dr. Manshadi provided a supplemental report converting his impairment ratings to the whole body. (Cl. Ex. 5, p. 18)

In May 2022, Dr. Torrez prepared a letter for defense counsel, changing his opinion to agree with Dr. Torrez. "I do agree with Dr. Bollier's opinion that Mr. Rema's stated right shoulder complaints were not caused by or materially aggravated or are a sequela of the left shoulder injury that he sustained on or about February or June of 2020." (Jt. Ex. 3, p. 87) Specifically, he changed his opinion due to being shown page 766 of the AMA Guides to the Evaluation of Disease and Injury Causation, which he indicated states that "favoring" injuries are not generally supported by scientific evidence. (Jt. Ex. 3, p. 87)

³ It is noted there are two reports from Dr. Bollier in the record, the first is dated February 21, 2022. (Def. Ex. A, pp. 1-5) The second is dated February 22, 2022. (Def. Ex. A, pp. 6-11) The reports are nearly identical, but not quite. There are minor changes, such as word choice, but nothing that changes the essence of his opinions.

In July 2022, Dr. Torrez penned an additional opinion letter for claimant's counsel wherein he opined that Mr. Rema had sustained an 18 percent impairment to his right upper extremity "due to the patient's result of his right shoulder sequela injury." (Jt. Ex. 3, pp. 88-89) The following month, he reversed his opinion again. (Jt. Ex. 3, p. 90)

At the time of hearing, claimant continued to work for defendant employer with no loss of earnings. (Def. Ex. C)

CONCLUSIONS OF LAW

The parties have stipulated that the claimant sustained an injury to his left shoulder which arose out of and in the course of his employment on February 21, 2020.

The first disputed question submitted is whether the claimant sustained an injury to his left upper extremity on June 1, 2020.

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 Electric 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.

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavy v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

The greater weight of evidence supports a finding that Mr. Rema did, in fact, sustain an injury which arose out of and in the course of his employment on June 1, 2020. He testified credibly he injured his left shoulder on that date. He reported the injury right away. There is no real evidence in the record that this did not occur.

The next question is whether he sustained any permanent impairment in his left shoulder from either work injury, and whether he sustained a sequela condition to his right shoulder resulting from overcompensating. This is primarily a question of medical causation and generally, must be proven through expert testimony.

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).

When an injury occurs in the course of employment, the employer is liable for all of the consequences that “naturally and proximately flow from the accident.” Iowa Workers' Compensation Law and Practice, Lawyer and Higgs, section 4-4. The Supreme Court has stated the following. “If the employee suffers a compensable injury and thereafter suffers further disability which is the proximate result of the original injury, such further disability is compensable.” Oldham v. Scofield & Welch, 222 Iowa 764, 767, 266 N.W. 480, 481 (1936). The Oldham Court opined that a claimant must present sufficient evidence that the disability was naturally and proximately related to the original work injury.

The greater weight of evidence supports a finding that the injury date of February 21, 2020, is primarily responsible for the claimant's disability in his left shoulder. While I have little doubt that the incident claimant described as happening on June 1, 2020, did in fact, occur, the most credible medical evidence (treatment notes) supports a finding

that it was the February 2020, incident which is the cause of disability in his left shoulder.

I find that the claimant has proven that he sustained an 8 percent functional impairment of his left shoulder. This condition was caused or materially aggravated by his February 2020, work injury. This finding is supported by claimant's credible testimony, the contemporaneous treatment notes, and the expert opinion of Dr. Manshadi.

Regarding the sequela claim, the greater weight of evidence supports a finding that his left shoulder condition did, in fact, aggravate the right. To begin with, I note that the medical opinion of Dr. Bollier is not particularly convincing. Dr. Bollier seemed to rely exclusively on a treatise which is not specifically recognized by this agency.

The problem for Mr. Rema is that the burden of proof is on him. While Dr. Bollier is not convincing, Dr. Torrez is also not convincing. He reversed his opinion on medical causation multiple times through the course of this case, seeming to agree with whichever attorney was asking the question at the time. In the end, Dr. Torrez seemed to agree with Dr. Bollier, again, exclusively based upon a treatise without any specific consideration of the facts and circumstances of Mr. Rema's actual condition. In fact, when Dr. Torrez did actually consider the facts and circumstances surrounding Mr. Rema's actual condition, he reached the opposite conclusion. (Jt. Ex. 3, pp. 88-89) While there may be some level of validity to the treatise relied upon by Dr. Bollier, the mere existence of this text does not obviate the need for a physician to consider the actual facts and circumstances of an injured worker's development of a condition. I find this is what both Dr. Bollier, and later Dr. Torrez did in this case.

This leaves the consideration of the opinion of Dr. Manshadi. Dr. Manshadi opined the following: "Mr. Rema also currently has right-sided shoulder pain with reduced range of motion as a sequela to the left shoulder injury due to overcompensation." (Cl. Ex. 5, p. 17) He assigned a 15 percent upper extremity impairment for this condition without apportioning out any impairment for his previous right shoulder injury. I find that this opinion is persuasive.

The next issue is the extent of disability.

Since the disability is located in Mr. Rema's bilateral shoulders, I find that the disability must be evaluated under Iowa Code section 85.34(2)(v) (2021). While subsection (v) applies in this case, making it an unscheduled disability, I am still required to consider the application of subsection (x).

x. In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical

association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity.

Iowa Code section 85.34(2)(x) (2021).

Since the claimant was earning greater wages at the time of hearing than he earned at the time of injury, I find that subsection (x) is applicable. Thus, the law, as written, is not concerned with an injured worker's actual functional loss or disability as determined by the evidence, but rather the impairment rating as assigned by the adopted version of the AMA Guides to the Evaluation of Permanent Impairment. The only function of the agency is to determine which impairment rating should be utilized.

The greater weight of evidence supports a finding that Mr. Rema sustained an 8 percent functional loss of his left shoulder and a 15 percent impairment of his right shoulder. (Jt. Ex. 5, p. 17) Therefore, I conclude that the claimant is entitled to ninety-two (92) weeks of compensation.

Defendants seek a credit for his previous settlement of a bilateral shoulder claim under Iowa Code section 85.34(7) (2021). (Def. Ex. D) Section 85.34(7) states:

An employer is liable for compensating only that portion of an employee's disability that arises out of and in the course of the employee's employment with the employer and that relates to the injury that serves as the basis for the employee's claim for compensation under this chapter, or chapter 85A, 85B or 86. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment from a prior injury with the employer, to the extent that the employee's disability has already been compensated under this chapter, or chapter 85A, 85B or 86.

For the reasons set forth in Rife v. P.M Lattner Manufacturing, File No. 1652412.02 (App. January 21, 2022), I find that the defendants are entitled to a credit of 5 percent for the right shoulder or 20 weeks. (Jt. Ex. 3, p. 42) This is the extent of functional impairment which claimant had in his right shoulder prior to this work injury, which was compensated in the prior settlement.

Finally, claimant seeks the medical expenses set forth in Claimant's Exhibit 7 under Iowa Code section 85.27.

Claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See, Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP,

Inc., File No. 1020226 (App., February 27, 1995).

It appears that the bills set forth in Claimant's Exhibit 7 are expenses related to the disputed right shoulder condition. Having found that the defendants are responsible for this condition, I find they are responsible for the medical bills for said condition. Defendants shall reimburse or otherwise pay for the expenses in Claimant's Exhibit 7.

ORDER

THEREFORE IT IS ORDERED

Defendants shall pay the claimant ninety-two (92) weeks of permanent partial disability benefits at the rate of five hundred twenty and 72/100 (\$520.72) per week commencing January 31, 2022.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall be given credit for the twenty-eight (28) weeks previously paid.

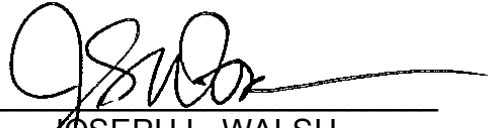
Defendants shall be allowed an additional credit under Iowa Code section 85.37(4) for the five (5) percent right shoulder rating in File No. 5059721. This amounts to twenty (20) weeks of benefits.

Defendants are responsible for the medical expenses in Claimant's Exhibit 7 consistent with this decision.

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

Costs are taxed to defendants.

Signed and filed this 17th day of March, 2023.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

John Pieters (via WCES)

James Ballard (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.