

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RUSSELL CUMMINGS,

Claimant,

vs.

FERGUSON CONSTRUCTION
SERVICES, INC.,

Employer,

and

PEKIN INSURANCE COMPANY,

Insurance Carrier,
Defendants.**FILED**

AUG 14 2019

WORKERS' COMPENSATION

File Nos. 5059576, 5059577

ARBITRATION

DECISION

Headnotes: 1108.50, 1402.30,
1402.40, 1802, 2209, 2501

On September 1, 2017, the claimant, Russell Cummings, filed two petitions in arbitration against the defendants, Ferguson Construction Services, Inc. ("Ferguson Construction") and Pekin Insurance Company ("Pekin"), File Numbers 5059576 and 5059577. In File Number 5059576, Cummings alleges he sustained injuries to his back and body as a whole while working for Ferguson Construction on December 5, 2016. In File Number 5059577, Cummings alleges he sustained injuries to his left wrist and upper extremity while working for Ferguson Construction on March 21, 2016. Ferguson and Pekin filed answers on October 10, 2017.

Cummings filed an amended petition in File Number 5059577 on February 27, 2018, alleging he sustained injuries to his left wrist/upper extremity, head, and body as a whole while working for Ferguson Construction on March 21, 2016.

An arbitration hearing was held on May 13, 2019, at the Division of Workers' Compensation, in Des Moines, Iowa. Attorney Robert Gainer represented Cummings. Cummings appeared and testified. Attorney Steven Durick represented Ferguson Construction and Pekin. Paul Ferguson appeared and testified on behalf of Ferguson Construction and Pekin. Sean Whitehead also appeared on behalf of Ferguson Construction and Pekin, but did not testify. Joint Exhibits ("JE") 1 through 12, and Exhibits A through J and 1 through 8 were admitted into the record. The record was held open through June 21, 2019, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

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

FILE NUMBER 5059576 (LOW BACK)

STIPULATIONS

1. An employer-employee relationship existed between Cummings and Ferguson Construction at the time of the alleged injury.
2. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.
3. If the injury is found to be a cause of permanent disability, the commencement date for permanent partial disability benefits is January 6, 2017.
4. At the time of the alleged injury Cummings' gross earnings were \$898.92 per week, he was single and entitled to one exemption, and the parties believe the weekly rate is \$540.89.
5. Costs have been paid.

ISSUES

1. Did Cummings sustain an injury on December 5, 2016, which arose out of and in the course of his employment with Ferguson Construction?
2. Is the alleged injury a cause of temporary disability during a period of recovery?
3. Is the alleged injury a cause of permanent disability?
4. Is Cummings entitled to temporary benefits from December 6, 2016 through January 5, 2017?
5. If the alleged injury is the cause of permanent disability, what is the extent of disability?
6. Is Cummings entitled to recover medical care expenses?
7. Is Cummings entitled to recover the cost of an independent medical examination?
8. Should penalty benefits be awarded to Cummings?
9. Should costs be assessed against either party?

FILE NUMBER 5059577 (LEFT WRIST)

STIPULATIONS

1. An employer-employee relationship existed between Cummings and Ferguson Construction at the time of the alleged injury.
2. Cummings sustained an injury on March 21, 2016, which arose out of and in the course of his employment with Ferguson Construction.
3. The alleged injury a cause of temporary disability during a period of recovery.
4. Temporary benefits are no longer in dispute.
5. The alleged injury is a cause of permanent disability.
6. If the injury is found to be a cause of permanent disability, the disability is a scheduled member disability to the left wrist.
7. The commencement date for permanent partial disability benefits is May 27, 2016.
8. At the time of the alleged injury Cummings' gross earnings were \$923.77 per week, he was single and entitled to one exemption, and the parties believe the weekly rate is \$553.16.
9. Medical benefits are no longer in dispute.
10. Prior to the hearing Cummings was paid two weeks of compensation at the rate of \$570.52 per week.
11. Costs have been paid.

ISSUES

1. What is the extent of disability?
2. Is Cummings entitled to recover the cost of an independent medical examination?
3. Should costs be assessed against either party?

FINDINGS OF FACT

Cummings is single and lives in Des Moines. (Transcript, page 11) Cummings is right-hand dominant. (Joint Exhibit 2, p. 18; Ex. I, p. 4; Tr., p. 44) At the time of the hearing he was fifty-four. (Tr., p. 9)

Cummings graduated from high school in 1983. (Exs. F, p. 4; I, p. 5; Tr., p. 10) While he was in school Cummings was diagnosed with a reading and writing learning disability. (Tr., pp. 9-10; Ex. I, p. 5) Cummings worked with his father on their farm and with home remodeling while growing up. (Ex. F, p. 4) Cummings attended shop classes in high school where he worked with HardiePlank siding, Tyvek, hot and cold metal, plastic, and he received instruction in woodworking and auto mechanics. (Ex. F, p. 5) Cummings did not attend any additional training after high school. (Tr., p. 10; Ex. I, p. 5)

From 1983 through 1986, Cummings worked for Iowa Pallets, building wooden pallets. (Ex. 4, p. 30; Tr., p. 12) Cummings nailed pieces of wood together to build the pallets, which weighed between sixty and eighty pounds. (Tr., p. 12)

Swift Packaging hired Cummings as a meat cutter in 1986. (Ex. 4, p. 30; Tr., p. 13) Cummings was assigned to boning beef where he cut out the center bone from a cow round and placed the meat on a conveyor. (Tr., pp. 13-14) Each round weighed between fifty and sixty pounds. (Tr., p. 13)

After leaving Swift Packaging Cummings went to work in the construction business as a rough carpenter. (Tr., p. 14) From 1989 through 1990 Cummings worked for AAA Construction building homes, where he installed joists, floors, walls, windows, doors, siding, and roofing. (Ex. 4, p. 30; Tr., pp. 14-15) When framing a home Cummings would carry lumber weighing between fifty and 100 pounds. (Tr., p. 16) Cummings relayed he would have to bend over to pick up each load. (Tr., p. 16) At times Cummings used a forklift to lift lumber, but he often bent over to pick up lumber. (Tr., p. 16)

Cummings left AAA Construction to work as a rough carpenter doing mostly framing for his father who owned Cummings Home Builders. (Tr., p. 21) Cummings did not do the electrical, plumbing, or drywall work. (Tr., pp. 21-22) Cummings operated a forklift and a skid loader. (Tr., p. 22) Cummings Home Builders used forklifts to help the workers raise the exterior walls. (Tr., pp. 23-24) Cummings had to lift the interior walls. (Tr., p. 24)

Cummings Home Builders closed during the housing market decline and Cummings went to work for Walker Construction where he framed homes and installed siding. (Tr., p. 24; Ex. 4, p. 30) Cummings worked with concrete siding and he used pump jacks up the wall. (Tr., p. 25) Cummings left Walker Construction and accepted a position with Rightway Construction in 2011 siding and framing homes. (Tr., p. 25)

On September 1, 2014, Ferguson Construction hired Cummings as a rough carpenter. (Tr., pp. 26, 49, 109) Ferguson Construction is a framing contracting company. (Tr., p. 108) Ferguson Construction paid Cummings \$20.00 per hour. (Ex. 4, p. 30) Cummings worked for Ferguson Construction through 2016. (Ex. 4, p. 30; Tr., pp. 30, 110) Cummings continued to frame homes like he had in the past. (Tr., p. 27) Cummings testified the job required constant walking, standing, bending, squatting,

climbing, kneeling, twisting and reaching. (Tr., p. 27) Cummings had to lift more than sixty pounds most of the time, and reported he would lift lumber more than fifty times per day. (Tr., p. 27) The lumber was supposed to be kiln dried, but it was often wet and heavier than it was supposed to be. (Tr., p. 28) Cummings worked on scaffolding at Ferguson Construction and he operated a forklift and truck. (Tr., p. 29) The job description provides the job requires constant sitting, walking, standing, bending at the neck and waist, squatting, climbing stairs and ladders, kneeling, crawling, twisting at the neck and waist, and reaching below and above shoulder level. (Ex. 2, p. 23) The job description also provides the job requires lifting fifty times per day and carrying items fifty feet thirty times per day, operating a forklift, walking on uneven ground, working at heights, and that the worker would be exposed to dust, gas, fumes, and chemicals. (Ex. 2, p. 23)

Cummings testified he had less help at Ferguson Construction from other employees. (Tr., p. 31) The homes he worked on were also smaller and closer together so he could not use a forklift to lift the walls. (Tr., p. 32)

Cummings has a history of problems with his lumbar spine dating back to 2000. (JE 1; Tr., p. 32) Cummings testified he had aches and pains and lower back problems from working in manual labor, hard work, all of his life. (Tr., p. 33) Cummings reported the aches and pains did not keep him from getting out of bed in the morning and going to work. (Tr., p. 33)

On February 11, 2000, Cummings underwent lumbar spine magnetic resonance imaging, after complaining of lumbar pain with left leg pain and paresthesias. (JE 1, pp. 1, p. 5) The reviewing radiologist listed findings of:

[t]here is a normal segmentation pattern. The vertebral column is essentially anatomically aligned with a normal lordosis and lumbosacral angle. The spinal canal is congenitally slightly diminutive in size in the lower lumbar spine. Diminished subarachnoid space is exacerbated by epidural lipomatosis at the lower L5 and S1 levels. The sagittal images demonstrate mild to moderate disc degeneration at L4-5 where there is no significant loss of disc height but significant loss of disc signal intensity,

(JE 1, p. 5)

On March 10, 2003, Cummings attended an appointment at the Mercy Medical Center Pain Control Center, reporting he was experiencing "[l]ower back pain all the time – numbness in feet – frames houses owns his own business." (JE 1, p. 8) Dana Simon, M.D., an anesthesiologist specializing in pain management, examined Cummings, reviewed his magnetic resonance imaging, and noted the imaging showed some bulging "at L4-5 and 5-1 without displacement but there is some facet arthropathy of a mild nature. More significantly there is bulging and I believe it is more at the left side than to the right at 4-5 and 5-1." (JE 1, p. 15) Dr. Simon listed an impression of

"ongoing pain with possible radiculopathies bilaterally in the lower extremities and L5-S1," and performed a trial of epidural steroid sacroiliac joint injections. (JE 1, p. 16)

During an appointment with Dr. Simon on March 31, 2003, Cummings reported he received one week of pain relief following the injection. (JE 1, p. 13) Dr. Simon recommended a referral to a physiatrist for exercise and/or assessment of Cummings' pain and documented "[h]e is unable to work on his own. He runs his own business from what I can see and he is unable to perform the duties and tasks of his physically demanding job." (JE 1, p. 13)

On April 17, 2003, Cummings attended an appointment with Donna Bahls, M.D., a physiatrist with Iowa Ortho, complaining of low back pain for six years with no specific injury. (JE 2, p. 1) Cummings relayed after a hard day at work he has difficulty getting out of bed in the morning due to his pain, and reported numbness and tingling in his feet with prolonged sitting. (JE 2, p. 1) Dr. Bahls assessed Cummings with low back pain, noted he has two degenerative discs in his low back, and prescribed medication. (JE 2, p. 3)

On May 5, 2004, Cummings attended an appointment with Joshua Kimelman, D.O., an orthopedic surgeon with Iowa Ortho, complaining of low back pain for fifteen to twenty years, aggravated by carrying, lifting, bending, and twisting. (JE 2, p. 4) Dr. Kimelman reviewed Cummings' magnetic resonance imaging from February 2003, which he found showed degenerative discs at L4-L5, and L5-S1. (JE 2, p. 4) Dr. Kimelman listed an impression of degenerative disc disease, recommended physical therapy and a Williams flexion pelvic tilt, and prescribed Relafen. (JE 2, p. 5)

On December 9, 2004, Cummings attended a follow-up appointment with Dr. Kimelman, reporting he was experiencing pain in his left leg that comes on randomly at night and at work. (JE 2, p. 6) Dr. Kimelman listed an impression of upper lumbar radiculopathy, and ordered magnetic resonance imaging. (JE 2, p. 6) Cummings returned to Dr. Kimelman on December 23, 2004. (JE 2, p. 8) Dr. Kimelman noted the imaging showed "rather advanced degenerative disc disease with loss of disc height and some bulging at L4-5 and L5-S1 level." (JE 2, p. 8) Dr. Kimelman listed an impression of degenerative disc disease, noted he did not recommend surgery, and recommended Williams flexion pelvic tilt, narcotic pain medication, and Flexeril. (JE 2, p. 8)

On June 21, 2005, Cummings attended an appointment with Timothy Walsh, M.D., an anesthesiologist specializing in pain management, complaining of low back pain. (JE 3, p. 1) Dr. Walsh diagnosed Cummings with lumbar degenerative disc disease, lumbar facet arthritis, low back pain, and cervical pain, and recommended right medial nerve branch blocks, and prescribed Lortab. (JE 3, p. 2) Cummings continued to treat with Dr. Walsh and a physician assistant working with Dr. Walsh on June 21, 2005, June 23, 2005, July 21, 2005, September 9, 2005, September 29, 2005, and November 8, 2005, where he received lumbar blocks, steroid injections, and

medication. (JE 3, pp. 3-8) Cummings reported relief from the medical nerve branch blocks and short lived relief from the injections. (JE 3, pp. 5-7)

Dr. Walsh terminated Cummings' care on December 1, 2005, for receiving medication from another physician and for not attending a procedure. (JE 3, p. 9) Cummings agreed to comply and his treatment resumed. (JE 3, p. 10) Cummings received additional medial nerve branch blocks, transforaminal epidural steroid injections, and medication from Dr. Walsh on March 9, 2006, March 14, 2006, March 21, 2006, March 30, 2006, April 4, 2006, April 11, 2006, and May 2, 2006. (JE 3, pp. 11-21) During an appointment on April 4, 2006, Cummings reported his pain was making it difficult for him to do his daily work and to maintain his home, and reported he only received "short lived relief" from the injections and blocks. (JE 3, p. 19)

On December 1, 2006, Cummings went to the emergency room at Broadlawns Medical Center ("Broadlawns"), complaining of severe, hard, and constant low back pain for four days. (JE 4, p. 1) Cummings was assessed with back pain and an acute exacerbation of chronic low back pain, and he received a Toradol injection (JE 4, pp. 2-4)

Dr. Walsh referred Cummings to Cassim Igram, M.D., an orthopedic surgeon with Iowa Ortho, because he was not responding to interventions. (JE 3, pp. 18-19) On April 13, 2006, Cummings attended an appointment with Dr. Igram complaining of chronic back pain for ten years. (JE 2, p. 9) Dr. Igram reviewed Cummings' magnetic resonance imaging and noted he had degenerative changes at L4-5 and L5-S1 without significant nerve root impingement. (JE 2, p. 10) Dr. Igram listed an impression of chronic back pain and recommended Cummings continue his current course of treatment without surgery. (JE 2, p. 10)

On May 9, 2006, Cummings attended an appointment with Camille Rivera, M.D., a physiatrist with Iowa Ortho on a referral from Dr. Walsh, complaining of chronic low back pain for more than ten years that has been slowly progressing. (JE 2, pp. 12, 22) Dr. Rivera noted injections, blocks, and multiple nonsteroidal medications had not provided significant pain relief. (JE 2, pp. 12-13) Dr. Rivera examined Cummings, reviewed his imaging, and listed an impression of chronic low back pain. (JE 2, pp. 15-16) Dr. Rivera recommended Cummings be referred to a chronic pain management specialist for medication management, noted he would not benefit from short-acting narcotics, found Cummings had a significant depressed mood and history of depression and recommended a referral to a psychiatrist, and recommended Cummings become more active. (JE 2, p. 16) There is no evidence Cummings received additional medical treatment for his lumbar spine condition from 2006 until 2015, after he started working for Ferguson Construction.

On July 24, 2015, Cummings sought treatment for low back pain at the emergency room at Broadlawns. (JE 4, p. 6) Cummings reported the pain started while he was at work. (JE 4, p. 7) Cummings relayed he could not recall an exact moment when the pain started, but he thought it was "related to when he had to reach into a pit

to grab something." (JE 4, p. 7) Cummings reported he had tight, burning pain radiating through his buttock to the lateral part of his thigh and knee. (JE 4, p. 7) Matthew Yauch, D.O. listed an impression of low back pain, and strain of back muscle, and prescribed Norco and Flexeril. (JE 4, p. 8)

On October 18, 2015, Cummings went to the emergency room at Broadlawns complaining of severe low back pain with chronic numbness in his toes. (JE 4, p. 9) Cummings reported he was not working much and he believed rest was making his pain worse. (JE 4, p. 9) James Cummings, M.D., examined Cummings and listed an impression of a low back strain and strain of muscle, fascia and tendon of the lower back, and prescribed tramadol. (JE 4, pp. 10-11)

On March 21, 2016, Cummings was working for Ferguson Construction finishing a home in Bondurant. (Tr., p. 34) Cummings was working on the garage door and went to climb up a ladder. (Tr., pp. 34-35) The ladder gave out and collapsed and Cummings went over backwards and tried to catch himself, landing on his left wrist. (Tr., p. 35) Cummings drove himself to Urgent Care. (Tr., p. 35; JE 5, p. 1) Cummings told the staff he fell off a ladder backwards and hit his head, complaining of left-sided neck pain, left shoulder pain, and left wrist pain. (JE 5, p. 1) Stephen Nowak, D.O., examined Cummings and ordered an x-ray, which showed a comminuted fracture of the distal radius of the wrist. (JE 5, p. 2) Dr. Nowak assessed Cummings with a contusion of the neck, contusion of the left shoulder, contusion of the left wrist, laceration of the occipital region of the scalp, and a Colles' fracture of the left radius. (JE 5, p. 2) Dr. Nowak applied a wrist splint, closed Cummings' scalp laceration, administered a Ketorolac Tromethamine injection, and recommended Cummings follow up with his primary care provider. (JE 5, pp. 2-3)

Cummings returned to work at Ferguson Construction the next day with a temporary cast. (Tr., p. 35) Ferguson Construction did not have light-duty work available and Cummings did what he could that day. (Tr., p. 36) Cummings was able to still use a hammer and nail gun and worked through the pain. (Tr., p. 36)

Ferguson testified he reported Cummings' March 21, 2016 work injury to his workers' compensation insurance carrier. (Tr., p. 110) Cummings returned to regular duty after his left wrist injury. (Tr., p. 111)

On March 22, 2016, Cummings attended an appointment with his primary care provider, Ronnie Hawkins, M.D., complaining of wrist pain. (JE 6, p. 1) Dr. Hawkins referred Cummings to Iowa Ortho for treatment. (JE 6, p. 2)

On March 23, 2016, Cummings attended an appointment with Scott Shumway, M.D., a plastic surgeon specializing in the management of hand and upper extremity disorders at Iowa Ortho, complaining of left wrist pain with an onset of March 21, 2016. (JE 2, pp. 18, 21) Cummings reported his left wrist was aching and throbbing and his pain was aggravated by movement and relieved by ice. (JE 2, pp. 18, 21) Cummings relayed two days before he was standing on a stepladder that broke while helping a

friend and he fell about six feet landing on his left hand and wrist. (JE 2, pp. 18, 21) Cummings reported he experienced immediate pain and swelling. (JE 2, pp. 18, 21) Dr. Shumway noted an x-ray demonstrated a comminuted intra-articular fracture of the left distal radius with a large fracture through the volar radial aspect and the dorsal radial aspect, and recommended surgery. (JE 2, pp. 18-19, 22) Cummings' statement to Dr. Shumway that he was helping a friend when he was injured was not accurate. The March 2016 work injury was accepted by Ferguson Construction and Pekin.

Cummings underwent an open reduction and plate fixation of an intraarticular fracture of the left distal radius with Dr. Shumway on March 26, 2016. (JE 2, p. 23; JE 7, p. 1) Dr. Shumway listed a postoperative diagnosis of intraarticular fracture of the left distal radius. (JE 2, p. 23; JE 7, p. 1)

On April 8, 2016, Cummings attended a follow-up appointment with Dr. Shumway reporting he fell on his wrist while going up some stairs and he had some increasing pain the last few days. (JE 2, p. 25) Dr. Shumway examined Cummings, placed him in a volar wrist splint, ordered occupational therapy to work on range of motion of the fingers, wrist, and forearm, and imposed restrictions of no use of the left arm. (JE 2, pp. 26, 28, 30)

On April 22, 2016, Cummings returned to Dr. Shumway. (JE 2, p. 32) Dr. Shumway continued his occupational therapy to work on strengthening and released Cummings to use his hand out of the splint for light daily activities. (JE 2, pp. 32-34) Cummings continued to treat with Dr. Shumway and reported some pain along the dorsal ulnar wrist, and Dr. Shumway documented it appeared he had some "ECU" tendinitis. (JE 2, pp. 36, 38) Dr. Shumway administered a Kenalog injection for the tendinitis, ordered Cummings to finish therapy and proceed with work hardening, and imposed a lifting restriction of thirty pounds. (JE 2, pp. 36, 38, 40)

During an appointment on May 27, 2016, Dr. Shumway placed Cummings at maximum medical improvement, finding he could use his hand for increasing daily and work-related activities, as tolerated, and released him to return to work without restrictions. (JE 2, pp. 42, 44) Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Shumway issued an impairment rating on June 15, 2016 for Cummings, assigning a one percent permanent impairment rating to his left wrist. (JE 2, p. 45)

During his treatment with Dr. Shumway, Cummings continued to work for Ferguson Construction building and lifting walls. (Tr., p. 37) Cummings did what he could at work. (Tr., p. 37) During the summer months Cummings was working forty to fifty hours per week for Ferguson Construction. (Tr., p. 39)

On August 24, 2016, Cummings attended an appointment with Shawn Spooner, M.D., complaining of acute onset of lower lumbar pain radiating into his right side to his knee for one day with right thigh and hip pain. (JE 8, p. 1) Dr. Spooner documented Cummings reported a remote history of lumbar disc degenerative disease with a history

of injections. (JE 8, p. 1) Dr. Spooner diagnosed Cummings with acute, right-sided low back pain with sciatica, sacroiliac joint pain, and a back muscle spasm, prescribed prednisone, tramadol, and methocarbamol, and asked Cummings to follow up in one week if his symptoms persisted. (JE 8, pp. 1, 4-5) The record does not mention when the pain started or the cause of the pain.

Cummings testified he informed Paul Ferguson, the owner of Ferguson Construction, and his son, Levi Ferguson, he was having problems with his back. (Tr., p. 40) Cummings reported Paul Ferguson had him go see a chiropractor and he offered to pay for the treatment. (Tr., p. 40) Cummings testified Paul Ferguson made a "couple payments at first, and that was it." (Tr., p. 41)

Paul Ferguson testified he did not recall Cummings ever reporting he sustained a back injury while working for Ferguson Construction. (Tr., p. 111) Ferguson recalled Cummings mentioning his back hurt and agreed he referred Cummings to Hassel Chiropractic, but he denied Cummings told him his back was hurting because he sustained a back injury while working for Ferguson Construction. (Tr., p. 112) Ferguson admitted he paid the chiropractic bills for Cummings, but he did so because Cummings did not have health insurance. (Tr., p. 112) During his deposition, Cummings testified Ferguson told him his workers' compensation insurance rates would go up if he submitted a claim and "[h]e didn't want no work comp claims." (Ex. I, p. 14)

On August 25, 2016, Cummings attended an appointment with Hassel Family Chiropractic, complaining of occasional aching discomfort in his low back. (JE 9, p. 1) Cummings received a chiropractic adjustment. (JE 9, p. 1) Cummings returned to Hassel Family Chiropractic on August 26, 2016 and August 29, 2016 and again received adjustments. (JE 9, pp. 2-3)

Cummings returned to Dr. Spooner on August 29, 2016, complaining of right lower lumbar pain with radiating pain into his right side to the knee, numbness in his right lower extremity, and weakness in his bilateral lower extremities with the right greater than the left. (JE 8, pp. 6-7) Dr. Spooner documented Cummings had difficulty ambulating and he was walking with a "significantly antalgic gait." (JE 8, p. 6) Dr. Spooner administered a Toradol injection, prescribed Norco, recommended magnetic resonance imaging, and referred Cummings to pain management. (JE 8, p. 9) Cummings received the imaging, and the reviewing radiologist listed an impression of "[d]isc degeneration at L4-L5 with disc bulging lateralizing to the right, accounting for moderately severe right neural foraminal narrowing and causing compression of exiting right L4 nerve root" and no significant abnormality at other lumbar levels. (JE 10, p. 2)

On September 7, 2016, Cummings underwent lumbar spine magnetic resonance imaging. (JE 6, p. 3) The reviewing radiologist listed an impression of "[d]isc degeneration at L4-L5 with disc bulging lateralizing to the right, accounting for moderately severe right neural foraminal narrowing and causing compression of exiting right L4 nerve root," and no significant abnormality at other lumbar levels. (JE 6, p. 3)

On September 28, 2016, Cummings presented to the emergency room at Mercy Medical Center he and was examined by Nicola Preston, D.O., complaining of chronic back pain and lumbar pain he described as "stabbing" and radiating into his bilateral extremities that is worse with movement. (JE 1, p. 17) Cummings relayed he was experiencing numbness, tingling, and weakness in his bilateral lower extremities. (JE 1, p. 17) Dr. Preston ordered lumbar spine magnetic resonance imaging, and noted the imaging showed a disc bulge with mild disc compression, but no central canal stenosis or acute changes. (JE 1, p. 21) Dr. Preston listed an impression of acute on chronic low back pain and lumbar radiculopathy, prescribed pain medication, ordered Cummings to follow up with his primary care provider, and discharged him. (JE 1, p. 21)

On October 4, 2016, Cummings attended an appointment with Rebecca Kriha, PA-C with Mercy East Village Family Practice and Urgent Care, complaining of lower back pain in the center of his back radiating down the back of his left leg all the way to his toes. (JE 11, p. 1) During the appointment Cummings denied having weakness in his lower extremities. (JE 11, p. 11) Kriha examined Cummings, assessed him with lumbar disc herniation and chronic lumbar radiculopathy, referred Cummings to pain management, and told him to keep his appointment with neurosurgery. (JE 11, p. 1) Kriha documented, "[p]atient appears to be in serious physical pain. He was seated in his chair leaning to one side. He said that this is affecting his work and he is not sure how much longer he [can] continue to go to work." (JE 11, p. 1)

Cummings continued to work for Ferguson Construction. From October 2016 through December 2016 Cummings worked on a side job, framing a personal home for "Dave and Becky." (Exs. 4, p. 30; F, p. 6; Tr., p. 37) Cummings earned \$20.00 per hour from Dave and Becky. (Exs. 4, p. 30; F, p. 6; Tr., p. 37) Cummings reported Dave was diagnosed with cancer and Cummings helped him finish up the home. (Tr., p. 38) After Dave died Cummings did not continue to work for Becky. (Tr., p. 38)

On October 21, 2016, Cummings went to Broadlawns complaining of low back pain. (JE 4, p. 12) Laurie Clair, PA-C, noted Cummings had been referred to pain management, but he had missed an appointment due to lack of insurance. (JE 4, p. 12) Clair listed an impression of chronic low back pain with sciatica, prescribed Baclofen, and recommended Cummings follow up with a regular outpatient provider for his chronic back pain. (JE 4, p. 14)

On November 19, 2016, Cummings went to the emergency room at Mercy Medical Center, complaining of bilateral wrist pain and an ingrown toenail. (JE 1, p. 45) Cummings reported he had been experiencing constant bilateral wrist pain for two weeks exacerbated by movement, reporting he had been using impact drills at work throughout the day that aggravated his wrist pain. (JE 1, p. 45) Haley Weiland, ARNP, examined Cummings, ordered x-rays and noted the imaging showed no acute fractures or dislocations, diagnosed Cummings with bilateral wrist pain, and directed Cummings to follow up with his primary care provider regarding his complaints of carpal tunnel syndrome. (JE 1, p. 48)

On November 21, 2016, Cummings went to Broadlawns complaining of wrist pain and pain in his right elbow. (JE 4, p. 16) Joyce Mischel, ARNP, examined Cummings, listed an impression of right medial epicondylitis and bilateral wrist pain, and administered a Toradol injection and Baclofen for back pain. (JE 4, pp. 16-17) The record does not document Cummings reported his low back pain was caused by work. (Tr. p. 86) Counsel for Ferguson Construction and Pekin asked why the medical record did not document his back complaints were caused by work, and Cummings responded, "[i]f I didn't want – Yeah, if I didn't want – If I put it on my insurance, I wouldn't tell them." (Tr., p. 85) Cummings responded he put it on his own insurance "many times for Paul . . . Because it wouldn't raise his comp rates to turn in insurance claims on me." (Tr., p. 85)

Cummings testified his last day of employment with Ferguson Construction was December 5, 2016. (Tr., p. 39) Cummings reported he could not take the pain anymore and he was having a difficult time getting out of bed in the morning. (Tr., pp. 39, 41) Cummings testified during his last week of work someone was helping him lift a wall, and the other worker "lost grip on the wall, and that put it on me." (Tr., pp. 42, 60)

Ferguson testified Cummings stopped showing up for work in December 2016. (Tr., pp. 109-10) Ferguson reported he tried calling Cummings several times because he needed him to finish a house and he never called him back. (Tr., p. 110)

On December 8, 2016, Cummings went to Broadlawns complaining of chronic low back pain after slipping on a ladder. (JE 4, p. 18) Chad Bradshaw, PA-C, examined Cummings, listed an impression of chronic low back pain, "[b]ack pain laterality: left Sciatica presence: without sciatica," chronic left-sided low back pain without sciatica, and lateral epicondylitis of the right elbow. (JE 4, pp. 19-20)

Cummings denied he slipped on a ladder at Ferguson Construction that caused his back injury. (Tr., p. 61) Cummings reported he told the medical staff he slipped on a ladder even though he had not because he did not want the claim to show up on Paul Ferguson's workers' compensation policy. (Tr., p. 43)

Interrogatory number 11, served on Cummings, asked Cummings to "[d]escribe in claimant's own words the incident or manner in which Claimant contends the injury or illness alleged in Claimant's pleadings was sustained." (Ex. F, p. 8) Cummings served his answers to interrogatories on January 16, 2017, responding:

I was on the southside of Des Moines building a house. I was sheeting a roof when I slipped on a sheet of plywood and twisted the wrong way. I immediately felt that something was wrong. I took a break hoping that it would get better, but it did not. I informed Paul Ferguson that I needed to go to the doctor and I went to the emergency room. The doctor informed me I had to see a surgeon. Before I was able to see the surgeon, I was incarcerated. I was able to see a chiropractor prior to being incarcerated

and see pain management where I received steroid injections, but have been unable to get any treatment since.

(Ex. F, p. 8)

During the hearing Cummings testified he was injured by lifting a wall, and explained he provided the above answer because he also injured his back on the day he slipped on a piece of plywood. (Tr., p. 63) When asked why he did not provide that he also injured himself while lifting a wall in his answers to interrogatories Cummings responded, "I'm not sure." (Tr., p. 64) Cummings replied lifting the wall was "the last thing I injured my back while working for Paul" on December 5, 2016. (Tr., p. 64)

During his deposition, Cummings testified he injured his back when "[w]e were lifting, I believe – we had a wall give out on us. We tried to save the wall." (Ex. I, p. 12) Cummings reported he could not bend over for seven days, and Ferguson sent him to Hassel Chiropractic. (Ex. I, p. 12)

On December 14, 2016, Cummings went to the emergency room at Mercy Medical Center and was examined by William Nowysz, D.O., complaining of worsening, constant lower back pain he described as sharp, burning, and moderate, exacerbated by movement. (JE 1, p. 22; JE 6, p. 10) Dr. Nowysz noted "[p]atient states he [sic] simply having exacerbation of his chronic and ongoing back pain problems and herniated disks and degenerative disc disease" and needs better pain management. (JE 1, p. 26) Dr. Nowysz listed a diagnosis of acute exacerbation of chronic low back pain, administered an injection, and prescribed acetaminophen-HYDROcodone. (JE 1, p. 26; JE 6, p. 14)

On December 22, 2016, Cummings attended an appointment with Elizabeth Gudgel, ARNP with Mercy West Family Practice and Urgent Care, complaining of low back pain, left hip pain, and left knee pain after he slipped and fell from a ladder while roofing. (JE 12, p. 1) Gudgel examined Cummings, assessed him with low back pain, left hip pain, and left knee pain, prescribed Baclofen, and referred Cummings for physical therapy for his low back pain. (JE 12, p. 2)

On January 5, 2017, Cummings attended an appointment with Dr. Hawkins. (JE 11, p. 5) Dr. Hawkins assessed Cummings with a lumbar disc herniation and lumbar low back pain, and referred Cummings for an orthopedic evaluation. (JE 11, p. 5)

Cummings testified between December 6, 2016 and January 5, 2017, he was unable to work and he was unemployed. (Tr., p. 58)

Cummings went to the emergency room at Mercy Medical Center on January 18, 2017, complaining of chronic low back pain following an incident where his car broke down on the interstate and he worked to move the car out of oncoming traffic. (JE 1, p. 28; JE 6, p. 15) Cummings relayed he was "unable to walk without severe pain." (JE 1, p. 28; JE 6, p. 15) Lenard Kerr, D.O., examined Cummings, diagnosed him with an

acute exacerbation of chronic back pain without radiculopathy, ordered a follow-up appointment with his personal physician, and prescribed Flexeril and Percocet. (JE 1, p. 31; JE 6, p. 18)

On March 6, 2017, Pekin sent a letter to Cummings' attorney stating Cummings had never reported a back injury to Ferguson Construction, and enclosed certain records he requested. (Ex. 3, p. 24) Pekin sent a second letter to Cummings' attorney on June 9, 2017, stating, "[a]fter a thorough investigation, it has been determined that he is not entitled to any workers' compensation benefits for that alleged accident. It should also be noted that your client never reported any type of work related back injury to his employer prior to quitting his job." (Ex. 3, p. 25)

Cummings was incarcerated for assault for eighteen months from August 7, 2017 through September 28, 2018. (Tr., pp. 44-45, 90) The crime did not involve dishonesty. Cummings testified when he went to prison his back was terrible, but his back improved during his incarceration. (Tr., p. 46) While in prison Cummings took ibuprofen, gabapentin, and trazodone for his back. (Tr., p. 46)

Cummings was paroled on September 28, 2018. He remained on parole at hearing. While on parole Cummings is required to have a job. (Tr., pp. 44, 104) Cummings testified he did not look for a construction job because he did not believe he could take the physical work anymore. (Tr., pp. 47, 104) Cummings testified he is no longer able to lift zero to twenty-five pounds fifty times per day, constantly walk, stand, bend, squat, climb, kneel, or twist. (Tr., pp. 47-48)

After he was released from prison Cummings worked for the Wittern Group, assembling or building soda and snack vending machines for one month. (Tr., pp. 45, 48, 93) Cummings reported the job did not involve heavy lifting. (Tr., pp. 48-49) Cummings testified he could not take the physical labor of the position. (Tr., p. 45) Cummings injured his knee at work in November 2018. (Tr., p. 94)

Jiffy Lube hired Cummings to service vehicles, change oil, and rotate tires. (Tr., pp. 49, 95) Cummings worked thirty to forty hours per week. (Tr., p. 95) Cummings testified he could not tolerate rotating the tires, so he quit. (Tr., p. 49)

Cummings testified two to three months before the May 2019 hearing Swan Packing hired him to trim pork. (Tr., pp. 50, 52) Cummings reported the job requires him to trim gristle and bones with a knife. (Tr., p. 50) Cummings estimated he cuts meat every three to four seconds, full-time. (Tr., p. 51) Cummings works some overtime, up to fifty-six hours per week. (Tr., p. 51) At the time of the hearing Cummings continued to work for Swan Packing, earning \$9.50 per hour. (Tr., p. 50) Cummings testified he has obtained every job he has applied for since he left Ferguson Construction. (Tr., pp. 98-99)

Cummings testified when he leaves work at the end of the day his left wrist and back bother him. (Tr., p. 51) Cummings reported he sometimes drops things with his

left hand, and the cold makes it harder for him to grip with his left hand. (Tr., p. 52)
Cummings reported he does not have any gripping problems with his right hand. (Tr., p. 53)

Cummings testified his lower back bothers him and he continues to experience pain down his legs. (Tr., p. 53) Cummings relayed walking and sitting aggravate his condition. (Tr., p. 53)

Cummings has not received medical care for his left wrist or back since he was released from prison. (Tr., p. 56) Cummings has requested additional medical care from Ferguson Construction and Pekin, but they denied further care. (Tr., pp. 56-57) At the time of the hearing Cummings requested additional medical care. (Tr., p. 58)

John Kuhnlein, D.O., an occupational medicine physician, conducted an independent medical examination for Cummings on March 5, 2019, and issued his report on March 20, 2019. (Ex. 1) Dr. Kuhnlein examined Cummings and reviewed his medical records. (Ex. 1)

With respect to the March 21, 2016 work injury, Dr. Kuhnlein causally related Cummings' left wrist fracture to his work injury and agreed with Dr. Shumway Cummings reached maximum medical improvement on May 27, 2016. (Ex. 1, p. 14) Using the AMA Guides, Dr. Kuhnlein opined:

[t]urning to Figure 16-31, Page 469, I would assign 1% left upper extremity impairment for decrements in radial deviation of the left wrist. The sensory deficit is in the lateral antebrachial cutaneous nerve distribution. Turning to Table 16-15, Page 492, this nerve is not represented in the table, and so I would use the value for the medial antebrachial cutaneous nerve. This would be an initial 5% left upper extremity impairment. However, this value must be multiplied by the modifier from table 16-10, page 482. I would use a 25% modifier. When these values are multiplied together (5% x 25%) and rounded according to the instructions on page 20, this is a 1% left upper extremity impairment.

Using the Combined Values Chart on page 604, when these values are combined (1% x 1%) this is a 2% left upper extremity impairment. Turning to Table 16-3, page 439, this would convert to a 1% whole person impairment, if indicated.

(Ex. 1, pp. 14-15) Dr. Kuhnlein recommended a fifty pound lifting restriction from floor to waist, waist to shoulder, and over the shoulder occasionally with the left wrist only. (Ex. 1, p. 15)

For the December 5, 2016 injury date, Dr. Kuhnlein diagnosed Cummings with degenerative disc disease of the lumbar spine with neural foraminal stenosis, radiculitis, and chronic back pain. (Ex. 1, p. 16) With respect to causation, Dr. Kuhnlein noted

"[t]here is no doubt that Mr. Cummings had a pre-existing chronic problem with his lumbar spine," but also found

[i]f the change in job stressors described by Mr. Cummings is accurate, then the work he performed for Ferguson Construction would have presented increased lumbar stressors when compared to his previous work. With this work, Mr. Cummings describes worsening low back symptoms, to the point that his symptoms became more constant in 2016. This would tend to match the currently available medical record, with more visits within a shorter time frame after the 2016 timeframe after he was released by Dr. Shumway from his wrist injury. He states that he started to buy narcotics on the street and obtained narcotics from his friends after the wrist injury, and he sought multiple providers in different clinics and the 2016 timeframe prior to quitting work for Ferguson Construction. This may or may not represent a component of drug-seeking behavior; I am not a substance abuse specialist and would defer to them in this regard.

Nevertheless, even when taking this into possible consideration, Mr. Cummings had a polysubstance abuse history before he went to work for Ferguson Construction and it is my understanding that "you take them as you get them" and [sic] Iowa Worker's Compensation law. Mr. Cummings was exposed to more significant lumbar stressors in his work for Ferguson Construction if the history he presents is accurate. As a result, and within a reasonable degree of medical certainty, I believe that the work for Ferguson Construction was a substantial more than minor factor in substantially and materially aggravating his pre-existing low back condition.

(Ex. 1, p. 17) Dr. Kuhnlein found Cummings reached maximum medical improvement for his low back condition on or about January 5, 2017, and using Table 15-3, page 384, he placed Cummings between DRE Lumbar Categories II and III, and assigned a nine percent whole person impairment. (Ex. 1, p. 18) Dr. Kuhnlein recommended permanent lifting restrictions of twenty pounds occasionally from floor to waist, thirty pounds occasionally from waist to shoulder as long as weights are kept close to the axial plane of the body, and ten pounds occasionally over the shoulder, and restrictions of stooping, squatting, bending at the waist, crawling, kneeling, climbing stairs, and working at or above shoulder height occasionally, no work on ladders or heights if he is taking medication that may affect his ability to maintain a three-point safety stance, no operation of industrial machinery with either lower extremity, and no driving of a forklift or operation of a pallet jack. (Ex. 1, p. 19) Dr. Kuhnlein noted Cummings needs the ability to change positions at will, and to sit, stand, and walk on an as-needed basis for comfort. (Ex. 1, p. 19)

On April 5, 2019, Peter Matos, D.O., an occupational health physician, conducted an independent medical examination of Cummings for Ferguson Construction and

Pekin. (Ex. A) Dr. Matos examined Cummings and reviewed his medical records. (Ex. A) Dr. Matos diagnosed Cummings with lumbar degenerative disc disease, and opined

I do not believe his employment at [Ferguson Construction] was a significant or substantial contributing factor to his low back condition and/or symptoms. There is not an acute or chronic mechanism of injury described during his employment at Ferguson. The records detail acute non work-related back injuries due to a slip on a ladder and pushing his broken-down car. He suffered a slip on a ladder on December 8, 2016 that caused such significant back pain that he went to be seen at Broadlawns Hospital. Then, on January 18, 2017, he returned to Broadlawns for back pain due to trying to move his car after it broke down.

(Ex. A, p. 4) Dr. Matos opined the December 8, 2016 and January 18, 2017 incidents were intervening incidents and/or causes for his back pain and/or complaints after his last day of work for Ferguson on December 5, 2016. (Ex. A, p. 4) Dr. Matos noted during his incarceration Cummings had no back pain issues from August 7, 2017 through September 28, 2018, and he held jobs after being released from prison "that more likely than not exacerbated and/or caused his low back complaints." (Ex. A, p. 4)

CONCLUSIONS OF LAW

I. Applicable Law

This case involves several issues, including causation, temporary benefits, nature and extent of disability, recovery of medical bills, recovery of the cost of an independent medical examination, penalty and interest under Iowa Code sections 85.27, 85.33, 85.34, 85.39, 86.13, and 535.3. In March 2017, the legislature enacted changes (hereinafter "Act") relating to workers' compensation in Iowa. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code sections 85.33, 85.34, and 85.39 apply to injuries occurring on or after the effective date of the Act. These cases involve work injuries occurring before July 1, 2017, therefore, the provisions of the new statute involving Iowa Code sections 85.33, 85.34, and 85.39 do not apply to this case. The calculation of interest is governed by Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

II. Arising Out of and in the Course of Employment – Lumbar Spine

The parties stipulated Cummings sustained a permanent impairment to his wrist caused by the March 2016 work injury in File Number 5059577. Cummings also avers he sustained a temporary and permanent impairment to his low back caused by a cumulative work injury, which manifested on December 5, 2016. Ferguson Construction and Pekin contend Cummings did not sustain an injury to his lumbar spine arising out of and in the course of his employment, arguing his condition preexisted his employment with Ferguson Construction, he did not complain his employment duties were causing or aggravating his pain to medical providers, he reported his pain worsened after he left his employment with Ferguson Construction, and he experienced subsequent trauma unrelated to his work.

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

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

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

must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). The cause does not need to be the only cause, “[i]t only needs to be one cause.” Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 64 (Iowa 1981).

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

Cummings asserts he sustained a cumulative injury to his lumbar spine while working for Ferguson Construction. A cumulative injury is an occupational disease that develops over time, resulting from cumulative trauma in the workplace. Baker v. Bridgestone/Firestone, 872 N.W.2d 672, 681 (Iowa 2015); Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842, 851 (Iowa 2009); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368, 372-74 (Iowa 1985). “A cumulative injury is deemed to have occurred when it manifests – and ‘manifestation’ is that point in time when ‘both the fact of the injury and the causal relationship of the injury to the claimant’s employment would have become plainly apparent to a reasonable person.’” Baker, 872 N.W.2d at 681.

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

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

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

Ferguson Construction and Pekin generally allege incidents occurring after Cummings left his employment with Ferguson Construction on December 8, 2016 and January 18, 2017, support he did not sustain a work-related injury because the December 8, 2016 medical record documents pain “lower back pain for past couple of days” after he left Ferguson Construction, and he experienced back pain while moving his car out of oncoming traffic on the interstate in January 2017. While Ferguson Construction and Pekin have not set forth any case law supporting their assertion, it appears Ferguson Construction and Pekin are alleging the events are intervening/superseding causes.

A superseding cause is an act or force that intervenes to prevent a defendant from being liable for harm to “the plaintiff that the defendant’s antecedent negligence is a substantial factor in bringing about.” Clinkscales v. Nelson Sec., Inc., 697 N.W.2d 836, 843 (Iowa 2005). An intervening act or force is an act or force that “actively operates to produce harm to another after the actor’s negligent act or omission has been committed.” Rieger v. Jacques, 584 N.W.2d 247, 251 (Iowa 1998). Not all intervening acts or forces become superseding causes. Id. The Iowa Supreme Court has noted, “[t]he intervention of a force which is a normal consequence of a situation created by the actor’s negligent conduct is not a superseding cause of harm which such conduct has been a substantial factor in bringing about.” Hollingsworth v. Schminkey, 553 N.W.2d 591, 597 (Iowa 1996) (quoting Restatement (Second) of Torts § 472 (1965)).

A force or act is a superseding cause if “the later-occurring event is such as to break the chain of causal events between the actor’s [conduct] and the plaintiff’s injury.” Hayward v. P.D.A., 573 N.W.2d 29, 32 (Iowa 1997). “An intervening force which falls squarely within the scope of the original risk will not supersede the defendant’s responsibility.” Rieger v. Jacques, 584 N.W.2d at 251.

Two expert witnesses have provided causation opinions on Cummings’ alleged back injury in this case, Dr. Kuhnlein, an occupational medicine physician retained by Cummings to conduct an independent medical examination, and Dr. Matos, an occupational medicine physician retained by Ferguson Construction and Pekin to conduct an independent medical examination. I find Dr. Kuhnlein’s opinion to be most persuasive.

As noted by Dr. Kuhnlein in his report, Cummings had a long history of problems with his lumbar spine prior to his employment with Ferguson Construction. The record also reflects a break in Cummings’ treatment from 2006 until July 2015, when he was working for Ferguson Construction. (JE 4, pp. 6-7) Ferguson Construction hired Cummings on September 1, 2014. Cummings was able to perform his normal duties for Ferguson Construction from September 1, 2014, without any complaints of back pain until July 24, 2015, for more than nine months.

Dr. Matos opined Cummings’ employment was not “a significant or substantial contributing factor to his low back condition and/or symptoms,” alleging there was not

"an acute or chronic mechanism of injury described during his employment at Ferguson," noting the records detail a non-work-related slip on a ladder and pushing of a broken down car. (Ex. A, p. 4) Contrary to Dr. Matos' assertion, a July 24, 2015 medical record documents Cummings was complaining of low back pain that started while he was at work, although he could not recall the exact moment when his pain started. (JE 4, p. 7)

The next incident of back pain is from August 24, 2016, when Cummings attended an appointment with Dr. Spooner. (JE 8, p. 1) Cummings testified he complained of back pain to Paul Ferguson and Ferguson recommended he see a chiropractor. (Tr., p. 40) During an appointment with Hassel Family Chiropractic, the next day, on August 25, 2016, Cummings complained of occasional aching discomfort in his back. (JE 9, p. 1) Ferguson admitted he paid for the appointment at hearing. Cummings continued to complain of back pain and he sought medical treatment in September and October 2016. (JE 1, p. 17; JE 6, p. 4; JE 4, pp. 12-14) The medical records support Dr. Kuhnlein's conclusion that "the work for Ferguson Construction was a substantial more than minor factor in substantially and materially aggravating his pre-existing low back condition." (Ex. I, p. 17)

During the hearing I assessed Cummings' credibility by considering whether his testimony was reasonable and consistent with other evidence I believe, whether Cummings had made inconsistent statements, his "appearance, conduct, memory and knowledge of the facts," and his interest in the case. State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990).

Cummings has an obvious interest in the outcome of this case. Cummings is a poor historian and he provided inaccurate information to a medical provider when he sought medical treatment on December 8, 2016. Cummings reported he developed back pain after falling from a ladder, which is not the case. He also provided inaccurate information to a medical provider when he reported he injured his left wrist while helping a friend on March 23, 2016. (JE 2, pp. 18, 21) Dr. Kuhnlein had access to this and all of Cummings' medical records, just as he had access to the records from December 8, 2016 and January 18, 2017.

I had the opportunity to observe Cummings testify under oath. During his testimony Cummings engaged in direct eye contact, his rate of speech was appropriate, and he did not engage in any furtive movements. His testimony was reasonable and consistent with the other evidence I believe, even considering the incorrect information he reported to medical providers on December 8, 2016 and also on March 23, 2016. Cummings complained of and sought treatment for low back pain during his employment with Ferguson Construction. The December 8, 2016 appointment occurred days after his last day of work, December 5, 2016. Cummings alleges he sustained a cumulative, as opposed to a traumatic injury while working for Ferguson Construction. While Cummings reported falling off a ladder, which is troubling, the record reflects he was experiencing ongoing back pain while working for Ferguson Construction. Poor historians and people who provide inaccurate information sustain work injuries, just as

people who are good historians and who provide accurate information sustain work injuries. Based on my personal observations at hearing, I find Cummings is a credible witness. Cummings has established he sustained an injury while working for Ferguson Construction that substantially and materially aggravated his pre-existing low back condition, causing a permanent impairment.

III. Extent of Disability

The parties stipulated Cummings sustained a permanent injury to his left wrist, a scheduled injury, caused by the March 21, 2016 work injury. I also found Cummings sustained a permanent impairment to his lumbar spine that manifested on December 5, 2016, which is compensated industrially.

Permanent partial disabilities are divided into scheduled and unscheduled losses. Iowa Code § 85.34(2) (2016). If the claimant's injury is listed in the specific losses found in Iowa Code section 85.34(2)(a)-(t), the injury is a scheduled injury and is compensated by the number of weeks provided for the injury in the statute. Second Injury Fund v. Bergeson, 526 N.W.2d 543, 547 (Iowa 1995). "The compensation allowed for a scheduled injury 'is definitely fixed according to the loss of use of the particular member.'" Id. (quoting Graves v. Eagle Iron Works, 331 N.W.2d 116, 118 (Iowa 1983)). If the claimant's injury is not listed in the specific losses in the statute, compensation is paid in relation to 500 weeks as the disability bears to the body as a whole. Id.; Iowa Code § 85.34(2)(u). "Functional disability is used to determine a specific scheduled disability; industrial disability is used to determine an unscheduled injury." Bergeson, 526 N.W.2d at 547.

A. March 2016 Left Distal Radius Injury

The schedule provides a maximum award of 250 weeks of permanent partial disability benefits for an injury to the left upper extremity. Iowa Code § 85.34(2)(m). Two expert witnesses provided permanent impairment ratings regarding Cummings' left wrist, Dr. Shumway, a plastic surgeon specializing in the management of hand and upper extremity disorders, who operated on Cummings' left wrist and treated him, and Dr. Kuhnlein, an occupational medicine physician who conducted an independent medical examination for Cummings. I find Dr. Kuhnlein's opinion to be most persuasive.

On May 27, 2016, Dr. Shumway assigned a one percent permanent impairment rating to the left wrist without identifying the criteria he used in the AMA Guides in assigning the permanent impairment rating and he released Cummings to return to work without restrictions. (JE 2, p. 45) Following an examination on March 5, 2019, Dr. Kuhnlein provided a detailed report with his findings on examination and assigned Cummings a combined two percent left upper extremity impairment for decrements in radial deviation of the left wrist, and for a sensory deficit in the lateral antebrachial cutaneous nerve distribution. (Ex. 1, pp. 14-15) Dr. Kuhnlein also recommended a lifting restriction of fifty pounds from floor to waist, waist to shoulder, and over the shoulder with the left wrist. (Ex. 1, pp. 14-15) There is no evidence Dr. Shumway was

provided with a copy of Dr. Kuhnlein's report or that he was asked to comment on the assignment of an additional impairment for the sensory deficit Dr. Kuhnlein found on examination. Dr. Kuhnlein also most recently examined Cummings and his report is more thorough. For these reasons I find Dr. Kuhnlein's opinion most persuasive.

I did not receive information at hearing that would persuade me to deviate from the schedule. Under the schedule, Cummings is entitled to five weeks of permanent partial disability benefits for the March 2016 work injury, at the stipulated rate of \$533.16 per week, commencing on the stipulated commencement date of May 27, 2016.

B. December 2016 Lumbar Spine Injury

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

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

As discussed above, I found Dr. Kuhnlein's opinion on causation to be the most persuasive. Dr. Kuhnlein assigned Cummings a nine percent permanent impairment rating for his lumbar spine condition. (Ex. 1, p. 18) Dr. Kuhnlein also recommended permanent lifting restrictions of twenty pounds occasionally from floor to waist, thirty pounds occasionally from waist to shoulder as long as weights are kept close to the axial plane of the body, and ten pounds occasionally over the shoulder, and restrictions of stooping, squatting, bending at the waist, crawling, kneeling, climbing stairs, and working at or above shoulder height occasionally, no work on ladders or heights if he is taking medication that may affect his ability to maintain a three-point safety stance, no operation of industrial machinery with either lower extremity, and no driving of a forklift or operation of a pallet jack. (Ex. 1, p. 19) Dr. Kuhnlein noted Cummings needs the ability to change positions at will, and to sit, stand, and walk on an as-needed basis for comfort. (Ex. 1, p. 19) I find Dr. Kuhnlein's restrictions are Cummings' permanent restrictions.

At the time of the hearing Cummings was fifty-four. (Tr., p. 9) Cummings graduated from high school. (Exs. F, p. 4; I, p. 5; Tr., p. 10) Cummings testified he was diagnosed with a learning disability in reading and writing while in school. (Tr., pp. 9-10;

Ex. I, p. 5) Cummings is an older worker, with limited education and a learning disability. I find he would have a difficult time with retraining.

Cummings has worked as a rough carpenter for most of his career. While working for Ferguson Construction Cummings earned \$20.00 per hour. (Ex. 4, p. 30) Cummings also has experience working as a pallet builder, and in meat processing. Cummings' prior work in construction and building pallets is not consistent with the lifting restrictions recommended by Dr. Kuhnlein.

After he was released from prison in September 2018, Cummings worked for Wittern Group assembling vending machines and for Jiffy Lube servicing vehicles and rotating tires. (Tr., pp. 45, 48-49, 93-95) Cummings testified he could not take the physical labor involved in either position. (Tr., pp. 45, 49) Two to three months before the May 2019 hearing, Swan Packing hired Cummings to trim pork. (Tr., pp. 50, 52) Cummings earns \$9.50 per hour and he has worked full-time, up to fifty-six hours per week. (Tr., pp. 50-51) Cummings testified he has obtained every job he has applied for since he left Ferguson Construction. (Tr., pp. 98-99) Considering all of the factors of industrial disability, I find Cummings has sustained a fifty percent industrial disability. Cummings is awarded 250 weeks of permanent partial disability benefits at the stipulated rate of \$540.89 per week, commencing on the stipulated commencement date of January 6, 2017.

IV. Temporary Benefits

Iowa Code section 85.33 (2016) governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012).

An employee has a temporary partial disability when because of the employee's medical condition, "it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee's disability." Iowa Code § 85.33(2). Temporary partial disability benefits are payable, in lieu of temporary total disability and healing period benefits, due to the reduction in earning ability as a result of the employee's temporary partial disability, and "shall not be considered benefits payable to an employee, upon termination of temporary partial or temporary total disability, the healing period, or permanent partial disability, because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury." Id.

As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Dunlap,

824 N.W.2d at 556. I found Cummings sustained a permanent impairment to his lumbar spine caused by his work injury. Therefore, if he is entitled to temporary benefits he is entitled to healing period benefits.

On the hearing report Cummings asserted he was entitled to temporary benefits for his lumbar spine from December 6, 2016 through January 5, 2017. The issue was not addressed in his post-hearing brief. I find the failure to address temporary benefits in the post-hearing brief to be a waiver of the issue.

Even assuming Cummings preserved the issue, I find Cummings abandoned his employment with Ferguson Construction. Ferguson testified after Cummings failed to show up for work in December 2016 he called and left messages for Cummings and he never returned his calls. During the hearing Cummings' attorney inquired, and Cummings responded:

Q. Mr. Cummings, between December 6, 2016, and January 5, 2017, were you able to work?

A. Could you repeat that, please?

Q. Sure. After you stopped working at Ferguson Construction through January 5, 2017, did you have a job?

A. No, I did not.

Q. So you were unemployed at this time?

A. Yes, I was.

(Tr., p. 58) Cummings did not testify he was unable to work during this period of time. There was no evidence presented at hearing Cummings was restricted from working during this period. I decline to award Cummings healing period benefits from December 6, 2016 through January 5, 2017.

V. Medical Bills and Alternate Medical Care

Ferguson Construction and Pekin denied liability for Cummings' lumbar spine condition. Cummings seeks to recover medical bills for his lumbar spine condition set forth in Exhibits 5, 6, and 8.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the

employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner “may, upon application and reasonable proofs of the necessity therefor, allow and order other care.” Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting “[t]he employer’s obligation under the statute turns on the question of reasonable necessity, not desirability”). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

Exhibit 5 contains bills paid by Medicaid for Cummings’ lumbar spine totaling \$809.54. Exhibits 6 and 8 include medical bills for treatment for Cummings’ lumbar spine condition and left upper extremity. As found above, Cummings has established he sustained an injury to his lumbar spine arising out of and in the course of his employment with Ferguson Construction. Based on the evidence presented at hearing, I find the treatment provided to Cummings set forth in Exhibits 5, 6 and 8 reasonable and beneficial to Cummings. Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 206; Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018). Ferguson Construction and Pekin are responsible for all causally related medical bills not previously paid as set forth in Exhibits 5, 6 and 8. Ferguson Construction and Pekin are responsible for providing all necessary medical care related to Cummings’ work-related injuries, including future care.

VI. Penalty

Iowa Code section 86.13 governs compensation payments. Under the statute’s plain language, if there is a delay in payment absent “a reasonable or probable cause or excuse,” the employee is entitled to penalty benefits, of up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse. Iowa Code § 86.13(4); see also Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 260 (Iowa 1996) (citing earlier version of the statute). “The application of the penalty provision does not turn on the length of the delay in making the correct compensation payment.” Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229, 236 (Iowa 1996). If a delay occurs without a reasonable excuse, the commissioner is required to award penalty benefits in some amount to the employee. Id.

The statute requires the employer or insurance company to conduct a “reasonable investigation and evaluation” into whether benefits are owed to the employee, the results of the investigation and evaluation must be the “actual basis” relied on by the employer or insurance company to deny, delay, or terminate benefits, and the employer or insurance company must contemporaneously convey the basis for the denial, delay, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits. Iowa Code § 86.13(4). An employer may establish a “reasonable cause or excuse” if “the delay was necessary for the insurer to investigate the claim,” or if “the employer had a reasonable basis to contest the employee’s

entitlement to benefits.” Christensen, 554 N.W.2d at 260. “A ‘reasonable basis’ for denial of the claim exists if the claim is ‘fairly debatable.’” Burton v. Hilltop Care Ctr., 813 N.W.2d 250, 267 (Iowa 2012). “Whether a claim is ‘fairly debatable’ can generally be determined by the court as a matter of law.” Id. The issue is whether the employer had a reasonable basis to believe no benefits were owed to the claimant. Id. “If there was no reasonable basis for the employer to have denied the employee’s benefits, then the court must ‘determine if the defendant knew, or should have known, that the basis for denying the employee’s claim was unreasonable.’” Id.

Benefits must be paid beginning on the eleventh day after the injury, and “each week thereafter during the period for which compensation is payable, and if not paid when due,” interest will be imposed. Iowa Code § 85.30. In Robbenolt, the Iowa Supreme Court noted, “[i]f the required weekly compensation is timely paid at the end of the compensation week, no interest will be imposed As an example, if Monday is the first day of the compensation week, full payment of the weekly compensation is due the following Monday.” Robbenolt, 555 N.W.2d at 235. A payment is “made” when the check addressed to the claimant is mailed, or personally delivered to the claimant. Meyers v. Holiday Express Corp., 557 N.W.2d 502, 505 (Iowa 1996) (abrogated by Keystone Nursing Care Ctr. v. Craddock, 705 N.W.2d 299 (Iowa 2005) (concluding the employer’s failure to explain to the claimant why it would not pay permanent benefits upon the termination of healing period benefits did not support the commissioner’s award of penalty benefits)).

When considering an award of penalty benefits, the commissioner considers “the length of the delay, the number of delays, the information available to the employer regarding the employee’s injuries and wages, and the prior penalties imposed against the employer under section 86.13.” Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 336 (Iowa 2008). The purposes of the statute are to punish the employer and insurance company and to deter employers and insurance companies from delaying payments. Robbenolt, 555 N.W.2d at 237.

Cummings seeks an award of penalty benefits from Ferguson Construction and Pekin alleging they denied his claim without conducting a reasonable investigation. Cummings’ attorney sent Ferguson Construction a letter on February 22, 2017, notifying Ferguson Construction Cummings was alleging he had sustained a cumulative injury to his back. (Ex. J, p. 1) On March 6, 2017, Pekin sent a letter to Cummings’ attorney stating Cummings had never reported a back injury to Ferguson Construction, and enclosing certain records he requested. (Ex. 3, p. 24) Pekin sent a second letter to Cummings’ attorney on June 9, 2017, stating, “[a]fter a thorough investigation, it has been determined that he is not entitled to any workers’ compensation benefits for that alleged accident. It should also be noted that your client never reported any type of work related back injury to his employer prior to quitting his job.” (Ex. 3, p. 25) Ferguson Construction and Pekin did not seek a medical causation opinion before denying the claim. I do not find Ferguson Construction and Pekin conducted a reasonable investigation for denying the claim, or that they adequately communicated the reason for the denial. An award of penalty benefits is appropriate to deter Ferguson

Construction, Pekin, and other employers and insurance carriers from similar conduct in the future. I award Cummings \$5,000.00 in penalty benefits.

VII. Independent Medical Examination

Cummings seeks to recover the \$4,278.00 cost of Dr. Kuhnlein's independent medical examination. (Ex. 7) Iowa Code section 85.39 (2016), provides, in part:

[a]fter an injury, the employee, if requested by the employer, shall submit for examination at some reasonable time and place and as often as reasonably requested, to a physician or physicians authorized to practice under the laws of this state or another state, without cost to the employee; but if the employee requests, the employee, at the employee's own cost, is entitled to have a physician or physicians of the employee's own selection present to participate in the examination. If an employee is required to leave work for which the employee is being paid wages to attend the requested examination, the employee shall be compensated at the employee's regular rate for the time the employee is required to leave work, and the employee shall be furnished transportation to and from the place of examination, or the employer may elect to pay the employee the reasonable cost of the transportation. . . . If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination. . . .

Dr. Shumway, an authorized treating physician, issued an impairment rating on June 15, 2016. (JE 2, p. 45) Dr. Kuhnlein conducted an independent medical examination for Cummings on March 5, 2019, and issued his report on March 20, 2019. (Ex. 1) Dr. Kuhnlein's report governs both of the alleged work injuries, December 5, 2016 and March 21, 2016. (Ex. 1) Dr. Kuhnlein performed his independent medical examination after Dr. Shumway issued his rating. Under the statute, Cummings is entitled to recover the \$4,278.00 cost of Dr. Kuhnlein's independent medical examination.

VIII. Costs

Cummings seeks to recover the \$100.00 filing fee, \$12.96 for service fees, \$162.00 for a deposition, and \$119.10 for medical records. (Ex. 7) Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides

[c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) 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, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

The administrative rule does not allow for the recovery of the cost of medical records, but allows for the recovery of the remaining fees Cummings seeks. Ferguson Construction and Pekin are assessed the \$100.00 filing fee, \$12.96 for service fees, and \$162.00 for the deposition.

ORDER

IT IS THEREFORE ORDERED, THAT:

For File Number 5059576:

Defendants shall pay the claimant two hundred fifty (250) weeks of permanent partial disability benefits at the stipulated weekly rate of five hundred forty and 89/100 dollars (\$540.89), commencing on the stipulated commencement date of January 6, 2017.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. Sanchez v. Tyson, File No. 5052008 (Apr. 23, 2018 Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue).

Defendants shall pay the claimant five thousand and 00/100 dollars (\$5,000.00) in penalty benefits.

For File Number 5059577:

Defendants shall pay the claimant five weeks of permanent partial disability benefits at the stipulated weekly rate of five hundred fifty-three and 16/100 dollars (\$553.16), commencing on the stipulated commencement date of May 27, 2016.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. Sanchez v. Tyson, File No. 5052008 (Apr. 23, 2018 Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue).

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

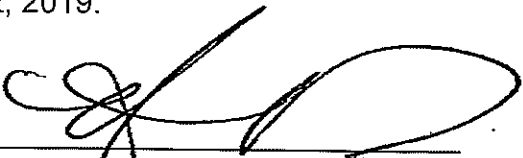
For Both Files

Defendants are responsible for all causally related medical bills and to provide medical care as set forth in this decision.

Defendants shall reimburse the claimant four thousand two hundred seventy-eight and 00/100 dollars (\$4,278.00) for the cost of Dr. Kuhnlein's independent medical examination, one hundred and 00/100 dollars (\$100.00) for the filing fee, twelve and 96/100 dollars (\$12.96) for service fees, and one hundred sixty-two and 00/100 dollars (\$162.00) for the deposition transcript.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 14th day of August, 2019.


HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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HLP/sam

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