BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MELISSA V. MANNING, Claimant, vs. ABCM CORPORATION d/b/a HARMONY HOUSE CARE CENTER, Employer, and CCMSI, Insurance Carrier, Defendants.	:	File No. 5025391 A R B I T R A T I O N D E C I S I O N Head Note Nos.: 1100, 1802, 1803, 2500

STATEMENT OF THE CASE

Claimant, Melissa Manning, has filed a petition in arbitration and seeks workers' compensation benefits from Harmony House, employer and CCMSI, insurance carrier, defendants.

This matter was heard by deputy workers' compensation commissioner, Ron Pohlman, on April 29, 2009, at Waterloo, Iowa. The record in the case consists of claimant's exhibits 1-6, 8-12; defendants' exhibits A-L as well as the testimony of the claimant and Dan Larimore.

ISSUES

The parties submitted the following issues for determination:

Whether the claimant sustained an injury on February 28, 2008, which arose out of and in the course of her employment;

Whether the injury was the cause of any disability;

The extent of claimant's entitlement to permanent disability benefits;

The commencement date for payment of permanent disability benefits;

The claimant's gross weekly wage and corresponding weekly rate;

Whether the claimant is entitled to payment of medical expenses pursuant to Iowa Code section 85.27;

Whether the claimant is entitled to payment of penalties pursuant to Iowa Code section 86.13; and

Whether the defendants have established their affirmative defense pursuant to Iowa Code section 85.23 and Iowa Code section 85.26.

FINDINGS OF FACT

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

The claimant, at the time of the hearing was 56 years old. She is a high school graduate and completed training and obtained an LPN license in 1987. The claimant began working for Harmony House the first time in 1986. Harmony House is a care facility for geriatric, brain injured and mentally challenged persons. Claimant worked as a development assistant, then a medication aide and finally an LPN charge nurse for Harmony House. She left Harmony House in 1988 and then worked for two other care facilities before returning to Harmony House full time. She was discharged from this job for misconduct on February 28, 2008. The claimant violated the privacy of a resident by performing a procedure called flushing, which causes the resident to have a bowel movement in an open area of the care facility. The claimant has a long history of tardiness and counseling for tardiness during her employment at Harmony House.

Generally however, the claimant's performance was good and she was good at providing care for residents.

The claimant has multiple medical conditions and in this case alleges that her back and knees sustained cumulative injuries due to the nature of the work that the claimant was performing. The claimant did not realize that her medical conditions were work related until after she had left her employment and sought legal counsel to pursue a discrimination claim. It was in the process of evaluating the claimant's discrimination claim that she was advised that she might have a claim for a work injury and this led to her filing her petition in arbitration in this matter on April 24, 2008.

The physical activities of a charge nurse are outlined in Exhibit 8. The claimant would be required to balance, climb, crouch, grasp, kneel, lift in excess of 100 pounds, pull, push, reach, move repetitively, stand, stoop and traverse long hallways.

The claimant has a medical history of conditions not alleged to be work related including laser eye surgeries, a hysterectomy, a left bunionectomy, left vein stripping for varicose veins, and treatment for hypertension.

On February 13, 2002, the claimant sought treatment with her family doctor, Monica Burgett, D.O., for knee pain. Dr. Burgett attributed the claimant's knee pain to degenerative joint disease and prescribed ibuprofen. The claimant has a family history of osteoarthritis. Dr. Burgett also prescribed regular exercise. On March 11, 2005, the claimant saw Cheryl Giles, M.D., with bilateral knee pain. Dr. Giles had the claimant undergo x-rays which showed advanced osteoarthritis in both knees and joint spaces obliterated bilaterally. On April 18, 2005, Dr. Giles began a series of Synvisc injections in the claimant's knees. The injection therapy concluded on May 4, 2005, and the claimant reported improvement in both of her knees. On September 6, 2005, after the claimant's pain returned in her knees, Dr. Giles referred the claimant to James Crouse, M.D., an orthopedic surgeon. Dr. Crouse recommended a left knee arthroplasty to be followed in two weeks with a right knee arthroplasty. The claimant underwent the left total knee arthroplasty on October 3, 2005. However, Dr. Crouse was unable to perform the second arthroplasty for the right knee because the claimant's blood sugars were out of control. The surgery was delayed until the claimant could better control her blood sugars. The claimant has subsequently undergone another series of Synvisc injections from Dr. Crouse, which resulted in some improvement in the claimant's right knee. On January 26, 2006, Dr. Crouse released the claimant to return to work, although she wanted a right total knee arthroplasty. The claimant underwent additional injections in 2006 and 2007 in her right knee. The claimant has continued to treat with her family doctor, Naga Nadipuram, M.D., for ongoing knee and leg pain. Dr. Nadipuram has prescribed Lyrica for the knee pain.

In January of 2003, the claimant started developing lower back pain and reported the symptoms to her nurse practitioner, Robert Welshon, on April 3, 2003. Mr. Welshon diagnosed the claimant with lumbar back pain and osteoarthritis and recommended medication. The claimant eventually had x-rays of the lumbar spine on May 30, 2003, which revealed scoliosis with convexity to the right and mild disc space narrowing with moderate osteophytes at each disc level as well as large facet osteophytes at L3-4, L4-5 and L5-S1. The claimant continued to treat in 2003 and 2004 for her back pain. On February 18, 2005, she underwent an MRI that revealed degenerative disc disease and degenerative facet disease at L2-3, L3-4 and L4-5, but there was no significant area of spinal stenosis or focal disc herniation noted.

The claimant underwent an independent medical evaluation at her attorney's request with Farid Manshadi, M.D., on January 12, 2009. With respect to causation, Dr. Manshadi opines:

> Ms. Manning probably had a pre-existing lumbar degenerative disc disease and degenerative arthritis. In addition, she had previous pre-existing osteoarthritis of the bilateral knee joints. However, she did work at Harmony House Nursing Home for over 17 years as an LPN where she was required to do a lot of walking on the cement floor, bending and stooping, lifting patients, transferring patients from wheelchairs to beds and vice versa, as well as pushing medication carts. It is my opinion that as a result of her work activities at Harmony House her pre-existing

> arthritic changes in her knees and lower back and lumbar region were aggravated, causing her to have significant pain in her knees. Also, probably due to her abnormal gait related to her knee pain, she did develop low back pain and aggravated her pre-existing degenerative changes in her lumbar spine. Using the American Medical Association's Guides to the Evaluation of Permanent Impairment, 5th Edition, I used Chapter 15, Page 384, Table 15-3 and she falls under Category 2 for DRE of Lumbar and I assign five (5) percent impairment of the whole person.

(Exhibit 1-16)

Dr. Manshadi also opines that the claimant has a 37 percent impairment of the left lower extremity as a result of the total knee arthroplasty. He recommends restrictions for the claimant to avoid activity which requires prolonged standing or walking and that the claimant needs to be able to sit and stand or lie down on an as needed basis. He also recommends that the claimant avoid activity that requires kneeling, prolonged walking and continuously climbing stairs. The claimant's treating physicians, Dr. Johnston (designation unknown), Dr. Giles and Dr. Crouse all opined that the claimant's work aggravated the claimant's underlying degenerative arthritis, resulting in the need for the claimant to undergo a total knee arthroplasty on the left and the need for the claimant to have a right knee replacement as well.

The claimant also has been rated for permanent impairment by Dr. Jackson (designation unknown), another of her treating physicians as follows: 2 percent for the back; 15 percent whole person for the left leg and 16 percent whole person for the right leg.

The claimant has applied for Social Security Disability and been approved.

The claimant was an hourly employee paid $17.09 for second shift, $17.24 for third shift and $16.84 for in service hours. She also received a regular bonus based upon her length of employment. Her bonus in 2007 was $600.00.

In the 13 weeks preceding the claimant's injury, there were 7 pay periods where the claimant did not work her customary 40-hour work week because of vacation, illness or other reasons. Excluding those weeks and adding the claimant's bonus, prorated to $11.54 per week over a year, the claimant's average weekly wage is $727.46 and her weekly rate $443.42.

The claimant prepared an affidavit of her time off work as a result of her injury, which is found in claimant's Exhibit 7, page 1.

The claimant has sought employment since her termination from Harmony House and currently works two days per week, approximately, as a senior companion, earning $8.50 per hour. She works approximately three to four hours. She helps the elderly prepare food, perform housekeeping tasks and some laundry.

REASONING AND CONCLUSIONS OF LAW

The first issue in this case is whether the claimant sustained an injury arising out of and in the course of her employment on February 28, 2008.

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 alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily

dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

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).

The record shows that the claimant has degenerative conditions in her knees and low back that were not caused by her work, but the record also demonstrates that those conditions were aggravated by the claimant's work duties. The claimant has proven that her work duties included physical functions that aggravated her degenerative conditions, which is supported by the medical opinions in the record. The date chosen for her injury was February 28, 2008, which is the date that the claimant separated from her employment. It is apparent that the claimant was requiring treatment for those injuries several years before her separation from her employment and it is also apparent that the claimant did not understand the connection between those conditions and her employment. The claimant understood that her medical conditions were degenerative in nature and like those that other family members had experienced. It was not until she sought legal advice for a discrimination matter that she realized that she had sustained a cumulative trauma to her bilateral knees and her low back as a result of her work

activities substantially aggravating her conditions. The claimant has established that she sustained a work injury, which occurred February 28, 2008.

The next issue is whether this injury resulted in any disability. The citations of law applicable to this issue have already been set out and will not be repeated here.

The claimant has permanent impairment and work restrictions as a result of her work injury. This establishes that she sustained permanent disability. The record also establishes that the claimant lost time from work as a result of her work injury as set out in her affidavit in this matter.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, Iowa App. 312 N.W.2d 60 (1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

The time the claimant lost from work preceded her work injury. Claims of this nature have been recognized by the Iowa Supreme Court. See Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009). The claimant has established that she is entitled to healing period benefits for these time periods: June 1, 2004; January 30, 2005 through January 31, 2005; April 15, 2005; October 3, 2005 through January 25, 2006; September 26, 2007; May 31, 2007 though June 4, 2007; January 28, 2007.

The next issue is the claimant's entitlement to permanent disability.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W.2d 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.

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

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 29, 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. 1982).

The claimant has substantial restrictions and permanent impairment. She continues to work minimally within her restrictions. She could not return to her employment at Harmony House given her current restrictions as the job description sets out the physical functions of that job. She was often tardy while she was employed at Harmony House and attributes that to her difficulty getting up and getting to work in the morning because of her pain. Given the medical record about the state of her physical condition, this contention is credible. It is unlikely that the claimant could perform work even at a sedentary level given her inability to get to work on an anything other than an occasional basis like she works at the current time. It is therefore concluded that the claimant has sustained a permanent total disability. Benefits shall commence February 28, 2008 for those periods for which the claimant is permanently and totally disabled.

The next issue is the claimant’s weekly rate of compensation. The claimant’s average weekly wage is $727.46 and the corresponding rate $443.42. Weeks in which the claimant did not work her regular 40-hour week in the 13 weeks preceding her injury must be excluded and she has established that the bonus she received in 2007 was a regular bonus and thus should be prorated over a year and the result added to her average weekly wage.

The next issue is whether the claimant is entitled to payment of medical expenses pursuant to Iowa Code section 85.27.

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 16, 1975).

The claimant attached medical bills from her family physician, Dr. Nadipuram, for office visits May 31, 2007; October 4, 2007; April 21, 2008; June 24, 2008 and January 14, 2008. The medical notes of Dr. Nadipuram found in Exhibit 2, pages 28-32 corroborate that those visits were for treatment of the claimant's work injuries. The claimant is entitled to have these bills paid and to be reimbursed for those portions of those bills she has paid herself.

The next issue is whether the defendants have established their affirmative defenses related to notice pursuant to Iowa Code section 85.23 and statute of limitations pursuant to Iowa Code section 85.26.

The time period both for giving notice and filing a claim does not begin to run until the claimant as a reasonable person, should recognize the nature, seriousness, and probable compensable character of the injury. The reasonableness of claimant's conduct is to be judged in light of claimant's education and intelligence. Claimant must know enough about the condition or incident to realize that it is work connected and serious. Claimant's realization that the injurious condition will have a permanent adverse impact on employability is sufficient to meet the serious requirement. Positive medical information is unnecessary if information from any source gives notice of the condition's probable compensability. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Orr v. Lewis Cent. Sch. Dist., 298 N.W.2d 256 (Iowa 1980); Robinson v. Department of Transp., 296 N.W.2d 809 (Iowa 1980).

Iowa Code section 85.26(1) requires an employee to bring an original proceeding for benefits within two years from the date of the occurrence of the injury if the employer has paid the employee no weekly indemnity benefits for the claimed injury. If the employer has paid the employee weekly benefits on account of the claimed injury, however, the employee must bring an original proceeding within three years from the date of last payment of weekly compensation benefits.

That the employee failed to bring a proceeding within the required time period is an affirmative defense which the employer must plead and prove by a preponderance of the evidence. See Dart v. Sheller-Globe Corp., II Iowa Industrial Comm'r Rep. 99 (App. 1982).

As already found, the claimant knew that she had a degenerative condition and knew the nature of that condition, but did not understand that there might be a relationship between that condition and her work that would entitle her to make a claim for workers' compensation until she sought legal advice after her employment ended for an unrelated legal matter. She filed her petition April 24, 2008, which was within 90 days after her separation from employment and well within 90 days of when she first realized that she may have a condition that was work related for purposes of workers'

compensation and well within the statute of limitations. The defendants have not established their affirmative defense.

The final issue in this matter is whether the claimant is entitled to penalties pursuant to 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."
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> 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).

This is a fairly debatable claim. The claimant, when she initially filed her petition, was not even sure as to what parts of her body were affected for purposes of her claim and the claimant has significant, if not substantial, pre-existing medical problems that might support denial of her claim. Therefore, penalty benefits are not awarded.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant healing period benefits for June 1, 2004; January 30 through 31, 2005; April 15, 2005; October 3, 2005 through January 25, 2006; September 26, 2007; May 31 through June 4, 2007; and January 29, 2007 at the weekly rate of four hundred forty-three and 42/100 dollars ($443.42).

Defendants shall pay claimant permanent total disability benefits commencing February 28, 2008 for those periods for which she remains permanently and totally disabled in the weekly amount of four hundred forty-three and 42/100 dollars ($443.42).

Accrued benefits shall be paid in lump sum together with interest pursuant to Iowa Code section 85.30 with subsequent reports of injury filed pursuant to rule 876 IAC 3.1.

Defendants shall pay the claimant's medical expenses with Dr. Nadipuram and reimburse the claimant for those expenses she has directly paid pursuant to Iowa Code section 85.27.

Costs in this action are taxed to the defendants pursuant to rule 876 IAC 4.33.

Signed and filed this _____9th_____ day of July, 2009.

RON POHLMAN
DEPUTY WORKERS'
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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.