BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEPHEN FUHRI,

Claimant,

vs.

GREATWIDE LOGISTICS,

Employer,

and

MIDWEST EMPLOYERS CASUALTY COMPANY,

Insurance Carrier,
Defendants.

File No. 5047670

ARBITRATION

DECISION

Head Note Nos.: 1100; 1803; 3000; 4000.2

STATEMENT OF THE CASE

Stephen Fuhri, claimant, filed a petition in arbitration seeking workers' compensation benefits against Greatwide Logistics, employer, and Midwest Employers Casualty Company, insurer, for an alleged work injury date of January 7, 2014.

This case was heard on January 27, 2016, in Des Moines, Iowa. The case was considered fully submitted on February 17, 2016 upon the simultaneous filing briefs.

The record consists of claimant's exhibits 1-8, defendants exhibits A-N, claimant's testimony and the testimony of Jack Theisen.

In the post hearing motion, the defendants request a reconsideration of the exclusion of exhibit H, pages three through five. This issue was considered at hearing and the pages were excluded based upon the objection regarding timeliness. The hearing assignment order governs the deadlines pertaining to exhibits. Specifically, the hearing order requires parties to exchange exhibit lists and witnesses at least 30 days prior to hearing. The production of the documents in question occurred on January 19, 2016. The hearing took place on January 27, 2016.

In the motion to reconsider, the defendants assert that there is no prejudice to the claimant. However given that deadlines had passed, claimant would not be able to address the statements of the expert. This is prejudicial.

Defendants also assert that the neurologist whose opinion was sought was the defendant's treating neurologist. The claimant saw the doctor one time at the request of the claimant's chiropractor. There were no follow-up visits and the doctor discharged claimant from his care. A medical report obtained over 18 months later is not a treating medical record.

Therefore for all the reasons stated previously, defendants' motion to reconsider is denied.

ISSUES

1. Whether claimant sustained an injury on January 7, 2014 arose out of and in the course of employment;
2. Whether the alleged injury is a cause of permanent disability and, if so;
3. The extent of claimant's industrial disability;
4. Penalty for failure to accept claim and for lack of communication;
5. The appropriate rate.

STIPULATIONS

The parties agree claimant is single and entitled to one exemption.

FINDINGS OF FACT

Claimant was a 44-year-old man at the time of hearing.

His prior work history includes construction as a union laborer, a driver for CR England, a cook, and work for a landscaping company.

He currently drives two to three times per week to Texas for Nordstrom's, earning approximately $1,200-$1,500 per week. Typically he does two runs but if he does three runs, he earned closer to $2,000 per week.

On January 7, 2014, claimant was called by the dispatcher to come into work. Claimant was dubious and reluctant to drive for two hours. The weather was quite cold and he was concerned that the vehicles would not start. The claimant testified that he was promised four hours of pay if he would make the two-hour drive to the employer's place of business even if the trucks would not start.

Mr. Theisen testified that as the dispatcher he is responsible for arranging loads and coordinating drivers. He will call the drivers between eight and nine in the morning, providing them with the destination. The truck should leave the yard at approximately

2:30 p.m. If he does not talk to the driver personally, he leaves a message. The policy requires the driver to call back and confirm.

He testified that he did call the claimant at home on January 7, 2014. He asserts that he did not promise payment but that he would see if he could get compensation for the claimant. "If the trucks didn't go, we would see if he could get compensation," he said during testimony. He went on to state that compensation was something that "Steve Stoffel and I always discussed and it was paid on a case-by-case basis." In the hearing brief, defendants argued that payment to the drivers who would come to the Dubuque facility and not be dispatched was "an established practice." However, claimant was not paid these funds for some nearly seven months and only after several reminders.

Mr. Theisen agreed that the claimant was paid some amount of money but denies that they were paying for travel time. Claimant testified that he ultimately was paid for four hours in July. (Ex. 7, p. 34) Mr. Theisen testified that drivers would be paid between two to four hours of regular pay for coming into work but not being dispatched. There was no explanation as to why it was between two and four hours of pay.

In his answers to interrogatories, claimant reported that he "was called and told at the last minute that the load was cancelled. I turned around to head home." His later testimony in deposition and at hearing presented a different story. In those retellings, claimant arrived at the Dubuque facility approximately two o'clock and left around three o'clock when not all of the trucks would start.

Claimant's past medical history is significant for a motor vehicle accident in 2006. An MRI on June 12, 2006, showed posterior and right paramedian disk herniation at L3-4 and small central disk bulging at L5-S1. (Ex. B, p. 1) He fell in late January 2009 and reportedly suffering "acute sciatica" and left lumbar sciatica. (Ex. B, p. 9, 16) In February 2010 wherein he was driving a semi-truck struck by a snowplow. He suffered muscle strain in his low back and neck and was treated with physical therapy and worked light duty. (Ex. C, p. 4) He reported serious pain and discomfort but was ultimately returned to work on May 13, 2010, with no restrictions.

He fell on ice on January 22, 2011. (Ex. C, p. 23) He reported pain in his spine, right shoulder and wrist. CT was normal. He was ordered to physical therapy but attended only three sessions and was discharged because he did not show, cancel or reschedule the other appointment. (Ex. C, p. 29) He was on light duty until May 23 2011, when he was returned to work full time and without restrictions.

From May 2013 through June 2013 he was treating with a chiropractor for neck and back pain along with headaches arising out of the 2011 auto injury.

On January 7, 2014, claimant was involved in a motor vehicle collision where he was rear impacted at a speed of approximately 10 miles per hour. The claimant was stopped at a stop light and vehicle behind him accelerated believing the light had turned green. (Ex. 6, p. 30) An x-ray revealed mild degenerative changes and possibly some muscle spasms. (Ex. E, p. 1-2)

On June 9, 2014 MRI of the cervical spine was conducted which showed signs of disc desiccation throughout the cervical spine and a mild reduction in height at C-5 – C6 and C6 – C7. (Ex. 2)

On July 3, 2014, claimant was seen by Marc Soriano, M.D., at the referral of claimant's chiropractor, Sid Kirkland, D.C. (Ex. H, p. 1) Claimant reported to being back driving two times per week to Texas with some loading and unloading responsibilities. He complained of headaches in the back of the neck that migrated to the front, causing pain in his eyes. He also complained of numbness and tingling in the right forearm and hand with cramping in the hand. There was also cramping symptoms in his left foot.

At the time, his therapy consisted of going to the gym and using the stationary bike, cardio, and lifting for his chest and arms.

He exhibited full range of motion of the neck. His gait and heel-to-toe walking was normal. The degenerative changes were age appropriate and Dr. Soriano felt that there was nothing surgical he could offer claimant. He recommended claimant return to work with no restrictions. (Ex. H, p. 2)

On July 27, 2015, claimant underwent another MRI, this time to his lumbar spine. The results revealed diffuse lumbar spondylosis with multilevel annular disc bulging and hypertrophy of posterior elements, a grade 1 retrolisthesis of L5 on S1. (Ex. 3)

Sunil Bansal, M.D., performed a medical evaluation on August 14, 2015. During the examination, claimant expressed pain on both sides of his neck, headaches, transient dizziness, weakness radiating into the forearms. Continues to have low and mid back pain radiating down both legs and ending in the knee region. He also complained of intermittent cramping left foot. He is able to sit approximately two hours at a time, has no difficulty standing in one place or with walking or climbing stairs. He does feel some discomfort when mowing his lawn using a push mower. He can comfortably lift 50 pounds occasionally and 25 to 30 pounds on a more frequent basis.

On examination, he exhibited tenderness to palpation over the cervical paraspinal musculature, greater on the left. Spasms were noted over the left trapezius. (Ex. 4, p. 16) His straight leg tests were negative, but he exhibited some reduction of range of motion in his neck.

Dr. Bansal diagnosed claimant as having sustained disc protrusions in his neck, aggravation of a lumbar spondylosis with symptoms in his bilateral arms and legs

relating to the neck and low back. Dr. Bansal attributed these issues to the motor vehicle collision.

"Based on the biomechanics, it is clear that the accident caused an aggravation of his cervical and lumbar spondylosis. The violent jerking of the body back and forth is certainly capable of inducing significant spinal canal inflammation, irritating the spinal nerves." (Ex. 4, p. 19)

He assessed a 5 percent impairment as a result of the neck injury a 5 percent impairment as a result of the back injury. He recommended the claimant lift 50 pounds occasionally, 30 pounds frequently, avoid lifting more than 30 pounds overhead and no frequent bending, squatting, climbing, or twisting. (Ex. 4, p. 21) Dr. Bansal believed the claimant's condition would worsen and that he would benefit from pain management with the pain specialist. (Ex. 4, p. 21)

Dr. Soriano's opinions were that claimant had no long-term injury and needed no restrictions. Claimant asserts that Dr. Soriano's examination report is full of lies, although the specifics of the lies were not articulated either in claimant's deposition or at hearing. Claimant did testify that he felt Dr. Soriano's examination was cursory.

In his answers to interrogatories, claimant reported headaches daily, pain in his neck, back, arms and legs. It difficult for him to sit for long hours and he has pain when he stretches overhead. It is difficult for him to turn his head in certain directions and he feels weakness in his arms and legs along with tingling. Claimant is unable to ride roller coasters, cannot go skiing, and must take extra breaks while driving. (Ex. 5, p. 25)

Claimant's work for defendant employer is the same job as he had prior to the motor vehicle collision. His physical tasks include sitting for long distances, performing the pre-trip inspection which means bending to look under the trailer, kicking the tires, and ensuring the paperwork is appropriately filled out.

He returned to his pre-injury workout routine within weeks of his collision.

Claimant wishes to exclude week ending January 4, 2014. He earned $806.32 that week which was significantly smaller than his next lowest gross earnings at $1,091.09 earned on November 16, 2013. (Ex. 8, p. 36) Claimant testified that he did only one run that week and that he usually performs two to three runs per week.

He believes that his physical condition is more aligned with the opinions of Dr. Bansal but agrees that his pain varies greatly. Some days he is in pain and others he is not. He has greater pain with greater activity. He currently takes Aleve.

He does not believe he could perform the heavy manual labor of his past employment including construction and landscaping work. He does believe he could do sales or a chef's position.

Post accident, claimant engaged in regular work outs and considered buying a motorcycle.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

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

The general rule is that employees are not covered under the workers compensation scheme if they are going and coming from work. There is a specific exception to this rule and that is when an employee is paid for his or her travel time. See Bulman v. Sanitary Farm Dairies, 247 Iowa 488, 73 N.W.2d 27, 29 (Iowa 1955). It is under this exception that claimant seeks relief.

Defendant claimed that the four hour payment to the claimant was for time spent waiting to see if the trucks would start at the Dubuque facility. Claimant reports the four hour payment was for the drive to and from the Dubuque facility.

Defendants assert that the claimant is not a credible witness. It was difficult to judge the claimant's credibility during the hearing as most of the testimony was in the form of yes or no answers to leading questions from the claimant's counsel. Because of the lack of direct testimony from the claimant, the undersigned relies heavily on the undisputed facts.

The undisputed facts include as follows:

1. Claimant was called to work.
2. It was cold and everyone was concerned that the trucks would not start.
3. Claimant did not want to come in because of the cold and the uncertainty about whether the trucks would start.
4. Claimant lives two hours away from the Dubuque facility. A round-trip is four hours.
5. Claimant was paid for four hours of work.
6. The trucks did not start.
7. Claimant was sent home.

What is in dispute is how long claimant spent at the Dubuque facility. Claimant initially asserted that he was not present and instead turned around before he even arrived. In his deposition and at hearing claimant conceded that he arrived at work and waited approximately an hour.

The police report indicates the time of the accident was 5:31 p.m. The dispatcher, Jack Theisen, testified that his standard practice was to call the drivers around 8:00 or 9:00 in the morning.

Based on the uncontroverted evidence, the common sense conclusion is that the claimant was paid for the travel to and from the employer's Dubuque facility. The defendants did not produce payment records that showed other driver's receiving payment for four hours on that particular day. Mr. Theisen did not testify at hearing that claimant was present in the facility for four hours.

Claimant was not paid for several months and only after several requests. If it was the ordinary and customary practice of paying drivers for wait time then payment should have been issued in short order. Instead, it is far more likely that claimant was being paid for his time driving based on an oral promise of Mr. Theisen.

Therefore it is determined that claimant's injury arose out of and in the course of his employment.

The next issue is the extent of claimant's disability.

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

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

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

Dr. Soriano, the neurologist claimant saw at the recommendation of his chiropractor, did not dispute that the claimant had suffered neck and back strain as a result of the motor vehicle collision. Dr. Soriano's opinion was that the claimant did not sustain an injury that required work restrictions.

Claimant did have past medical problems involving his low back, mid-back, cervical spine along with headaches and radicular symptoms. He was not entirely asymptomatic prior to the injury. He had been treating fairly regularly with his chiropractor for several months preceding the injury.

His course of recovery following the low-impact motor vehicle collision mirrored his past injuries. Claimant is injured, has a course of treatment and therapy, and then returns to work approximately six months following the injury. In this case, claimant was back at work, full-time and with no restrictions around July 2014. According to Dr. Soriano's medical notes, claimant was engaged in a full-body physical workout regime that included using machines, weight-lifting and calisthenics.

Dr. Bansal recommended certain restrictions including lifting restrictions, but the basis of those restrictions were the result of subjective reports from the claimant including that he could not sit for longer than two hours and that he had difficulties with lifting. Claimant traveled from Dubuque to Texas and back twice a week and participated in a regular exercise regimen since at least July 2014.

However, even at discharge from his chiropractor, claimant's injury had not fully resolved. He continued to have pain, tingling and numbness. That he keeps himself fit and exercises regularly does not preclude pain and discomfort arising out of the low-impact motor vehicle collision.

Taking all the medical evidence into consideration and the consistent reports of pain and discomfort from the claimant, along with claimant's motivation to return to work, his past work history, education, age, and all other relevant factors, it is determined claimant has sustained an 8 percent industrial disability.

The next issue is one of rate. Defendants would like to include the week wherein claimant made only one run. It is not an issue briefed by defendants.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which injured as the employer regularly required for the work or employment.

Claimant testified that he drove two to three trips per week. It was unusual to make three trips or one trip. Ordinary and customary practice was for claimant to make two trips. This was unrebutted testimony supported by the weekly pay receipts.

Therefore the ordinary and customary hours worked in a full pay period would include two trips and not one. The week ending January 4, 2014 is excluded and the claimant's calculation is adopted. The claimant's weekly benefit rate is $804.90.

The final issue is one of penalty. The claimant asserts entitlement to penalty benefits based on the failure to communicate the basis of the denial of his worker's compensation claim.

Iowa Code section 86.13, concerning an employer's denial of benefits, provides:

> 4. a. If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.

b. The workers' compensation commissioner shall award benefits under this subsection if the commissioner finds both of the following facts:

(1) The employee has demonstrated a denial, delay in payment, or termination of benefits.

(2) The employer has failed to prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.

c.[1] In order to be considered a reasonable or probable cause or excuse under paragraph "b", an excuse shall satisfy all of the following criteria:

(1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.

(2)The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.

(3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

In Pettengill v. American Blue Ribbon Holdings, LLC, 875 N.W.2d, 740 (Iowa Ct. App. 2015), the Court of Appeals stated:

> Iowa Code section 86.13(4)(b) creates a two-prong test that requires the agency to award a claimant penalty benefits if (1) "The employee has demonstrated a denial, delay in payment, or termination of benefits"; and (2) "The employer has failed to prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits."

Pettengill, 875 N.W.2d at 740 (Iowa Ct. App. 2015). The claimant must prove the first prong and the burden then shifts. Id.

In this case, we have a denial of benefits. Claimant reported to his employer that he had been in an auto accident returning to his home on January 7, 2014. Defendants assert that claimant did not report any work injury, pointing to the fact that the claimant pursued treatment through his own private care providers instead of seeking medical direction from the employer. Claimant had experience with worker's compensation in the past with at least two different employers.

Claimant admitted he wasn't aware that he had a workers' compensation claim until he hired his attorney, well after the January 7, 2014, incident. Defendants claim that they were made known that claimant was pursuing a workers' compensation claim around September 2014. (Transcript, p. 102) Defendants subsequently denied the claim via its answer on September 30, 2014.

The Supreme Court of Iowa has stated that:

> [I]f either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits. A reasonable basis for denial of the claim exists if the claim is fairly debatable. A claim is fairly debatable when it is open to dispute on any logical basis. Whether a claim is fairly debatable can generally be determined by the court as a matter of law. The reasonableness of the employer's denial or termination of benefits does not turn on whether the employer was right. The issue is whether there was a reasonable basis for the employer's position that no benefits were owing. 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.

Burton v. Hilltop Care Ctr., 813 N.W.2d 250, 267 (Iowa 2012) (internal citations, alterations, and quotation marks omitted).

The Pettengill court went on to clarify exactly what the defendants must prove:

> (4)(c)(1)-(3) creates a mandatory timeline for the employer to follow in showing it had a "reasonable or probable cause or excuse" for the termination of benefits. First, the employer's excuse for the termination must have been preceded by an investigation. Iowa Code § (4)(c)(1). Second, the results of the investigation were "the actual basis . . . contemporaneously" relied on by the employer in terminating the benefits. Third, the employer "contemporaneously conveyed the basis for the . . . termination of benefits to the employee at the time of the . . . termination."

Pettengill, at p. 8.

There's only the slimmest of evidence to suggest defendants undertook an investigation. The answer, which they rely upon as the basis for their communication with the claimant, states that "deny that the automobile accident occurred within the course and scope of claimant's employment." (Answer, paragraph 2)

There is no accompanying documentation indicated that the claimant had been interviewed, any of the defendant's employees were interviewed, any of the pay records

were reviewed. There is no information that actually provided the basis upon which the defendants denied the claim.

While the undersigned agrees that the defendant can make a contemporaneous notice via an answer, the defendants still are under the obligation to demonstrate that a reasonable investigation was conducted. In the brief, defendants argued that they believed that claimant's claim was not compensable pursuant to the going and coming rule. As such, the evidence of investigation is not sufficient for the defendants to carry their burden.

The statute requires the imposition of a penalty when the defendants failed to prove that there was probable cause or excuse for the denial of benefits. Based upon the foregoing evidence it is determined the claimant is entitled to a 10 percent penalty of the total amount of permanent partial disability award.

ORDER

THEREFORE IT IS ORDERED

That defendants are to pay unto claimant forty (40) weeks of permanent partial disability benefits at the rate of eight hundred four and 90/100 dollars ($804.90) per week from January 8, 2014.

That defendants shall pay ten (10) percent of the total amount of permanent partial disability benefits in the form of penalty benefits.

That defendants shall pay accrued weekly benefits in a lump sum.

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

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

That defendants shall pay the costs of this matter pursuant to rule 876 IAC 4.33.

Signed and filed this 29th day of April, 2016.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JGL/kjw

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.