BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRADLEY WOODS,

Claimant,

vs.

CODY'S, INC.,

Employer,

ACCIDENT FUND INSURANCE COMPANY OF AMERICA,

Insurance Carrier,
Defendants.

File No. 5057998

A R B I T R A T I O N

D E C I S I O N

Head Note Nos.: 1108.20, 1402.40, 1704, 1803, 1902, 2204, 2501, 2907 3001, 3002, 4000.1, 4000.2

STATEMENT OF THE CASE

Bradley Woods, claimant, filed a petition in arbitration and seeks workers' compensation benefits from defendants, Cody's, Inc., as the employer and Accident Fund Insurance Company of America, as the insurance carrier. Hearing occurred before the undersigned on August 3, 2017, in Cedar Rapids.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision. No factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 7, Claimant's Exhibits 1 through 24, and Defendants' Exhibits A through H.

Claimant testified on his own behalf and called Nicole Woods, his wife, to testify. Defendants called Cal Hawkins to testify.

As a result of an evidentiary objection, the evidentiary record in this case was suspended at the conclusion of the arbitration hearing. Defendants were given an opportunity to obtain rebuttal evidence. Defendants filed a rebuttal report marked as Exhibit H on September 6, 2017. The evidentiary record closed upon receipt of Defendants' Exhibit H.

However, counsel for the parties requested an opportunity to submit post-hearing briefs. Their request was granted. The parties filed post-hearing briefs on or before the established date of October 2, 2017, at which time the case was considered fully submitted to the undersigned.

ISSUES

1. Whether claimant's permanent disability should be compensated as a scheduled member injury or with industrial disability as an unscheduled disability.

2. The extent of claimant's entitlement to permanent disability benefits.

3. Claimant's average gross earnings at the time of the injury.

4. The number of exemptions to which claimant was entitled for purposes of calculating his weekly rate on the date of injury.

5. The corresponding weekly rate at which benefits should be paid.

6. Whether claimant is entitled to an order requiring reimbursement, direct payment, or satisfaction of past medical expenses contained at Claimant's Exhibit 16.

7. Whether claimant is entitled to reimbursement of his independent medical evaluation expenses, including a request for wage reimbursement to attend defendants' requested evaluation.

8. Whether defendants are entitled to credit for overpayment of weekly benefits.

9. Whether claimant is entitled to penalty benefits pursuant to Iowa Code section 86.13

10. Whether costs should be assessed against either party, including a request for taxation of the cost of evidentiary depositions and expert reports.

FINDINGS OF FACT

Having considered all of the evidence and testimony in the record, recognizing that there may be competing or contradictory facts within this evidentiary record, I find the following facts:

Bradley Woods sustained an admitted injury to his left hand on July 17, 2011, while working for Cody's Inc. Mr. Woods worked as a crew leader for Cody's and was on a remote site in Iowa City. At the time of his injury, claimant was working on a ladder while cleaning a kitchen exhaust fan at a restaurant. Unfortunately, he lost his balance,

reached out with his left hand and grabbed a piece of metal. As a result, he sustained a significant laceration of his left hand.

Mr. Woods required emergency treatment after the injury and, unfortunately, has required nine surgeries on his left hand, including amputation of his left little finger. Claimant's recovery has been protracted and he has lost time from work and functional abilities with his left hand.

Mr. Woods' situation is made worse by the fact that he is left hand dominant, or at least was prior to the work injury. Mr. Woods now has significant difficulties using his left hand and has decreased grip strength and permanent limitations on the use of his left hand.

Two physicians have offered opinions about claimant's residual functional abilities with his left hand. The first is one of his hand surgeons, Ericka Lawler, M.D. Dr. Lawler practices at the University of Iowa Hospitals and Clinics. She has treated claimant's left hand injuries, including performance of surgical intervention on his left hand. Dr. Lawler requested a functional capacity evaluation (FCE), which demonstrated that claimant remains capable of working at the very heavy work demand level. (Joint Exhibit 5)

In crafting her permanent work restrictions, Dr. Lawler tempered the FCE findings based upon her clinical observations and experience. Dr. Lawler opined in 2015 that claimant remains capable of lifting 35 pounds with his left hand and 75 pounds using both hands. However, Dr. Lawler recommends against work involving repetitive grip with the left hand. (Joint Ex. 1, page 41)

The FCE also demonstrated some reductions in claimant's left hand grip and pinch strengths when compared to his non-dominant right hand. (Joint Ex. 5, p. 9) However, the FCE demonstrated that claimant was capable of ladder climbing, overhead reaching, and forward reaching despite his injuries and protracted recovery. (Jt. Ex. 5, p. 10)

However, claimant returned for further evaluation by Dr. Lawler in June 2017. In June 2017, Dr. Lawler imposed more stringent work restrictions. Specifically, Dr. Lawler opined that claimant has "permanent restrictions of no repetitive gripping, left hand lifting of 10lbs frequently and 15lbs occasional. He feels this is the maximum his hand will tolerate." (Claimant's Ex. 21, p. 3)

Mr. Woods sought an independent medical evaluation, performed by John D. Kuhnlein, D.O., on June 7, 2017. (Joint Ex. 7) Dr. Kuhnlein provided a detailed analysis of claimant's current work abilities. He stated:

> Mr. Woods has upper extremity strength, but the problem is in manipulating what he lifts because of the condition of his left hand, with the absent small finger, the contracture of the left ring finger, and the

inability to form a composite fist because of the left hand injury. These deficits would affect his ability to work with items on a regular basis in a workplace. As such, material handling restrictions would be in order. Material handling restrictions would include lifting 15 pounds occasionally from floor to waist, 20 pounds occasionally from waist to shoulder, and 10 pounds occasionally over the shoulder.

Nonmaterial handling restrictions would include sitting, standing or walking on an unrestricted basis. Mr. Woods can stoop or squat without restrictions, bend without restriction or crawl occasionally. He can kneel without restriction. Mr. Woods cannot work on ladders or at height because of an inability to maintain a 3-point safety stance with both feet and his right hand and still be able to work with the damaged left hand. He can climb stairs without restriction. He can work at or above shoulder height without restriction within the material handling restrictions outlined above. Mr. Woods can grip or grasp occasionally with the left hand within the restrictions outlined above. There are no lower extremity restrictions.

There are no vision, hearing, or communication restrictions. Mr. Woods can travel for work. He would benefit from a mobile ball on the steering wheel of his vehicles to assist when driving. This would make it easier for him to turn the wheel. Mr. Woods can use tools on an occasional basis with the left hand within the material handling restrictions outlined above. He should not use vibratory tools with his dominant left hand. There are no environmental restrictions other than to dress warmly when working in the cold. Because of the left ring finger contracture, Mr. Woods may have problems putting on gloves. Because of the residual pain in the left small finger ray, he may have discomfort when wearing gloves. Mr. Woods cannot work on production lines.

(Joint Ex. 7, pp. 16-17)

Dr. Kuhnlein's restrictions are similar to those outlined by Dr. Lawler in June 2017. However, Dr. Kuhnlein's restrictions are much more detailed and thorough. They make sense for the injury claimant has sustained. I find that the restrictions outlined by Dr. Kuhnlein are reasonable and appropriate for claimant's injury. I accept Dr. Kuhnlein's restrictions as those that should be applied for claimant's injury and utilize those restrictions in fashioning a permanent disability award in this case.

Dr. Lawler and Dr. Kuhnlein both offer opinions about claimant's permanent impairment related to his left hand injury as well. Dr. Lawler opined in August 2015 that claimant sustained impairment equal to 15 percent of the left upper extremity as a result of the physical injuries sustained in the July 17, 2011 work injury. (Joint Ex. 1, p. 42)

Dr. Kuhnlein offered an opinion that claimant sustained permanent impairment equivalent to 29 percent of the left arm, or 17 percent of the whole person as a result of the physical injuries he sustained at work on July 17, 2011. (Joint Ex. 7, pp. 14-15) As a result of an evidentiary ruling made by the undersigned at the arbitration hearing, defendants were permitted to seek a rebuttal report from Dr. Lawler.

Defendants filed Dr. Lawler's rebuttal report as Exhibit H. In that report, Dr. Lawler reviewed Dr. Kuhnlein's impairment rating and her prior impairment rating. After that review, Dr. Lawler opined that there was some loss of motion in the left ring finger PIP joint that was not included within her prior impairment rating. Dr. Lawler increased her prior permanent impairment rating, opining that with the inclusion of the loss of range of motion of the ring finger, claimant actually sustained a 15 percent loss of the left upper extremity as a result of the physical injuries sustained on July 17, 2011. (Defendants' Ex. H, p. 4)

Dr. Lawler also explained why she disagreed with Dr. Kuhnlein's higher impairment rating, and specifically with his award of additional impairment for pain, which Dr. Lawler believed was appropriately assessed by the functional impairment ratings for the left hand and fingers. Dr. Lawler also opined that she did not observe instability in claimant's left long finger and, therefore, disagreed with Dr. Kuhnlein's impairment for such instability. (Defendants' Ex. H, pp. 4-5)

Comparing the competing impairment ratings, I accept the impairment rating offered by Dr. Kuhnlein in this case. Dr. Lawler was forced to acknowledge an error and underestimation of her impairment rating in her rebuttal report. Dr. Kuhnlein's impairment rating appears to be consistent with the AMA Guides and was sufficient to convince Dr. Lawler to increase her own impairment rating. Therefore, I find that claimant has proven he sustained a 29 percent permanent impairment of the left upper extremity, or a 17 percent functional impairment of the whole person as a result of the physical injuries he sustained on July 17, 2011.

Mr. Woods asserts that he also sustained mental injuries as a result of the July 17, 2011 physical injuries. Defendants contend that claimant had pre-existing mental injuries and that he has not proven he sustained mental injuries as a result of the July 17, 2011 physical work injury.

Claimant produces the opinions of his independent medical evaluator, Dr. Kuhnlein, as well as his treating mental health providers, Mark W. Mittauer, M.D., and Paul Eggerman, Ph.D., in support of his claim that he sustained mental injuries as a result of the July 17, 2011 physical work injuries.

Dr. Kuhnlein opines that

> [t]his injury appears to have been a substantial more than minor factor in the development of his depression and anxiety as it relates to the July 17, 2011, work injury.
>
> ....
>
> This has been a major life stressor for Mr. Woods, and, as such, it is more likely than not that his current mental health issues with depression and anxiety are related to the July 17, 2011, injury.

(Joint Ex. 7, p. 17)

Dr. Mittauer is a board certified psychiatrist. He authored a report dated January 22, 2017 in which he opined:

> I believe that Mr. Woods' work injury of 07/17/2011, did indeed "trigger, make active and necessitate the healthcare treatment Brad has received since he injured his left hand." I believe that his major depressive disorder diagnosis was caused by his work related injury and associated disability. I also believe that his anxiety disorder, not otherwise specified, diagnosis was caused by his work related injury. I do not feel that his work related injury caused his generalized anxiety disorder; however, it likely exacerbated, or worsened his generalized anxiety disorder.

(Joint Ex. 4, p. 15)

Similarly, Dr. Eggerman opined, "I would agree to a reasonable degree of psychological certainty that Mr. Woods' work injuries of 07-17-11 aggravated or 'lighted up' his underlying condition or propensity for depression and/or anxiety, and that treatment from this office has been necessary in the years subsequent to 07-17-11." (Joint Ex. 4, p. 14)

Mr. Woods was initially evaluated for mental health issues after the date of injury upon referral from the orthopaedic department at the University of Iowa Hospitals and Clinics to a psychiatrist at the University of Iowa Hospitals and Clinics. (Joint Ex. 1, p. 44) Mr. Woods also sought psychological treatment, upon referral from the University of Iowa Psychiatry Department through Michael March, Ph.D.

Dr. March was not specifically asked to comment on the causal connection between claimant's work injury and his development of depression and/or anxiety. However, Dr. March's office notes indicate that claimant was referred by a psychiatrist at the University of Iowa Hospitals and Clinics "for individual therapy to treat depression and anxiety due to a work-related injury." (Joint Ex. 2, pp. 5-15) It appears that Dr.

Weldon concurs that the development or worsening of claimant's anxiety and depression were the result of his July 2011 work injury.

Defendants counter with a psychiatrist and psychologist of their own. Psychologist, Amy Mooney, Ph.D. and psychiatrist, Terrence L. Augspurger, M.D., performed a joint interview of the claimant on July 25, 2016. Dr. Mooney then administered a battery of psychological tests. Dr. Mooney and Dr. Augspurger authored a joint report dated August 22, 2016. (Joint Ex. 6)

Drs. Mooney and Augspurger were asked about a potential diagnosis of post-traumatic stress disorder. They rejected such a diagnoses. Instead, they diagnosed claimant with a major depressive disorder, recurrent, moderate with anxious distress and occasional panic attacks. They further diagnosed claimant with generalized anxiety disorder. Interestingly, Drs. Mooney and Augspurger noted that claimant reported positive responses to the treatments offered by Dr. Mittauer and Dr. Eggerman. They recommended claimant continue treatment through both Dr. Mittauer and Dr. Eggerman. (Joint Ex. 6, p. 8)

However, Drs. Mooney and Augspurger concluded that claimant has "pre-existing anxiety and depressive problems" with a strong family history of the same. (Joint Ex. 6, p. 9) Drs. Augspurger and Mooney opined:

> There is no scientific evidence that mental disorders are caused by any work-related event or experience. Research has repeating (sic) indicated that such claims that work relatedness would be not only false but in fact directly contradict the relevant scientific findings. It is not a risk factor and therefore no a cause. It is not even a matter of being a lack of relationship of work and Major Depressive Episode; rather, work has repeatedly been demonstrated to have an inverse relationship to major depressive episode.

(Joint Ex. 6, p. 9)

It does not appear that Drs. Augspurger and Mooney were specifically asked to comment on whether the work injury, resulting surgeries, impairment, limitations, and loss of employment were potentially materially aggravating factors in causing claimant's depression and/or anxiety. In fact, the questioned posed to Drs. Augspurger and Mooney was, "Is the anxiety and depression Mr. Woods is experiencing solely caused by his work injury or is it due to underlying, pre-existing issues?" (Joint Ex. 6, p. 9)

The question posed by appears to assume there are two options: (1) the work injury was the sole cause of claimant's mental health problems; or (2) claimant's mental health problems are due to underlying, pre-existing conditions. It appears that Drs. Augspurger and Mooney addressed the questioned posed and perhaps answered it accurately. Nothing about work, in and of itself, is a direct and sole cause of depression. Even assuming this is an accurate recitation of the research backing Drs.

Augspurger and Mooney's work, it does not address the issue of whether the work injury, resulting surgeries, pain, functional limits, and related issues may have been a substantial factor, or substantially aggravating factor, of claimant's depression and anxiety.

Considering all of the competing opinions pertaining to claimant's mental health diagnoses, I accept the opinions expressed by the treating mental health professionals, Dr. Mittauer and Dr. Eggerman, as most convincing and accurate. Dr. Mittauer and Dr. Eggerman have had numerous interactions with claimant, and the opportunity to evaluate him over a period of time. Dr. Mittauer and Dr. Eggerman have provided care that is beneficial and that is recommended to continue even by defendants' experts. Dr. Mittauer and Dr. Eggerman also address the correct legal standard pertaining to substantial factors and whether the work injury caused a material aggravation of claimant's underlying mental health conditions.

I acknowledge defendants' arguments about claimant's failure to initially report prior mental health issues. I acknowledge defendants' arguments about claimant's past personal issues pertaining to abuse, his mother's death, blended family issues, his prior incarceration, and his wife's job loss. Certainly, each of these issues may have caused Mr. Woods mental stress and anguish. Each of these issues may have been sufficient alone to cause a person to succumb to stress and develop depression and/or anxiety. Claimant admits that he probably had some generalized anxiety before the date of injury.

However, there is no evidence that Mr. Woods was experiencing significant symptoms related to depression or anxiety prior to his July 2011 work injury. There is no evidence that he was seeking treatment for depression or anxiety immediately prior to his work injury. Only after he sustained this significant physical injury and had undergone surgeries and treatment did he receive a referral for mental health treatment. Only after he experienced the significant physical limitations, pain, and stresses of his physical injury did he require ongoing psychiatric and psychological care. Therefore, I reject defendants' arguments and find that claimant has proven by a preponderance of the evidence that his mental injuries arose out of and in the course of his employment as a result of his physical injuries sustained on July 17, 2011.

Similarly, I find that the mental injuries alleged by claimant have caused permanent disability. As Dr. Mittauer opined, claimant requires ongoing medication management for his mental health conditions as well as ongoing psychotherapy. (Joint Ex. 4, p. 15) Claimant has not been provided a permanent impairment or specific permanent work restrictions as a result of his mental injuries. However, Dr. Kuhnlein noted, "[w]ith the psychiatric and psychologic issues and the sleep issues, it would be better for Mr. Woods not to perform shift work." (Joint Ex. 7, p. 17)

Mr. Woods has obtained new employment and does work specific shifts. I do not interpret Dr. Kuhnlein's comments to specifically be a permanent restriction or preclude claimant from returning to shift work. Although not a specific permanent restriction, Dr. Kuhnlein's comments do explain that it will be more difficult for claimant to perform psychologically in future employment as a result of his depression and anxiety.

There is also great debate in this case about claimant's motivation and the reason he did not return to work at Cody's. Indeed, claimant was offered work to return to Cody's. He initially accepted the offer. Then, after the meeting, called and declined the work and resigned his employment.

Mr. Woods asserts that he experienced a panic attack at the thought of returning to his former work activities. Claimant testified that he was promised at a meeting that he could perform different duties for the employer, such as residential carpet cleaning, to remain within his work restrictions and allow him to return to work at Cody's. However, he testified that immediately after the meeting where such promises were made, he was offered a job performing a commercial cleaning similar to the one in which he was injured. He testified that he left the meeting, experienced a significant panic attack while driving home, and called and resigned his employment.

Cody's CEO, Cal Hawkins, testified that the company offered claimant light duty work whenever it was available after his injury. Claimant performed light duty assignments, including driving a van, carrying items, but Mr. Hawkins never saw claimant experience a panic attack during these employment duties.

Mr. Hawkins testified that he offered claimant a position as a carpet cleaner for Cody's with work hours from 8:00 a.m. to 5:00 p.m. Mr. Hawkins testified that the job offered to claimant was 100 percent different than the job claimant was performing on the date of injury. Mr. Hawkins also testified that claimant seemed "taken aback" when the job offer was made. Claimant, instead, told Mr. Hawkins he would think about it. However, according to Mr. Hawkins, claimant called back ten minutes later and indicated that he was not comfortable working at Cody's and declined the offer of employment.

Mr. Hawkins conceded that claimant was one of the best employees. He also conceded that he understood why claimant may not want to continue employment at Cody's, which is an interesting concession given the defendants' position that the work and injury at Cody's did not cause mental injury. Rather, it appears that the employer's representative concedes or believes that there was a mental aspect to claimant's refusal of work caused by the work injury.

Ultimately, I am not certain which version of the final meeting between claimant and Cal Hawkins is accurate. Claimant is not seeking additional healing period after that meeting. However, the decision to terminate his employment is understandable. Yet, I do not find Mr. Woods to be an unmotivated individual. He sought and obtained

his high school diploma after this injury. He sought alternate employment and now works two jobs and more hours per week than he did at the time of injury to make ends meet. Mr. Woods is a motivated worker and has been able to transition to alternate employment, though he earns less per hour now than he did in 2011 on the date of injury.

Defendants introduced several photos and screen pages from claimant's Facebook account. Those documents make it clear that Mr. Woods has continued on with his life and continues to try to enjoy his life. They depict such things as Mr. Woods participating in a Polar Plunge, enjoying time with his wife in Las Vegas, taking trips with his family, and other enjoyment activities such as attending dances and/or parties.

I certainly acknowledge these photographs and that Mr. Woods may be trying to enjoy life as best he can. He is certainly not required to concede to his depression and anxiety and refuse to enjoy life. Obviously, he remains active. Yet, the physical and mental injuries he sustained will make future work more difficult. Mr. Woods was a physical laborer prior to this injury. Physical work is more difficult for him. Yet, he has not quit working or trying to live life. I find that he is motivated and attempting to be resilient to maintain the best quality of life that he can under the circumstances.

Considering claimant's age, the situs and severity of his physical and mental injuries, his educational background, his learning disability, his motivation to continue to work, his permanent functional restrictions, his permanent impairment, his subsequent work, as well as all other factors of industrial disability outlined by the Iowa Supreme Court, I find that Mr. Woods has proven he sustained a 40 percent loss of future earning capacity as a result of the physical and mental injuries sustained as a result of his work accident on July 17, 2011.

The parties have disputes about claimant's applicable weekly rate. Specifically, there are factual disputes about claimant's gross earnings and about his entitlement to claim a niece as an exemption on the date of injury. With respect to the issue of the claimed exemptions, there appears to have been some gamesmanship occurring between the parties on that issue. Defendants were not initially focused upon this issue or asking significant questions.

Claimant provided a very curious and confusing answer on his initial report, suggesting he had no dependents. Claimant subsequently claimed a biological child in his answers to interrogatories. However, it appears he was not entitled to claim that child on his taxes because the biological mother was entitled to claim the child in 2011. Claimant also testified that he was behind in his child support for the biological child.

Subsequently, claimant claimed a niece, who he testified resided with he and his wife and was dependent. Defendants challenge that entitlement. They requested proof that the biological mother did not claim the niece as a dependent. Claimant refused to seek the requested information. Instead, claimant noted he submitted an amended tax return for 2011, requesting permission to claim the child as a dependent. Neither party

called other witnesses to testify about the dependency of the minor claimed by Mr. Woods.

Mr. Woods testified that the biological mother for the niece gave him verbal permission to claim the niece as a dependent because she was not going to do so. However, he admits that there are no legal documents granting him custodianship, guardianship, or otherwise granting him a right to claim the niece as a dependent. On the other hand, the IRS has not challenged or audited claimant's 2011 tax returns, which claim the niece as a dependent.

Mrs. Woods testified that the biological father of her children did not claim those children as dependents in 2011. She testified that she has specifically seen his tax returns to confirm this fact. However, she conceded that she does not know whether the biological parents of her niece claimed the niece as a dependent on their tax returns in 2011.

I find that Mr. Woods was entitled to claim his step-children as dependents and exemptions in 2011. Both step-children lived with claimant and his wife. Neither step-children were claimed as exemptions by their biological father according to Mrs. Woods, who testified she has seen that father's tax returns.

With respect to the niece claimed, I acknowledge that an amendment was asserted to have been made to Mr. and Mrs. Woods' 2011 tax returns seeking to claim the niece as a dependent. Claimant offered no evidence that the amendment was received, approved, or Mr. Woods testified that the biological mother told him he could claim the niece as an exemption. However, Mrs. Woods actually contradicted claimant on this point and testified she is not aware of whether either of the biological parents of the niece claimed her as an exemption in 2011. No other testimony was obtained in this regard and no other documentary evidence was produced to establish the total support given the niece and whether her biological parents claimed her as an exemption. I find that Mr. Woods failed to prove he was entitled to claim the niece as a dependent, or exemption, in 2011.

With respect to the dispute about claimant's gross earnings, claimant asserts that he had earnings of $739.00 per week, while defendants contend that the applicable average gross earnings before the date of injury were $691.06.

Review of the parties' respective weekly rate calculations demonstrates some significant differences. Defendants include the week ending (July 11, 2011) prior to the injury. Claimant's calculation suggests this should be excluded because it includes the date of injury. However, the date of injury was July 17, 2011 and clearly occurred after this week. I find that the week of July 11, 2011 is representative and should be included in the gross weekly earnings calculation.

However, there is not a pay stub in evidence for that date of injury and there is a discrepancy in the earnings reported by defendants. Defendants' initial wage statement indicates that claimant earned $688.33 the week ending July 11, 2011. On their calculations at Exhibit G, however, defendants assert that the earnings for the week ending July 11, 2011 were $683.10. Given that defendants produced the initial wage statement at Exhibit 12 and no alternate wage records are in this record for the week of July 11, 2011, I will rely upon the wage statement rather than what constitutes an argument of counsel in Exhibit G. Therefore, I include wages totaling $688.33 for the week ending July 11, 2011.

Claimant asserts that the weeks ending July 4, 2011 and May 30, 2011 should be excluded because they include holidays when claimant did not work. Defendants do not specifically address or refute this contention. The earnings on these weeks are somewhat lower than other weeks. I find that the weeks of July 4, 2011 and May 30, 2011 should be excluded as not representative of claimant's typical earnings.

Claimant also asserts that the weeks ending June 27, 2011, June 20, 2011 and June 13, 2011 should be excluded because they include vacation time. Review of the pay stubs for those weeks (Claimant's Ex. 13, pp. 4-6) demonstrate that claimant did utilize vacation time during those weeks. Defendants' calculations do not acknowledge the fact that the weeks include vacation or explain why those would be representative in spite of this use of vacation time. I find that the weeks ending June 27, 2011, June 20, 2011, and June 13, 2011 should be excluded as non-representative when calculating claimant's gross earnings prior to the date of injury. Instead, I find that claimant earned $18.25 per hour for regular hours worked. I use the following weeks to calculate claimant's typical earnings prior to the date of injury:

Pay Period Ending Date	Total Hours Worked	Gross Earnings @ Straight Rate
7/11/11	37.7	$688.03
6/6/11	38.4	700.80
5/23/11	40.0	730.00
5/16/11	40.2	733.65
5/9/11	40.0	730.00
5/2/11	40.0	730.00
4/25/17	38.4	700.80
4/18/11	41.0	748.25

Pay Period Ending Date	Total Hours Worked	Gross Earnings @ Straight Rate
4/11/11	41.0	748.25
4/4/11	41.3	753.73
3/28/11	41.0	722.70
3/21/11	40.0	730.00
3/14/11	46.8	854.10
	TOTAL:	$9,570.31

Dividing the total gross earnings of $9,570.31 by the 13 weeks of wages utilized to calculate claimant's gross earnings, I find that claimant's average gross weekly wages prior to the July 17, 2011 date of injury were $736.18.

Mr. Woods seeks reimbursement of his independent medical evaluation. With regard to this issue, I find that defendants authorized medical care through the University of Iowa Hospitals and Clinics' Orthopaedic Department. An orthopaedic surgeon in that unit, Dr. Lawler, provided a permanent impairment rating on August 19, 2015. Claimant did not obtain an impairment rating until evaluated by a physician of his choosing, Dr. Kuhnlein, on June 2, 2017. I find that the charges submitted by Dr. Kuhnlein are reasonable for the services rendered.

Claimant also seeks reimbursement of lost wages for his attendance at defendants' mental health evaluation with Dr. Mooney and Dr. Augspurger on July 25, 2016. Dr. Augspurger is a licensed physician in the State of Iowa. Review of the evidentiary record discloses that there is really not a factual dispute about whether claimant missed work and lost wages. The dispute between the parties appears to involves some gamesmanship by both parties.

Mr. Woods proclaims that he lost $112.00, representing a loss of eight hours of work at an hourly rate of $14.00 per hour. Claimant did not provide a pay stub or other specific evidence to support the lost wages. However, he did provide the name of his supervisor and telephone number if defendants wished to contact him to verify the claim.

Defendants elected not to pursue the additional inquiry through the supervisor. Instead, after litigation and discovery commenced, they requested additional documentation from claimant. Claimant did not provide the additional documentation. Either party could have subpoenaed records from the employer or taken a statement or deposition from the employer to verify the lost wages. Neither party elected to do so.

Ultimately, I am left with the testimony of claimant that he lost $112.00 as a result of his attendance at the defense mental health evaluation on July 25, 2016. Defendants contend that claimant could have produced additional evidence. However, as this record stands, claimant's testimony was credible on this issue and there is no contradictory evidence in this record. Given that his testimony is the only evidence in the record on this issue, I find that claimant lost $112.00 in wages to attend the defendants' mental health evaluation on July 25, 2016.

CONCLUSIONS OF LAW

The initial dispute in this case is the nature of the claimant's permanent disability. Specifically, the parties dispute whether claimant's alleged mental injury is causally related to the July 17, 2011 work injury. If claimant has proven a mental injury, his claim will be compensated as an unscheduled injury with industrial disability. Iowa Code section 85.35(2)(u). If the mental injury claimed is not causally related to the work injury, claimant's injury will be compensated as a scheduled injury to the left arm. (Iowa Code section 85.34(2)(m).

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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to

recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

Having found that claimant proved he sustained a mental injury as a result of the July 17, 2011 work injury, I conclude that claimant has established he sustained an unscheduled injury that is compensable with industrial disability benefits. Iowa Code section 85.34(2)(u).

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.

Having considered claimant's age, the situs and severity of his injuries, his permanent impairment, permanent restrictions, ability to return to gainful employment, his motivation level, educational background, employment history, and all other industrial disability factors identified by the Iowa Supreme Court, I found that claimant sustained a 40 percent loss of future earning capacity. This entitles claimant to a 40 percent industrial disability award, or 200 weeks of permanent disability benefits. Iowa Code section 85.34(2)(u). Pursuant to the parties' stipulations, permanent partial disability benefits shall commence on June 19, 2015. (Hearing Report)

The next issue to be determined is the proper weekly rate at which all benefits in this case should be paid. Two factual and legal issues are relevant and disputed with respect to the weekly rate issue. First, the parties dispute claimant's gross weekly earnings at the time of the injury. Second, the parties dispute claimant's entitlement to exemptions.

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. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Any week that does not fairly reflect the employee's customary earnings that fairly represent the employee's customary earnings, however. Section 85.36(6).

In this case, I excluded certain weeks because they included non-working holidays and other weeks that claimant utilized vacation and worked fewer hours than were typical. Ultimately, I calculated that claimant's gross weekly wage prior to the injury date was $736.18.

Claimant contends he should be entitled to five exemptions on the date of injury. Defendants dispute claimant's entitlement, particularly to a niece, who is claimed by claimant as a dependent. Claimant concedes that he did not have legal guardianship or custodianship over the niece. In this situation, claimant was required to prove actual dependency of the niece to claim her as an exemption, or dependent, for purposes of calculating the weekly rate. Iowa Code section 85.44.

Having considered the parties' evidence, or lack thereof, as well as the arguments of counsel, I found that claimant did not prove entitlement to claim the niece as a dependent or exemption. However, claimant is entitled to claim four dependents. Pursuant to the parties' stipulations, he is married. (Hearing Report)

The weekly benefit amount payable to an employee shall be based upon 80 percent of the employee's weekly spendable earnings, but shall not exceed an amount, rounded to the nearest dollar, equal to 66-2/3 percent of the statewide average weekly wage paid employees as determined by the Department of Workforce Development. Iowa Code section 85.37.

The weekly benefit amount is determined under the above Code section by referring to the Iowa Workers' Compensation Manual in effect on the applicable injury date. Having found that claimant's gross average weekly wage was $736.18 and that he is entitled to claim married, plus four exemption status, and using the Iowa Workers' Compensation Manual (p. 99) with effective dates of July 1, 2011 through June 30, 2012, I determine that the applicable weekly rate for benefits in this case is $507.58. This calculation does not correspond precisely with either party's calculations but does represent a fair and typical wage calculation for claimant. Therefore, all weekly benefits in this case will be ordered to be paid at the rate of $507.58 per week.

The next disputed issue for resolution is claimant's entitlement to payment, reimbursement, or satisfaction of past medical expenses included in Claimant's Exhibit

16. Defendants dispute whether the requested medical expenses were reasonable and necessary and whether the disputed expenses are causally related to the work injury.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

At the commencement of the arbitration hearing, the undersigned had a discussion about the disputed medical expenses with counsel. Defense counsel noted for the undersigned that the defendants concede the disputed medical expenses are causally related to claimant's alleged mental injury. Defense counsel further noted that if the mental injury claim was determined to be work related, the disputed medical expenses would also be ordered paid.

Based upon the conversation with counsel, I conclude that claimant is entitled to an order directing defendants to reimburse claimant for any out-of-pocket expenses he paid, to satisfy any outstanding medical expenses directly with the medical providers, and to hold claimant harmless for all medical expenses outlined in Claimant's Exhibit 16.

Mr. Woods asserts a claim for reimbursement of his independent medical evaluation expense pursuant to Iowa Code section 85.39.

Mr. Woods also seeks an order requiring defendants to reimburse his lost wages to attend the defendants' independent psychiatric evaluation on July 25, 2016. Iowa Code section 85.39 requires claimant to attend an evaluation with "a physician or physicians authorized to practice under the laws of this state or another state." However, if defendants require such attendance, the statute provides that the "employee shall be compensated at the employee's regular rate for the time the employee is required to leave work." Iowa Code section 85.39. Having found that claimant did miss work and that his testimony about losing $112.00 in wages was not rebutted, I conclude that claimant is entitled to an order directing defendants to reimburse him $112.00 in lost wages to attend the July 25, 2016 evaluation.

Mr. Woods asserts that defendants unreasonably delayed and/or denied his weekly benefits in this case and that defendants should be ordered to pay penalty benefits pursuant to Iowa Code section 86.13. Claimant asserts three basis for claiming penalty benefits.

First, claimant asserts that defendants underpaid the applicable weekly rate and that their basis for calculating weekly rate was unreasonable because they did not utilize claimant's asserted exemptions as part of the calculation and because defendants utilized unrepresentative weekly rates in their calculation of the weekly rate.

Second, claimant asserts that defendants unreasonably denied weekly benefits by denying industrial disability benefits related to his mental injury. Claimant contends that the defendants asked an improper question of their mental health experts and that their denial of the mental health claim was unreasonable and their corresponding denial of industrial disability benefits was similarly unreasonable.

Third, claimant asserts that defendants terminated weekly benefits without sending claimant an Auxier notice pursuant to Iowa Code section 86.13. Defendants contend that the unreasonable termination of benefits should result in penalty benefits through and continuing until defendants reinstate weekly benefits.

Iowa Code section 86.13(4) provides:

> 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 in 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.

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 (Robbennolt, 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. Robbennolt, 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. Robbennolt, 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 Robbennolt, 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. Robbennolt, 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).

Turning to the claimant's initial claim for penalty benefits, I concluded that the applicable weekly rate at which benefits should be paid exceeds the weekly rate at which defendants paid any benefits. Review of the evidence in this case demonstrates that claimant provided confusing information about his claimed dependents' actual dependency. Defendants did not do extensive investigation or seek immediate clarification of the confusing information.

However, the claims adjuster interestingly conceded that she knew most claimants do not know how to calculate benefits and that it was appropriate for a claimant to request clarification from the insurance carrier about how the benefits were

calculated. (Claimant's Ex. 7, pp. 25-27) In this case, claimant sought clarification of how benefits were calculated. A full explanation was not timely provided by defendants.

Realistically, defendants are required to contemporaneously convey their basis for denial of benefits, including payment of rate. Iowa Code section 86.13(4)(b)(2). In this instance, claimant sought clarification and received no clarification of how defendants' paid their rate. Without the requested information, claimant could not knowingly challenge the weekly rate. Defendants' failure to provide contemporaneous information resulted in an underpayment of the weekly rate. Defendants' failure to provide the requested information made the underpayment of weekly rate unreasonable. I conclude that penalty benefits are appropriate in some amount.

Claimant's second basis for penalty benefits is that the defendants asked the improper question to its mental health experts. Claimant contends that the fact that defendants knew the proper legal standard but relied upon the opinion of mental health experts under an improper standard to deny benefits was unreasonable and should be penalized.

Generally, I would conclude that reliance upon a medical or expert opinion as the basis for denial is sufficient to create a fairly debatable issue and avoid penalty benefits. However, in this case, the claims representative testified that she knew the legal standard for compensability of the mental injury was different from the question she posed to the defendants' mental health experts. Whether she submitted the improper question to the experts intentionally or negligently, she clearly knew that the question posed and answered was not the proper legal standard upon which to determine claimant's mental injury claim. Reliance upon evidence that the defendants knew did not meet the proper legal standards in the face of contrary evidence that answered the proper legal question is not reasonable.

Therefore, having found that the claims representative's denial of the mental health claim was unreasonable, I conclude that penalty benefits in some amount are required. Iowa Code section 86.13.

Claimant's third basis for claiming penalty benefits is that defendants terminated benefits without providing advance notice of their intention to terminate benefits. In fact, defendants did not offer any evidence that they provided claimant advance notice of their intention to terminate weekly benefits. Claimant has proven a denial of benefits through defendants' termination. Given the requirements of advance notice contained in Iowa Code section 86.13(2), defendants have not provided a reasonable basis for their termination. I conclude that penalty benefits in some amount are required.

The purpose of Iowa Code section 86.13 is both punishment for unreasonable conduct but also deterrence for future cases. Id. at 237. In this regard, the Commission is given discretion to determine the amount of the penalty imposed with a maximum penalty of 50 percent of the amount of the delayed, or denied, benefits. Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 261 (Iowa 1996).

In exercising its discretion, the agency must consider factors such as the length of the delays, 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. Meyers v. Holiday Express Corp., 557 N.W.2d 502, 505 (Iowa 1996). In this instance, claimant has proven three different bases for award of penalty benefits. The claims representative's deposition demonstrated unreasonable behavior without explanation in many instances.

The denial of the mental health claim was ongoing at the time of trial, even after the claim's representative's concession in a deposition that defendants' experts utilized the incorrect legal standard. No explanation for continuing a denial through trial on a known legally erroneous basis is provided by defendants. A denial after concession that the denial is based upon an erroneous legal standard is egregious and warrants a substantial penalty.

The failure to give an explanation of the weekly rate resulted in an ongoing underpayment of weekly rate. Of course, I did not concur with claimant's asserted weekly rate either. This denial is less egregious given the confusing evidence in the record and the fact that claimant's assertions were also not correct. Neither party was able to calculate the applicable weekly rate.

The failure to give advance notice of the termination of benefits is a direct violation of Iowa Code section 86.13(2). There is no reasonable excuse for violation of a specific statutory code. The failure to provide a termination notice in advance of termination of benefits suggests that a significant penalty should be imposed.

Weekly benefits were terminated by defendants on March 8, 2016. An additional 73 weeks of benefits accrued between March 9, 2016 and the date of hearing in this case. At the weekly rate of $507.58, this represents unreasonable denial of benefits totaling $37,053.34. In addition, defendants underpaid weekly benefits prior to terminating benefits on March 8, 2016.

Having considered the relevant factors and the purposes of the penalty statute, I conclude that a section 86.13 penalty in the amount of $17,500.00 is appropriate in this case. Such an amount is appropriate to punish the employer for unreasonable denial of and underpayment of benefits and should be sufficient serve as a deterrent against future conduct. I elect not to impose the precise maximum in penalty because the claims representative appeared candid in her testimony and appears to have learned a lesson from this situation.

However, I am still troubled that benefits were not reinstated after the claim representative's deposition on May 10, 2017 and before trial on August 3, 2017. Almost three months after the adjuster acknowledged her failure to provide an Auxier notice and almost three months after conceding the denial of the mental health claim was based upon an incorrect legal standard, defendants had not yet accepted that claim, sought new expert opinions, or issued an Auxier notice. Clearly, a substantial penalty is

necessary to remind defendants of their obligation and deter similar conduct in the future. I conclude a penalty of $17,500.00 should be sufficient to satisfy the purposes of the penalty statute.

Finally, claimant also seeks assessment of his costs. Assessment of costs is a discretionary function of the agency. Iowa Code section 86.40. Claimant has prevailed on the majority of the disputed issues. Therefore, I conclude that it is appropriate to assess his costs in some amount.

Claimant seeks assessment of his filing fee ($100.00). This is a reasonable request and is assessed pursuant to 876 IAC 4.33(7).

Claimant seeks assessment for the cost of his deposition totaling $165.55. Agency rule 876 IAC 4.33(1) permits assessment of the attendance fee for a court reporter at an evidential deposition. Although probably not necessary, claimant's deposition was ultimately introduced into evidence by defendants. Therefore, I conclude it is appropriate to assess claimant's cost relative to his deposition in the amount of $165.55.

Claimant seeks assessment for the cost of Brenda Morris' deposition. Ms. Morris was not called to testify live at the time of trial. Therefore, it was appropriate for claimant to introduce her deposition transcript. I conclude it is reasonable to assess claimant's cost relative to Ms. Morris' deposition in the amount of $394.45.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant two hundred (200) weeks of permanent partial disability benefits commencing on June 19, 2015.

All weekly benefits shall be paid at the rate of five hundred seven and 58/100 dollars ($507.58) per week.

Defendants shall pay all accrued benefits in lump sum with interest pursuant to Iowa Code section 85.30.

Defendants shall reimburse claimant for any out-of-pocket medical expenses he paid, satisfy any outstanding medical expenses directly with the medical providers, and hold claimant harmless for all medical expenses outlined in Claimant's Exhibit 16.

Defendants shall provide claimant future medical care for all treatment causally related to his left hand and mental injuries.

Defendants shall be entitled to credit for all benefits paid to date.

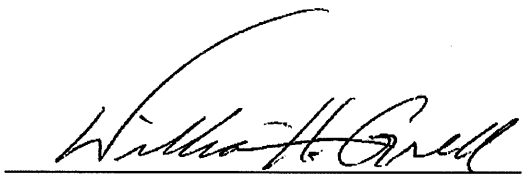
Defendants shall reimburse claimant one hundred twelve and 00/100 dollars ($112.00) representing lost wages to attend defendants' mental health evaluation on July 25, 2016.

Defendants shall pay claimant penalty benefits pursuant to Iowa Code section 86.13 in the amount of seventeen thousand five hundred and 00/100 dollars ($17,500.00).

Defendants shall reimburse claimant's costs totaling six hundred sixty and 00/100 dollars ($660.00).

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 17th day of January, 2018.



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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.