BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID SCOTT MILES,	:	
Claimant,	:	File Nos. 5048896, 5048899
vs.	:	REVIEW-REOPENING
CITY OF DES MOINES,	:	DECISION
Employer, Self-Insured, Defendant.	:	Head Note Nos.: 1803, 1804, 2502, 2905, 2907

STATEMENT OF THE CASE

David Miles, claimant, filed two petitions for review-reopening against the City of Des Moines, as a self-insured employer. File No. 5048896 involves a November 29, 2012 injury. File No. 5048899 involves a December 20, 2013 injury date. These cases proceeded to an arbitration hearing in 2015, resulting in an arbitration decision, and ultimately an appeal decision from the Iowa Workers' Compensation Commissioner in June 2017. Claimant now seeks review-reopening and an increase in his permanent disability awards from the June 2017 appeal decision.

These consolidated claims came before the undersigned for a review-reopening hearing on July 8, 2020. Due to the ongoing pandemic in the state of Iowa and an order of the Iowa Workers' Compensation Commissioner, the hearing was conducted via internet, video-based conferencing using CourtCall.

The parties filed hearing reports in each of the arbitration files at the commencement of the hearing. On the hearing reports, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal conclusions relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 8 and Claimant's Exhibits 1 through 4. Claimant testified on his own behalf. Claimant also called Dennis Wagner and Dennis Smith to testify. No other witnesses testified at trial. The evidentiary record closed at the conclusion of the evidentiary hearing on July 8, 2020.

However, counsel for the parties requested an opportunity to file post-hearing briefs. This request was granted and both parties filed briefs simultaneously on July 31, 2020. The case was considered fully submitted to the undersigned on that date.

ISSUES

The parties completed a combined hearing report for both of the files. In each file, the parties submitted the following disputed issues for resolution:

1. Whether claimant proved a substantial change in condition from the date of the prior arbitration hearing.

2. If claimant proved a substantial change in condition, the extent of claimant's additional entitlement to permanent disability benefits, including a claim for permanent total disability, or odd-lot status.

3. Whether claimant is entitled to reimbursement of his independent medical evaluation fee pursuant to Iowa Code section 85.39.

4. Whether claimant is entitled to reimbursement of his functional capacity evaluation expense.

5. Whether costs should be taxed against either party and, if so, in what amount.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

These cases were consolidated and tried with two other files in the underlying arbitration hearing on August 13, 2015. The final agency findings of fact and conclusions of law were entered by the Iowa Workers' Compensation Commissioner in an appeal decision filed on June 14, 2017. In File No. 5048896, the Commissioner found claimant proved a 10 percent functional impairment of the left leg as a result of a left knee injury, which combined with an ankle injury to result in permanent functional impairment equivalent to 12 percent of the body as a whole. In File No. 5048899, the Commissioner found claimant proved a compensable low back injury and awarded 35 percent industrial disability. (Appeal Decision)

Claimant now contends that he sustained a substantial change in condition since the August 13, 2015 arbitration hearing and that both his functional and industrial disability awards should be increased. Turning to File No. 5048896, the appeal decision found claimant sustained an injury to both knees, both ankles, and his low back on November 12, 2012. However, the Commissioner also found that claimant proved only permanent functional impairment to the left knee and bilateral ankles as a result of the November 12, 2012 injury and awarded permanent disability benefits for this injury on a scheduled member basis. Of the permanent disability benefits awarded, claimant proved a 10 percent permanent functional impairment of the left leg as a result of his November 12, 2012 left knee injury. (Appeal Decision)

In this review-reopening proceeding, Mr. Miles sought evaluation by Jacqueline Stoken, D.O. Dr. Stoken also evaluated claimant prior to the arbitration hearing. Prior

to the arbitration hearing in 2015, Dr. Stoken estimated claimant's left knee injury caused a 10 percent permanent functional impairment of his left leg. (Appeal Decision, pages 14-15) The commissioner accepted Dr. Stoken's impairment rating in the underlying arbitration proceeding and awarded functional impairment equivalent to 20 percent of the leg (11 percent of the leg attributable to the left ankle and 10 percent of the left leg attributable to the left knee resulting in a combined 20 percent of the left leg). (Appeal Decision, pp. 14-15)

In a report dated April 15, 2020, Dr. Stoken opines that claimant currently has a 35 percent permanent functional impairment of the left lower extremity due to a left knee flexion contracture. (Claimant's Exhibit 2, p. 45) Dr. Stoken's April 2020 evaluation potentially could be challenged because her evaluation was performed via telemedicine. Dr. Stoken evaluated and interviewed claimant via video conferencing and did not physically examine claimant's left knee before rendering her opinions. Certainly, this limitation in her evaluation is understandable given the current pandemic in Iowa. However, the inability to physically touch claimant's left knee and verify his ranges of motion and any flexion contracture also leads to some concern about the accuracy of Dr. Stoken's evaluation and measurements.

On the other hand, defendants introduce no competing medical opinion, measurements, or impairment rating. Dr. Stoken's current impairment rating is not rebutted. Given that Dr. Stoken evaluated claimant prior to the 2015 hearing and again prior to this review-reopening hearing, I find her opinion and impairment rating related to the left knee to be credible and convincing. I find that Mr. Miles has proven a substantial change in condition in his left knee, which has resulted in an increase in his permanent functional impairment of the left leg from 10 percent (related to the left knee) at the time of the 2015 arbitration hearing to 35 percent of the left leg (related to the left knee) at the present time.

No party offered evidence that claimant's ankle impairment changed between 2015 and the present. Although Dr. Stoken now gives a permanent impairment rating for the right knee, no permanent impairment or permanent disability was found related to the work injury in the 2015 appeal decision. Therefore, I find this new impairment related to the right knee is not proven to be related to the work injury and does not represent a substantial change in condition since the 2015 arbitration hearing.

Mr. Miles was previously compensated for permanent impairment related to the left knee and bilateral ankles. The appeal decision found Mr. Miles sustained 12 percent functional disability to the whole person as a result of these injuries. Accordingly, the Commissioner awarded Mr. Miles 60 weeks of permanent partial disability benefits for the November 12, 2012 injury (File No. 5048896). (Appeal Decision, pp. 15, 20)

I find that the left ankle impairment rating of 11 percent of the left leg remains unchallenged and accurate, as does the impairment rating for claimant's right ankle and leg. Mr. Miles now has 35 percent impairment of the left leg as a result of his left knee injury. Using the same methodology utilized by the Commissioner in the Appeal

Decision, including the combined values chart found at page 604 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, the 11 permanent impairment for the left ankle combines with the current 35 percent of the left leg impairment and results in a 42 percent permanent impairment of the left leg. Therefore, I find that claimant has proven he now has a 42 percent permanent functional impairment of the left leg, which converts pursuant to Table 17-3 found on page 527 of the AMA Guides to a 17 percent functional impairment of the body as a whole as a result of the November 12, 2012 injury.

This is combined with the 11 percent of the right leg found in the Appeal Decision. Again, pursuant to the methodology used by the Commissioner and using the combined values chart of the Guides, the 11 percent right leg impairment converts to four percent of the whole person. The 17 percent functional impairment of the left leg combines with the 4 percent whole person rating for the right leg to result in 20 permanent functional impairment of the whole person.

The Appeal Decision found that claimant only had a 12 percent permanent functional impairment of the body as a whole after the arbitration hearing in 2015. This increase in claimant's functional impairment is a substantial change in condition since the 2015 arbitration hearing. I find that Mr. Miles now has 20 percent permanent functional impairment of the body as a whole as a result of the November 29, 2012 work injury.

With respect to the December 20, 2013 injury (File No. 5048899), Mr. Miles previously proved he sustained a five percent permanent impairment of the whole person as a result of his low back injury. (Appeal Decision, pp. 15, 18) Dr. Stoken again offers an unrebutted opinion on this issue and continues to opine that claimant has a five percent functional impairment of the whole person as a result of his back injury. (Claimant's Ex. 2, p. 45)

At the time of the 2015 arbitration hearing, Mr. Miles had functional limitations and restrictions. The Commissioner found that the December 20, 2013 back injury was a significant contributor to claimant's restrictions on lifting, carrying, and sitting, as documented by an FCE performed on June 2, 2015. That FCE documented that claimant could lift 55 pounds occasionally from floor to waist, 35 pounds from waist to overheard on an occasional basis, lift up to 60 pounds occasionally on a horizontal basis and push up to 55 pounds occasionally. The FCE also demonstrated claimant could front carry up to 55 pounds occasionally, but was limited to occasional bending, rotation, crawling, kneeling, crouching, standing and walking. Mr. Miles was also limited by the 2015 FCE to rarely climbing ladders or stairs and that he would need to transition between sitting, standing and walking as tolerated. (Appeal Decision, pp. 11-12)

Dr. Stoken adopted the above-mentioned FCE restrictions. (Appeal Decision, p. 12) The Commissioner likewise adopted those restrictions as applicable for claimant's December 2013 low back injury. (Appeal Decision, p. 15) The Commissioner found that claimant's permanent restrictions in 2015 prevented claimant from returning to prior jobs he held performing manual labor work. Nevertheless, claimant returned to work for

the employer in a different capacity, performing accommodated work for the City. The Commissioner found that claimant sustained a 35 percent industrial disability as a result of the December 2013 back injury. (Appeal Decision, p. 15)

Mr. Miles submitted to a new FCE shortly before the review-reopening hearing. As a result of the March 23, 2020 FCE, the physical therapist recommended restrictions that include no lifting even on an occasional basis, lifting floor to waist or waist to overhead rarely up to 10 pounds. The FCE also recommended lifting up to 10 pounds for a horizontal lift and pushing up to 50 pounds occasionally. (Claimant's Ex. 1, p. 11)

The March 2020 FCE also recommended nothing more than occasional forward bending while seated, occasional rotation, rare crawling, and occasional kneeling. (Claimant's Ex. 1, p. 12) The FCE recommended against crouching and recommended only rare squatting, stairs or ladder climbing. (Claimant's Ex. 1, p. 13) The FCE also recommended only occasionally sitting, standing and walking. (Claimant's Ex. 1, p. 14) Overall, the physical therapist recommended claimant be limited to sedentary work duties. (Claimant's Ex. 1, p. 6)

Claimant portrays the March 2020 FCE as demonstrating significant changes since the prior hearing. Realistically, many of the restrictions documented in March 2020 were also present in 2015. For instance, both FCEs recommended rare squatting, stairs, or ladder climbing. Both FCEs recommended occasional bending, rotation, kneeling, standing, and walking.

However, there were some important changes between the 2015 and 2020 FCES, including limiting sitting to an occasional basis as well. Lifting capacities were also significantly reduced between 2015 and 2020 with claimant now only capable of rare lifting up to 10 pounds. This represents a significant change in claimant's physical abilities since the 2015 hearing. The 2020 FCE is not rebutted in this record.

Once again, Dr. Stoken adopted the 2020 FCE as claimant's permanent restrictions. (Claimant's Ex. 2, pp. 45-46) Accordingly, Dr. Stoken's opinion is supported by objective testing via the FCE. I find the FCE restrictions from the March 2020 FCE to be realistic, reasonable, and appropriate for claimant's current physical condition. I also find that those restrictions further erode claimant's earning capacity beyond the 2015 hearing level. Claimant testified that even the accommodated job offered by the City of Des Moines exceeds the sedentary limits of the current FCE. (Tr., p. 39) I accept that testimony as accurate.

Mr. Miles has not obtained any additional education since the arbitration hearing. He has no new skills since the arbitration hearing. However, he has quit his position with the employer due to ongoing and worsening symptoms. Mr. Miles also testified that he missed 727 hours of work in 2018 as a result of his increasing symptoms and missed 358 hours of work in the first four months of 2019 due to ongoing symptoms and difficulties in reporting to work due to his work injury and increasing symptoms. (Tr., p. 23) No contrary evidence was generated or introduced. I find claimant missed significant time from work due to his work injury in 2018 and the beginning of 2019 and

also find that it would be difficult for claimant to hold a full-time job with an employer missing such quantities of time from work.

Mr. Miles explained that it is now difficult for him to get going in the morning and that it takes significant time for his body to respond in the morning. I find Mr. Miles' testimony and explanation of his need to terminate his employment due to absences and ongoing symptoms to be credible.

Mr. Miles was 55-years-old at the time of the arbitration hearing. (Appeal Decision, p. 3) He retired at the age of 59, though testified he intended to continue working to the age of 67 prior to the worsening of his symptoms. (Tr., pp. 18-19) He is now 60 years old. Claimant obtained only a 9th grade education and never obtained a GED after leaving high school. (Appeal Decision, p. 10; Transcript, p. 9) Most of claimant's working career was with the City of Des Moines. Claimant testified, and I accept the testimony as accurate, that he is a hunt and peck typist and not good at typing. He has no sales experience and cannot return to any of the former jobs he has held. (Tr., p. 30)

Claimant credibly testified that he has difficulties riding in a car for more than 30-45 minutes. (Tr., pp. 16) His companions, Dennis Wagner and Dennis Smith, testified that they continue to sporadically fish with claimant but that he has significant difficulties walking on uneven ground, sitting still for any period of time, carrying the tackle box, and does not fish for extended periods of time now. (Tr., pp. 43-53) I accept the testimony offered by Dennis Wagner and Dennis Smith as accurate.

Claimant retired from the City of Des Moines on April 19, 2019. (Tr., p. 18) After retiring from the City of Des Moines, Mr. Miles made no attempts to find alternate employment. He sought no vocational retraining or vocational placement assistance. Certainly, I would like to have seen claimant attempt a job search or seek professional assistance and analysis of the likelihood of returning to gainful employment, rather than simply retiring with no intention of returning to work.

Nevertheless, when I consider claimant's injury, his educational and employment background, his permanent restrictions, his ongoing and worsening symptoms, the significant amounts of lost time form work that claimant experienced in 2018 and 2019 due to his symptoms, along with his age, permanent impairment, motivation, and all other factors of industrial disability outlined by the Iowa Supreme Court, I find that Mr. Miles is not capable of performing work that is within his experience, training, education, intelligence and physical capabilities at this time. Therefore, I find that claimant has proven he is permanently and totally disabled. I further find that Mr. Miles proved he has been permanently and totally disabled since April 20, 2019.

CONCLUSIONS OF LAW

The primary disputed issue in each case is whether claimant sustained a substantial change in condition between the August 2015 arbitration hearing and the July 2020 review-reopening hearing that justifies an increase in claimant's permanent

disability compensation. Upon review-reopening, claimant has the burden to prove a change in condition related to the original injury since the original award or settlement was made. The change may be either economic or physical. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). A mere difference of opinion of experts as to the percentage of disability arising from an original injury is not sufficient to justify a different determination on a petition for review-reopening. Bousfield v. Sisters of Mercy, 249 Iowa 64, 86 N.W.2d 109 (1957).

The claimant need not prove that the current extent of his disability was not contemplated by the prior arbitration or appeal decision. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009). In fact,

> In determining a scheduled or unscheduled award, the commissioner finds the facts as they stand at the time of the hearing and should not speculate about the future course of the claimants' condition. The functional impairment and disability resulting from a scheduled loss is what it is at the time of the award and is not based on any anticipated deterioration of function that might or might not occur in the future . . . Likewise, in an unscheduled whole-body case, the claimant's loss of earning capacity is determined by the commissioner as of the time of the hearing based on the factors bearing on industrial disability then prevailing—not based on what the claimant's physical condition and economic realities might be at some future time.

Id. (internal citations omitted).

With respect to File No. 5048896 (November 2012 date of injury), I found a substantial change in the condition of Mr. Miles' left knee. Having accepted Dr. Stoken's unrebutted permanent impairment rating in this review-reopening proceeding, I found that Mr. Miles now has a 20 percent permanent functional impairment of the body as a whole as a result of the November 2012 work injury. He had a 12 percent permanent functional impairment of the body as a whole at the time of the 2015 arbitration hearing. Therefore, I conclude Mr. Miles has proven a substantial change in condition to his left knee and has proven his permanent functional impairment has increased equivalent to 8 percent of the body as a whole.

The Commissioner previously determined that the November 2012 injury was limited to a scheduled member injury to be compensated pursuant to Iowa Code section 85.34(2)(s). (Appeal Decision, p. 18) Therefore, pursuant to Iowa Code section 85.34(2)(s) and the 2017 Appeal Decision, this injury should be compensated on a functional basis using a 500-week schedule. (Appeal Decision, p. 18) An 8 percent increase in claimant's functional permanent impairment results in an increase in his entitlement to permanent partial disability benefits. Eight percent of 500 weeks entitles claimant to an additional 40 weeks of permanent partial disability benefits. Therefore, I conclude claimant has proven entitlement to an increase of his permanent disability award and that he should receive an additional 40 weeks of permanent partial disability

benefits in File No. 5048896. Iowa Code sections 85.34(2)(s); 86.14(2). The additional permanent disability benefits shall commence on the date of filing claimant's petition for review-reopening, or March 4, 2019. Searle Petroleum, Inc. v. Mlady, 842 N.W.2d 679 (Iowa App. 2013) (Table). See also Verizon Bus. Network Servs., Inc. v. McKenzie, 823 N.W.2d 418 (Iowa App. 2012) (Table).

In File No. 5048899, claimant again seeks an increase in his permanent disability award. This file involves a low back injury occurring on December 20, 2013. The Commissioner previously awarded claimant 35 percent industrial disability. Claimant asserts this award should be increased and, in fact, asserts he is now permanently and totally disabled or an odd-lot candidate. Because it is more difficult and the burden always resides with claimant under the traditional industrial disability analysis and because the odd-lot doctrine is applicable only if the traditional industrial disability analysis does not result in a finding of permanent total disability, I will evaluate the case under the traditional industrial disability model before relying upon or analyzing the case as a potential odd-lot case.

Having found that claimant's physical abilities have deteriorated and that he has more onerous physical restrictions now than he carried at the time of the 2015 hearing, I also found that claimant proved a deterioration of his earning capacity since the 2015 arbitration hearing. Accordingly, I conclude that claimant proved he sustained a substantial change in condition since the 2015 arbitration hearing. Iowa Code section 86.14(2)

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

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

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

Mr. Miles asserts that he is now permanently and totally disabled as a result of his 2013 back injury. Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

Having considered all of the factors of industrial disability outlined by the Iowa Supreme Court, and having given great weight to the permanent physical restrictions outlined in the 2020 FCE, as adopted by Dr. Stoken, I found that Mr. Miles proved he is wholly disabled from performing work consistent with his experience, training, education, intelligence, and physical capabilities. Realistically, there are not jobs within the community that Mr. Miles can perform and for which he can realistically compete in his current condition. Second Injury Fund v. Shank, 516 N.W.2d 808, 815 (Iowa 1994). Accordingly, I conclude that claimant proved he is permanently and totally disabled. Iowa Code section 85.34(3). Having reached this conclusion under the traditional industrial disability analysis, I do not consider or rely upon the burden-shifting framework of the odd-lot doctrine.

The next question is when permanent total disability benefits should commence. The parties did not reach a stipulation on this issue and neither party briefed it in their post-hearing brief. Prior appellate case law indicates, “the date of the commencement of additional weekly benefits in a review-reopening case is the date the review-reopening petition was filed.” Searle Petroleum, Inc. v. Mlady, 842 N.W.2d 679 (Iowa App. 2013) (Table). See also Verizon Bus. Network Servs., Inc. v. McKenzie, 823 N.W.2d 418 (Iowa App. 2012) (Table).

In this instance, the review-reopening petition was filed March 4, 2019. However, I found that claimant did not become totally disabled until he retired on April 19, 2019. Claimant continued to work for the employer at the time he filed the review-reopening petition and it does not seem reasonable or logical to award permanent total disability benefits while claimant continued to work and earn wages with the employer. I conclude that the Iowa Court of Appeals’ analysis in Mlady and McKenzie did not consider the scenario where total disability commenced after the date of filing the petition for review-reopening. Therefore, I conclude those cases and holdings are not dispositive in this situation. Instead, it seems more reasonable to award permanent total disability benefits at the later date, when I found claimant actually became totally disabled. Therefore, having found that Mr. Miles retired on April 19, 2019 and that he has been totally disabled since April 20, 2019, I conclude the proper commencement date for permanent total disability benefits is April 20, 2019.

Mr. Miles also seeks award of his independent medical evaluation fee pursuant to Iowa Code section 85.39. A pre-requisite of Iowa Code section 85.39 is that claimant can only obtain an evaluation at the employer's expense after "an evaluation of permanent disability has been made by a physician retained by the employer." Iowa Code section 85.39. As noted in the findings of fact, only claimant's independent evaluator provided a permanent impairment rating in this review-reopening proceeding. Accordingly, claimant cannot establish entitlement to reimbursement of the independent medical evaluation fee pursuant to Iowa Code section 85.39.

Claimant also seeks award of his functional capacity evaluation charges. Claimant cites no specific statute or rule that permits award of these charges. I conclude claimant failed to prove entitlement to recover the entirety of his functional capacity evaluation charges.

Finally, Mr. Miles seeks award and assessment of costs associated with this review-reopening proceeding. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. Claimant has prevailed in both files and received additional awards of permanent disability. Therefore, exercising the agency's discretion, I conclude that costs should be assessed against defendant in some amount.

I conclude that claimant's filing fee ($100.00) should be assessed pursuant to 876 IAC 4.33(7). In addition, the expense of Dr. Stoken's written report can be assessed as a cost since she offered a written report in lieu of trial or deposition testimony. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 846 (Iowa 2015). Claimant's Exhibit 2, page 59 demonstrates that Dr. Stoken charged $2,600.00 for services related to drafting her report. I conclude it is also appropriate to assess the cost of her written report ($2,600.00) as a cost pursuant to 876 IAC 4.33(6). Id. Therefore, I assess claimant's costs in the amount of $2,700.00 against defendant.

ORDER

THEREFORE, IT IS ORDERED:

In File No. 5048896:

Defendant shall pay claimant an additional forty (40) weeks of permanent partial disability benefits at the rate of seven hundred twenty-five and 89/100 dollars ($725.89) per week commencing on the date of filing of the petition for review-reopening, or March 4, 2019.

In File No. 5048899:

Defendant shall pay claimant permanent total disability benefits commencing on April 20, 2019, continuing to the present and into the future so long as claimant remains totally disabled and qualifies for benefits under Iowa Code section 85.34(3).

Permanent total disability benefits shall be payable to claimant at the stipulated weekly rate of six hundred fifty-nine and 71/100 dollars ($659.71) per week.

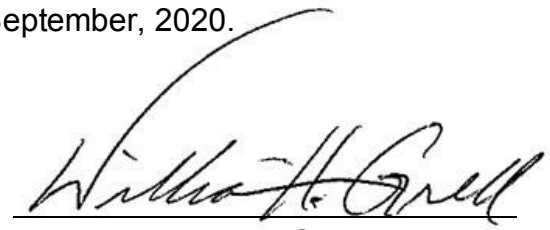
With respect to both files:

Defendant shall pay accrued weekly benefits in a lump sum together with interest 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. Gamble v. Ag Leader Technology, File No. 5054686 (Appeal April 2018).

Defendant shall reimburse claimant's costs in the amount of two thousand seven hundred and 00/100 dollars ($2,700.00).

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

Signed and filed this 30th day of September, 2020.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

John Dougherty (via WCES)

John O. Haraldson (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.