

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RANDY L. ENGEL,

Claimant,

vs.

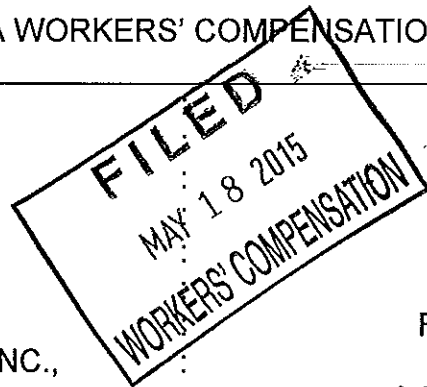
SUNOPTA INGREDIENTS, INC.,

Employer,

and

INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,

Insurance Carrier,
Defendants.



File No. 5036000

ARBITRATION

DECISION

Head Note Nos.: 1402.40, 1803, 4000.2

STATEMENT OF THE CASE

Claimant, Randy Engel, filed a petition in review-reopening seeking workers' compensation benefits from Sunopta Ingredients, Inc., employer (Sunopta) and Insurance Company of The State of Pennsylvania, insurer, both as defendants. This case was heard in Des Moines, Iowa on March 2, 2015 with a full submission date of April 3, 2015.

Claimant sustained an accepted work injury to his left hand on December 11, 2008. Claimant pled both a physical and a mental injury. A June 29, 2012 arbitration decision found that claimant was due benefits for the scheduled member injury, but found that claimant failed to carry his burden of proof concerning the mental injury.

An appeal decision was filed on July 25, 2013 remanding the case to the presiding deputy to make more detailed findings regarding the mental injury. In the remand decision, the presiding deputy determined claimant had established his mental injury, a post-traumatic stress disorder (PTSD) was work related, but that claimant had not yet reached maximum medical improvement (MMI). The remand decision ordered the issue regarding the nature and extent of permanent disability and the entitlement to penalty benefits was to be bifurcated on later determination.

Claimant filed a petition regarding these matters on March 17, 2014. That petition was labeled as a review-reopening petition. Based on prior proceedings in this case, as detailed above, this petition is in arbitration as ordered by the remand decision.

The record in this case consists of claimant's exhibits 1-17, defendants' exhibits JJ-VV, and the testimony of claimant and his wife, Heather Engel.

ISSUES

1. Whether claimant's mental injury resulted in a permanent disability; and if so;
2. The extent of claimant's entitlement to permanent partial disability benefits.
3. The commencement date of permanent partial disability benefits.
4. Whether defendants are liable for a penalty under Iowa Code section 86.13.

FINDINGS OF FACT

Claimant was 50 years old at the time of hearing. Claimant went through the 11th grade. Claimant has a GED. Claimant has worked largely in construction. Claimant worked in a warehouse. Claimant also worked for a soil erosion company as a project manager.

Claimant began employment with Sunopta in September of 2008. On December 11, 2008 claimant caught his left hand in a machine. This resulted in a partial amputation of two fingers. (Arbitration Decision, page 2) Claimant was found to have a 36 percent permanent impairment to the hand, converting to a 32 percent permanent impairment to the right upper extremity. (Arb. Dec., p. 2; Exhibit 6, p. 3)

Claimant was terminated from employment from Sunopta on July 13, 2011 for insubordination. (Arb. Dec., p. 3; Ex. TT, p. 2; Ex. H, p. 19)

Claimant's prior medical history is relevant. Claimant had a suicide attempt in 1988 concerning a girlfriend. He had been assessed as having mental health issues in dealing with his problems with colitis. (Ex. R, pp. 52-54)

Claimant took Ativan for anxiety in 1995. (Ex. Q, p. 57) In 2002 claimant was prescribed Zoloft for depression. (Ex. Y, p. 105) In 2006 claimant was prescribed Xanax for anxiety. (Ex. R, p. 55) In 2006 claimant was assessed as having significant symptoms of major depression. (Ex. Y, p. 110) The record indicates that dating back to 1988, claimant did receive counseling and medication for mental health issues such as anxiety and depression. There is no evidence in the record that claimant had any

permanent impairment or permanent restrictions from these prior mental health conditions.

On November 17, 2010 claimant was referred to Ronit Cohen, M.D. for concerns related to PTSD. Claimant had begun counseling for PTSD in September of 2010. Claimant indicated he felt violent and "jacked up." (Ex. 4, p. 2) Claimant was assessed as having major depressive disorder. His Global Assessment of Functioning (GAF) was between 40-45.

In 2011 claimant began undergoing counseling with Cher Stephenson, LMHC, CRC. Claimant received approximately 11 counseling sessions with Ms. Stephenson in 2011. Claimant was assessed during that period as having a major depressive disorder and PTSD. During that period claimant expressed suicidal ideation. (Ex. 9, pp. 1-9)

Heather Engel testified she is claimant's wife. She said that between 1996 and 2006 claimant owned a construction company called Otter Creek. She said this was a successful business for ten years. She said between 2011 to 2013 claimant did not work for Otter Creek. She said claimant did not bring in income from employment during this period of time. Ms. Engel said resumes and job applications indicate claimant worked for Otter Creek from 2011 through 2013 as a way to fill in unemployment periods when applying for jobs and for unemployment insurance purposes. (Ex. 14; Ex. KK, p. 9)

Ms. Engel said Exhibit 12 is a list of approximately 150 jobs claimant applied for after losing his job at Sunopta. Ms. Engel testified she was the one who put together this list of potential employers. She said she also wrote cover letters and applications for claimant. She said she also wrote claimant's resume.

On January 14, 2012 Ms. Stephenson indicated claimant required ongoing counseling services. She opined it was likely claimant's PTSD symptoms would have a significant impact on claimant's ability to perform adequately in a work environment requiring physical action. (Ex. 2, p. 1)

In a January 17, 2012 letter Gregory Hotsenpiller, M.D., Ph.D. indicated he was the psychiatrist who treated claimant since April of 2011. He assessed claimant as having PTSD. He opined claimant would likely be at risk for having PTSD in the future, which would complicate claimant's return to work in an environment with machinery. (Ex. 3, p. 1)

On July 31, 2012 claimant was thrown while riding a horse. Claimant was assessed as having contusions and strains. (Ex. QQ)

On October 31, 2012 claimant was involved in a rollover car accident with his family. (Ex. MM)

During 2012 claimant received approximately 20 counseling sessions from Ms. Stephenson. During that period of time claimant expressed suicidal ideation. (Ex. 8, pp. 10-21)

In January of 2013 claimant began working as a second-shift supervisor at CLM Pallet. (Ex. JJ, p. 3) CLM rebuilt wooden pallets. (Ex. UU, Deposition p. 14)

In April 2013 claimant was evaluated by Wayne Alberts, M.D. Claimant was found to not be showing major depressive or anxiety symptoms. He was assessed as having an attention deficit disorder (ADD). (Ex. QQ, pp. 36-37)

In October of 2013 claimant was laid off from CLM Pallet when the operation shut down. (Ex. 9, p. 1)

On November 16, 2013 claimant was brought to Mercy Medical Center by police. The records indicate police were called to claimant's home when claimant threatened to kill the family dog with a loaded shotgun. Police were contacted by claimant's daughter. (Ex. OO, p. 25)

Ms. Engel testified that since his 2008 work injury claimant has had numerous outbursts of anger. She testified that in 2013, police were called to their home after claimant threatened to kill the family dog with a shotgun after the dog had messed on the floor.

On October 16, 2013 claimant was hired as a salesperson with Rexco Equipment, Inc. Rexco sold skidloaders and tractor mowers. (Ex. KK, p. 11; Ex. UU, Depo. p. 12) Claimant was terminated from Rexco on February 20, 2014 for failure to make job performance goals. (Ex. 10)

Claimant was evaluated on December 4, 2013 by Mark Mittauer, M.D. Dr. Mittauer is board certified in psychiatry. Claimant's history indicated he had suicidal thoughts in 2008. Claimant had a history of depression. Claimant has been assessed as having ADHD since 2008. Claimant was assessed as having a major depressive disorder, PTSD, an anxiety disorder, and possible ADHD. Claimant was recommended to get rid of his weapons. He was recommended to have continued psychotherapy. (Ex. 7, pp. 1-4)

In 2013 claimant had approximately 21 counseling sessions with Ms. Stephenson. Records indicate claimant showed progress with his mental health conditions but had a setback in November of 2013. Suicidal ideation was noted in November of 2013. (Ex. 8, pp. 22-30)

Between March of 2014 and December of 2014 claimant was evaluated by Dr. Mittauer on eight occasions. Notes indicate Dr. Mittauer recommended claimant and his wife dispose of all of their firearms. Records also indicate claimant had stress regarding beginning a new job. Records suggest claimant was released from care from Dr. Mittauer on or about October 14, 2014. (Ex. 7, pp. 6-12)

In a September 23, 2014 report Dr. Mittauer gave his opinions regarding claimant's condition. Claimant was diagnosed as having a major depressive disorder, PTSD, anxiety disorder and ADHD. Claimant's estimated GAF was 48. This indicated claimant was experiencing serious symptoms effecting his social or occupational functioning. Claimant was experiencing periodic mild panic attacks and occasional severe panic attacks. Claimant reported difficulty with concentration. (Ex. 1, p. 1)

Using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Section 14.3, he found claimant had difficulties in the four categories regarding areas of function. Dr. Mittauer found claimant had a moderate impairment (Class III) in activities of daily living; a marked impairment (Class IV) in social functioning; a marked impairment (Class IV) in concentration, persistence and pace; and a moderate impairment (Class III) regarding adaptation. Dr. Mittauer found these characteristics were developed following claimant's work-related injury. He did not believe claimant's ADHD symptoms were significant contributors to claimant's current symptoms. (Ex. 1, pp. 2-3)

In an October 8, 2014 note, Ms. Stephenson indicated she had provided psychotherapy and counseling services to claimant for a major depressive disorder and PTSD since October of 2011. Ms. Stephenson agreed with Dr. Mittauer's impairment ratings for claimant. She indicated claimant's GAF scores typically fell at 50. (Ex. 2, p. 2)

In a December 30, 2014 report Eli Chesen, M.D. gave his opinions of claimant's condition following an independent medical evaluation (IME). Dr. Chesen opined claimant's functions in the GAF ranged from 85-90, which translated to a zero percent permanent impairment. Dr. Chesen indicated claimant was not agitated during his interview. He indicated claimant was not overly emotional. He opined there were discrepancies between claimant's claimed symptoms and objective findings. He opined it was "odd" that claimant's symptoms worsened for an event occurring in 2008. He also opined claimant's symptoms were not consistent with PTSD. (Ex. 55)

Ms. Engel testified claimant was evaluated by Dr. Chesen for approximately an hour in a motel room next to the Omaha Airport. She testified Dr. Chesen's report is false in that there were multiple times during the interview when claimant was agitated or emotional. Ms. Engel said she had to ask Dr. Chesen for breaks for claimant during the IME.

In 2014 claimant saw Ms. Stephenson for approximately 21 counseling sessions. (Ex. 8, pp. 31-45)

In deposition Ms. Stephenson testified claimant's GAF scores were in the 30-50 range. (Ex. 17, Depo. pp. 8-10) She said she had seen claimant approximately 75 different times since October 2011 based on scheduling and severity of claimant's symptoms. (Ex. 17, Depo. p. 12) She testified claimant's PTSD would continue to effect claimant in the future. (Ex. 17; Depo. p. 26) She testified she is unsure to what

extent claimant's ADHD symptoms interfered with claimant's work before his injury. (Ex. 17; Depo. p. 34) She said she agreed with Dr. Mittauer that claimant's ADHD symptoms were not significant contributing factors to his current mental health issues. (Ex. 17, p. 40) She testified claimant's PTSD has an effect on claimant's work. (Ex. 17, Depo. pp. 39-40)

Both claimant and his wife testified that counseling with Ms. Stephenson had been beneficial to claimant. Both claimant and his wife said that working with Ms. Stephenson had helped claimant cope with his mental health issues.

At the time of hearing claimant was working for Reconstruction 380. Claimant testified Reconstruction 380 was a company that rebuilds homes after storms and floods. Claimant is a project manager. As a project manager he checks the work of subcontractors and ensures the work is properly done. Claimant said he works mostly by himself, which he likes. He testified he earns approximately \$42,000.00 a year and works between 45-80 hours per week. (Ex. UU, Depo. pp. 7-10)

Ms. Engel testified claimant likes his job with Reconstruction 380, as he is allowed to work by himself most of the time.

Claimant testified in deposition he feels his mental health is better in 2014 than it was in 2012. He testified in deposition he feels his memory is deteriorating. He testified in deposition that he does not work well with people. (Ex. UU, Depo. pp. 25, 32)

Ms. Engel testified claimant's condition was notably different after his injury. She said claimant has crying spells, panic attacks, and outbursts of anger. She said claimant still has crying spells, panic attacks, and outbursts of anger. Ms. Engel testified claimant has difficulty interacting with family and friends. She said that because of his difficulty with interacting with others, claimant no longer coaches his daughter in basketball, and avoids going to his daughter's volleyball games so that he does not have to interact with other parents. She said claimant does not like being around people.

Ms. Engel testified her husband has attempted suicide since the 2008 accident. She said her husband has been dangerous to the extent the family has had to leave the house for their personal safety.

CONCLUSIONS OF LAW

The first issue to be determined is if claimant's mental health condition resulted in a permanent disability.

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).

Claimant contends his PTSD is a permanent condition. Defendants contend claimant's PTSD is a temporary condition. Defendants also suggest that any mental health issues claimant now experiences are caused by non-work related mental health problems that claimant had prior to the 2008 injury.

Three experts have opined regarding whether claimant has a permanent disability. Ms. Stephenson has treated claimant since 2011. She has seen claimant on approximately 75 occasions since that time. Ms. Stephenson opines that since 2011 claimant has been assessed as having a major depressive disorder and PTSD. She opines claimant's PTSD would have a significant impact on claimant's ability to perform adequately in a work environment requiring physical activity. (Ex. 2, p. 1) Her assessment of claimant has not changed for approximately 3.5 years. Ms. Stephenson indicated claimant's GAF score has typically been at 50. (Ex. 2, p. 2)

According to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV-TR), a person with a GAF score of 50 has a severe impairment in social and occupational functioning. (DSM-IV-TR, page 32). The recent edition of the DSM, Fifth Edition, does not use the GAF scale for evaluation of functioning regarding mental health (DSM-V-TR, p. 16). Most of the experts in this case reference to claimant's GAF scores. For this reason, and for the purposes of this decision, it is found the use of the GAF scale, along with other evidence in the record, is valid as a factor in assessing claimant's industrial disability.

Dr. Mittauer has treated claimant since December of 2013 and has seen claimant on approximately eight occasions. Dr. Mittauer opines claimant's mental health

condition has a moderate impact on two levels of functioning, and a marked impact on two other levels of functioning.

According to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, numerical percentages are not given to estimate mental impairment. Instead, the Guides assess four main areas of function: 1. The ability to perform activities of daily living; 2. Social functioning; 3. Concentration, persistence and pace; 4. Deterioration or decompensation in work or work-like settings. (The Guides section 14.3, p. 361)

The Guides define Class III moderate impairment as a level compatible with some, but not all useful functioning. The Guides define Class IV marked impairment as an impairment that significantly impedes useful functioning. (Guides section 14.3(a) (Table 14.1), p. 363)

As noted above, Dr. Mittauer opines claimant has a moderate impairment in two categories of functioning, and a marked impairment in two other categories of functioning. The Guides note, in evaluating an individual for mental impairment, a marked limitation in two or more spheres would likely preclude the performance of any complex tasks, such as ones involving work, without support or assistance. (Guides section 14.3, p. 364)

Dr. Chesen evaluated claimant on one occasion. He opined claimant has no permanent impairment. Dr. Chesen saw claimant for approximately an hour in a hotel room in Omaha. Claimant's wife testified his report of claimant is partly false, in that claimant did experience stress and agitation during his interview with Dr. Chesen.

Dr. Chesen saw claimant on one occasion, compared to the multiple occasions claimant has met with Dr. Mittauer and Ms. Stephenson. The veracity of his report is questioned by claimant's wife. Given these facts, it is found the opinions of Dr. Chesen regarding the degree of impairment are found not convincing.

Claimant suffered an amputation to fingers on his left hand in 2008. Since 2011 he has been assessed as having a major depressive disorder and PTSD. Claimant has lost one job due to his inability to learn new information. He has a GAF typically in a range indicating severe impairment with social or occupational functioning. He has been assessed by Dr. Mittauer as having a marked impairment in function in two of the four areas assessed in the Guides. Given this record, claimant has carried his burden of proof he has a permanent impairment as a result of his PTSD.

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

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and

not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

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

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

A psychological condition caused or aggravated by a scheduled injury is to be assessed as an industrial disability. Mortimer v. Fruehauf Corp., 502 N.W.2d 12 (Iowa 1993).

Claimant was 50 years old at the time of hearing. He has a GED. Claimant has worked mostly in the construction industry.

As noted above Ms. Stephenson indicates claimant has a GAF typically in the 50 range. (Ex. 2, p. 2) Ms. Stephenson notes scores in this range still require ongoing psychological counseling. A GAF at the level 50 suggests the person has severe impairment with social and occupational functioning. (DSM-IV-TR, p. 32)

As noted above, Dr. Mittauer has found claimant has marked impairment in two levels of functioning as defined by the Guides. A marked level of functioning in two or more spheres, according to the Guides, would likely preclude the performance of complex tasks such as working. (Guides, p. 364, section 14.3)

At the time of hearing claimant was working full time with Reconstruction 380 as a project manager. He testified he believes since 2012 his mental condition has improved. The record indicates claimant earns more money with Reconstruction 380 than he did when employed with Sunopta. (Ex. UU, Depo. p. 8; Ex. 11)

When all relevant factors are considered, it is found claimant has an industrial disability, or loss of earning capacity of 30 percent.

The record suggests claimant was released from care by Dr. Mittauer on October 13, 2014. Benefits should commence from this date. (Ex. 7, p. 12)

The final issue to be determined is if defendants are liable for penalty under Iowa Code section 86.13.

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

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

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

The supreme court has stated:

(1) If the employer has a reason for the delay and conveys that reason to the employee contemporaneously with the beginning of the delay, no penalty will be imposed if the reason is of such character that a reasonable fact-finder could conclude that it is a "reasonable or probable cause or excuse" under Iowa Code section 86.13. In that case, we will defer to the decision of the commissioner. See Christensen, 554 N.W.2d at 260 (substantial evidence found to support commissioner's finding of legitimate reason for delay pending receipt of medical report); Robbennolt, 555 N.W.2d at 236.

(2) If no reason is given for the delay or if the "reason" is not one that a reasonable fact-finder could accept, we will hold that no such cause or excuse exists and remand to the commissioner for the sole purpose of assessing penalties under section 86.13. See Christensen, 554 N.W.2d at 261.

(3) Reasonable causes or excuses include (a) a delay for the employer to investigate the claim, Christensen, 554 N.W.2d at 260; Kiesecker v. Webster City Meats, Inc., 528 N.W.2d at 109, 111 (Iowa 1995); or (b) the employer had a reasonable basis to contest the claim—the "fairly debatable" basis for delay. See Christensen, 554 N.W.2d at 260 (holding two-month delay to obtain employer's own medical report reasonable under the circumstances).

(4) For the purpose of applying section 86.13, the benefits that are underpaid as well as late-paid benefits are subject to penalties, unless the employer establishes reasonable and probable cause or excuse. Robbennolt, 555 N.W.2d at 237 (underpayment resulting from application of wrong wage base; in absence of excuse, commissioner required to apply penalty).

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

Id.

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

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

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

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

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

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

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

Claimant contends defendants are liable for penalty benefits. This is because defendants should have known claimant was due industrial disability benefits for his mental injury following the remand decision. (Claimant's post-hearing brief, p. 11)

Following the arbitration decision claimant was not given any work restrictions. Although claimant was laid off from one job due to a plant closure, and terminated from another for failure to meet performance goals, at the time of hearing claimant was working full time with Reconstruction 380. Claimant testified he earned approximately \$42,000.00 a year at his current job. (Ex. UU, Depo. p. 8) When he worked at Sunopta, claimant earned approximately \$33,000.00 a year. (Ex. 11) Defendants do have an IME from a board-certified psychiatrist indicating claimant has no permanent impairment. Given this record, a penalty is not appropriate at this time.

ORDER

THEREFORE IT IS ORDERED:

That defendants shall pay claimant one-hundred fifty (150) weeks of permanent partial disability benefits at the rate of four-hundred forty and 66/100 dollars (\$440.66) per week commencing on October 13, 2014.

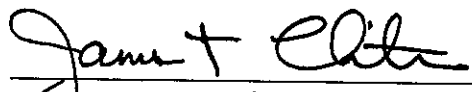
That defendants shall pay accrued benefits in a lump sum.

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

That defendants shall file subsequent reports of injury as required under Rule 876 IAC 3.1(2).

That defendants shall pay the costs of this matter.

Signed and filed this 18th day of May, 2015.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.