BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICHARD KLUESNER, Claimant, vs. BODINE ELECTRIC, Employer, and AMERISURE PARTNERS, INS. CO., Insurance Carrier, Defendants.	File No. 5061923 A R B I T R A T I O N D E C I S I O N
RICHARD KLUESNER, Claimant, vs. BODINE ELECTRIC, Employer, and AMERISURE PARTNERS INS. CO., Insurance Carrier, and SECOND INJURY FUND, Defendants.	File No. 5061924 A R B I T R A T I O N D E C I S I O N

STATEMENT OF THE CASE

Richard Kluesner, claimant, filed a petition in arbitration seeking workers' compensation benefits from Bodine Electric, employer, and Amerisure Partners Insurance (Amerisure) in File No. 5061923 (date of injury October 25, 2016). Claimant also filed a petition seeking workers' compensation benefits from Bodine Electric, employer, Amerisure Partners Insurance and the Second Injury Fund of Iowa (Fund) in

File No. 5061924 (date of injury April 12, 2017), as a result of injuries he allegedly sustained on October 25, 2016 and April 12, 2017 that allegedly arose out of and in the course of his employment. This case was heard in Des Moines, Iowa and fully submitted on April 17, 2020. The evidence in this case consists of the testimony of claimant, Joint Exhibits 1 - 9, Defendants' Bodine Electric and Amerisure Partners Insurance Exhibits A – C, the Fund's Exhibits AA - DD and Claimant's Exhibits 1 - 9. Defendants', Bodine Electric and Amerisure Partners Insurance Company, motion to exclude Claimant's Exhibit 3, pages 55 – 58 was sustained. All parties submitted briefs.

The parties filed hearing reports at the commencement of the arbitration hearing. The parties revised the proposed hearing reports and submitted hearing reports on March 10, 2020, which were approved by the undersigned. On the hearing reports, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and 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.

For File No. 5061923 (date of injury October 25, 2016)

ISSUES

Whether claimant sustained an injury on October 25, 2016 which arose out of and in the course of employment;

Whether the alleged injury is a cause of temporary disability and, if so, the extent;

Whether the alleged injury is a cause of permanent disability and, if so;

The extent of claimant's disability.

Whether claimant provided timely notice of an injury to the defendants.

Whether claimant is entitled to payment of certain medical expenses.

Whether penalty should be assessed.

Assessment of costs.

For File No. 5061924 (date of injury April 12, 2017)

ISSUES

Whether claimant sustained an injury on April 12, 2017 which arose out of and in the course of employment;

Whether the alleged injury is a cause of temporary disability and, if so, the extent;

Whether the alleged injury is a cause of permanent disability and, if so;

The extent of claimant's disability.

Whether claimant provided timely notice of an injury to the defendants.

Whether claimant is entitled to payment of certain medical expenses.

Whether claimant is entitled to payment for an independent medical examination.

Whether penalty should be assessed.

Assessment of costs.

Whether claimant had a first qualifying injury on October 25, 2016 for Fund liability purposes, and if so;

The extent of the functional loss.

Whether claimant had a second qualifying injury on April 12, 2017 for Fund liability purposes, and if so;

The extent of the functional loss.

The commencement date for any benefits paid by the Fund.

The amount of credit the Fund may be entitled to for a second qualifying injury.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record, finds that:

Richard Kluesner, claimant, was 64 years old at the time of the hearing. Claimant graduated from high school. He has no other formal post-high school education. Claimant grew up on a dairy and hog farm. When claimant started working for Bodine Electric, claimant stopped farming full time. (Exhibit 3, page 38) Currently the claimant and his brother grow grain and hay and claimant runs 10-12 feeder cattle a year. (Transcript page 31) Claimant testified that the farm requires a couple of days in the spring to get the crops in and at harvest he might work a few days longer. He testified that the cattle take little work, which includes putting out a round bale and grinding corn occasionally.

Claimant started working for Bodine Electric in May 1996. Claimant assembles small electric motors at Bodine Electric. Claimant described his work as repetitive in nature. Claimant said that in the 24 years he worked for Bodine he has only missed one week of work, due to his father's death. Claimant said that where he worked, the work is divided into eight cells and each cell has three stations and workers. Work is rotated to different stations every day.

On October 25, 2016, claimant was at work and was having difficulty with his right hand. Claimant was feeling like his fingers burned in his right hand and he could not make the feeling go away. Claimant testified that he had symptoms prior to October in his right hand/arm, including trouble sleeping due to pain. Claimant testified that in October 2016 he had symptoms in his left wrist and that the right wrist was worse. Claimant reported his symptoms to his employer on that day. (Tr. p. 34) Claimant agreed that when he reported on October 25, 2016 he had a three-year history of right wrist symptoms and a history of symptoms on his left wrist. When claimant reported his right wrist symptoms to his employer, his employer referred claimant for medical care. Claimant was referred to Tri-State Occupational Health and was seen on October 25, 2016. (JE 1, p. 1)

Claimant was seen by Ryan Cloos, D.O. on July 5, 2017 for right carpal tunnel symptoms. (JE 5, p. 33) On August 8, 2017, Dr. Cloos performed a right endoscopic carpal tunnel release. (JE 6, p. 36) Claimant testified that he did well after the surgery. Claimant said that he still has some tingling in his fingers once in a while. Claimant said he was off work from August 8, 2017 through August 17, 2017 due to his surgery. On August 17, 2017 claimant told Dr. Cloos that he was interested in having carpal tunnel surgery on his left wrist after the crops are in. (JE 5, p. 34)

On May 30, 2019, Dr. Cloos wrote,

> The patient presents for a recheck of his left carpal tunnel. Since the last time I saw him, he has started working on getting Workman's [*sic*] Compensation approval for his left carpal tunnel. He went to Iowa City, and they feel that his left-sided carpal tunnel is work related and that likely his right side is also work related. I discussed with him what his job entailed as far as rebuilding engines, using vibratory tools and doing a lot of strong grip as far as cranking on wrenches. There is likely a work-related component to this. He states this side is as bad now as the right side was before he had that one done. He has been very happy with the right side. It does not wake him up, and he states his sensation is good. He is very happy he had it done, and he would like to get that done on the left side now.

(JE 7, p. 40)

On July 2, 2019, Dr. Cloos performed a left open carpal tunnel release. (JE 9, p. 47) Claimant was returned to light duty work and then was returned to regular duty on August 12, 2019 with no restrictions. (JE 7, p. 43)

Claimant testified that he reviewed Exhibit C, the DVD of his work. Claimant said Exhibit C shows only one of nine stations he works at. Claimant said the DVD did not show one task he performed at that particular job, which was the function that requires claimant to put a seal with a press.

Claimant agreed with Dr. Taylor's report that stated he assembled 150 – 200 motors a day and over his career at Bodine Electric has assembled 700,000 motors. Claimant testified that over the last couple of years the ergonomics of the plant have substantially improved as a result of the work of Steve Freedman. Claimant said that the changes in ergonomics helped him a lot and if they had not been changed he would not have been able to do his old work. Claimant testified that there are portions of his work that require him to use his hands in awkward positions.

Claimant testified that he currently has some symptoms in his hands. Claimant has pain in his right wrist of 1 – 2, on a 10-point scale. He notices the pain more after work and does not have it during the weekend. Claimant said that he has tingling in the tips of his fingers. Claimant has seen a loss of strength in both his hands. He is unable to handle cold in his hands and has started to wear gloves at work. Claimant uses his thumb and middle finger to grasp and open items. Claimant avoids vibratory tools and uses his middle finger to grasp with and does not use his index finger.

On October 25, 2016, claimant was examined by Emily Armstrong, PA-C at Tri-State Occupational Health. (JE 1, p. 3) Claimant reported that over the past three years he had numbness and tingling in fingers 1, 2 and 3 on his right hand, which was worsening over the past three weeks. Clamant reported he had intermittent numbness and tingling of fingers 1, 2, and 3 on his left hand. Claimant reported his left hand was not nearly as symptomatic. (JE 1, p. 3) Claimant reported he assembled 150 – 200 motors a day and assembled small and tiny parts. Claimant reported that the air gun he used has a slight vibration and there was no awkward positioning. (JE 1, p. 4) Claimant was assessed with right carpal tunnel syndrome and mild left carpal tunnel syndrome. (JE 1, p. 4)

On November 16, 2016, claimant was examined by Erin Kennedy, M.D. for a causation opinion. Dr. Kennedy assessed claimant with right carpal tunnel syndrome and opined that claimant was developing carpal tunnel syndrome in both wrists. Dr. Kennedy stated claimant has not had new or increased offensive exposure at work. Dr. Kennedy noted the vast majority of carpal tunnel cases are due to personal factors, specifically anatomy with increased crowding in the tunnel with aging as tendons naturally thicken. Dr. Kennedy opined that this was the cause of claimant's carpal tunnel syndrome. (JE 1, pp. 9, 10) Dr. Kennedy referred claimant to his primary care physician for treatment.

On November 22, 2016, claimant was sent a letter from the defendants informing him that claimant's right wrist/hand injury was denied as a workers' compensation case.

Claimant was seen by Michael Merritt, D.C. on November 19, 2016. Dr. Merritt provided treatment for claimant's right and left wrist. (JE 2, p. 13) Claimant had a total of ten visits with Dr. Merritt between November 19, 2016 and January 11, 2017. (JE 2, pp. 12 – 22)

On April 12, 2017, Joseph Preeti, M.D. performed an EMG study. Dr. Preeti concluded,

> Abnormal study. There is electrodiagnostic evidence of a bilateral median mononeuropathy at the wrist, or bilateral carpal tunnel syndrome. Today's study shows severe right carpal tunnel syndrome and mild carpal tunnel syndrome. There is also evidence of a mild bilateral ulnar sensory neuropathy at the wrist without compression of either ulnar nerve. There is also no evidence of a myopathy or a right brachial plexopathy based on this evaluation.

(JE 3, p. 26) On June 14, 2017, Peter Pardubsky, M.D. recommend that claimant proceed with a right carpal tunnel release under local anesthetic. (JE 4, p. 32)

Claimant was examined by Ericka Lawler, M.D. at the University of Iowa Hospitals and Clinics (UIHC) on April 22, 2019. Claimant informed Dr. Lawler that the symptoms in his left hand were worse and he would like to proceed with left carpal tunnel release surgery. (JE 8, p. 44) Dr. Lawler wrote,

> Based on his work activities over the past 20 years including repetitive grip activities and his symptoms which began mostly at work, in addition to the fact that he is not the typical demographic for carpal tunnel syndrome, I would agree that this is likely an aggravating factor.

(JE 8, p. 45)

On January 31, 2019, Michael Taylor, M.D. issued an independent medical examination (IME) report. As part of the examination, claimant demonstrated some of the movements that he performs with his hands at work. Dr. Taylor noted some positions were neutral and some were awkward. (Ex. 3, pp. 35, 36) Dr. Taylor noted claimant had insidious onset of bilateral hand paresthesia with the right more symptomatic than the left. (Ex. 3, p. 36) Dr. Taylor noted that claimant was not operating jackhammers or other heavy equipment at work, but had spent over 20 years in assembly-related jobs that included use of vibratory tools and awkward bending, twisting and other maneuvers. (Ex. 3, p. 40) Dr. Taylor noted claimant did not describe any non-occupational risk factors that would cause the carpal tunnel. Dr. Taylor wrote,

> Regardless, it appears more likely than not that his work activities represented a significant, more than minor, contributing factor to his development of carpal tunnel syndrome. There may be genetic and/or anatomic factors that might have also played a role or that may have predisposed him to such a condition. However, the repetitive hand and wrist movements as well as some of the awkward wrist and hand postures and the use of various tools over the course of more than 20 years more than likely played a role.

(Ex. 3, p. 40) Dr. Taylor provided a three percent right upper extremity rating for claimant's right-sided carpal tunnel syndrome. (Ex. 3, p. 40) Dr. Taylor recommended claimant avoid vibratory tools and have the ability to alter his tasks or take stretch breaks at work.

Dr. Taylor diagnosed left-sided carpal tunnel syndrome. Dr. Taylor noted claimant's symptoms worsened with time and that claimant has presumably utilized a later injury date of injury of April 12, 2017. (Ex. 3, p. 41) Dr. Taylor did not rate the left carpal tunnel syndrome as claimant was not at maximum medical improvement.

On December 30, 2019, Dr. Taylor performed another IME. Dr. Taylor noted that Dr. Lawler at the UIHC, who was an upper extremity specialist, diagnosed claimant with carpal tunnel syndrome that was aggravated by his work activities. (Ex. 3, p. 48) Dr. Taylor's diagnosis was,

1. Right-sided carpal tunnel syndrome resulting in endoscopic carpal tunnel release on August 8, 2017 by Dr. Cloos.

2. Left-sided carpal tunnel syndrome resulting in an open carpal tunnel release on July 2, 2019 by Dr. Cloos.

. . . .

> With regard to causation, please refer to my previous IME report dated January 31, 2019. In summary, it is my opinion that Mr. Kluesner's work activities represented a significant contributing factor to his development of bilateral carpal tunnel syndrome. It appears that Dr. Lawler was of a similar opinion, and Dr. Cloos commented that there was likely a work-related component.

(Ex. 3, p. 50) Dr. Taylor provided a five percent upper extremity impairment rating. And Dr. Taylor recommended the same restriction he recommended for the right carpal tunnel syndrome. (Ex. 3, p. 51)

Robert Broghammer, M.D. performed an IME on February 3, 2020 and issued his report on February 3, 2020. As part of his IME, Dr. Broghammer reviewed the medical records as well as a two-minute video of the job claimant was performing. (Ex. B, p. 8) Dr. Broghammer concluded that the video did not show any evidence of significant force, frequent, awkward posture or vibration. Of the video he reviewed he did not see any job aspect that could pose a risk of developing carpal tunnel syndrome. (Ex. B, p. 9) Dr. Broghammer was informed by claimant that at work claimant would work at different spots and would rotate and that claimant would rotate on a daily basis. In the past, employees would rotate on a weekly basis. (Ex. B, p. 9; See Ex C-video) Dr. Broghammer agreed with Dr. Kennedy that the claimant's work did not contribute to his carpal tunnel syndrome nor did it aggravate, light-up or accelerate his condition.

(Ex. B, p. 11) Defendants provided a two – three-minute video which shows claimant performing motor assembly tasks. (Ex. C[1])

Claimant has requested medical expenses related to his carpal tunnel symptoms in the amount of $25,449.80. (Ex. 1, pp. 1 – 3) Claimant has requested medical mileage related to his treatment for his carpal tunnel symptoms in the amount of $810.74. (Ex. 2, pp. 30, 31)

Claimant has requested costs of $100.00 for the filing fee, $727.50 for an IME for File No. 5061924 and $202.50 for a supplemental medical report. Total costs requested are $1,030.00. (Ex. 4, p. 61)

RATIONALE AND CONCLUSIONS OF LAW

Notice

Defendants Bodine Electric and Amerisure have asserted a notice defense in File 5061923; the October 25, 2016 injury.

Iowa Code section 85.23 provides:

> Unless the employer or the employer's representative shall have actual knowledge of the occurrence of an injury received within ninety days from the date of the occurrence of the injury, or unless the employee or someone on the employee's behalf or a dependent or someone on the dependent's behalf shall give notice thereof to the employer within ninety days from the date of the occurrence of the injury, no compensation shall be allowed.

Iowa Code section 85.23 requires an employee to give notice of the occurrence of an injury to the employer within 90 days from the date of the occurrence, unless the employer has actual knowledge of the occurrence of the injury.

The purpose of the 90-day notice or actual knowledge requirement is to give the employer an opportunity to timely investigate the facts surrounding the injury. The actual knowledge alternative to notice is met when the employer, as a reasonably conscientious manager, is alerted to the possibility of a potential compensation claim through information which makes the employer aware that the injury occurred and that it may be work related. Dillinger v. City of Sioux City, 368 N.W.2d 176 (Iowa 1985); Robinson v. Department of Transp., 296 N.W.2d 809 (Iowa 1980).

Failure to give notice is an affirmative defense which the employer must prove by a preponderance of the evidence. DeLong v. Highway Commission, 229 Iowa 700, 295 N.W. 91 (1940).

[1] At the present time videos are not able to be stored in the WCES case file. The video, Exhibit C, has been exported to a directory maintained by the Division of Workers' Compensation.

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).

Claimant had some symptoms for a couple of years before he reported his injury to his employer. The October 25, 2016 report of PA Armstrong states that it was approximately 3 weeks prior to this visit that claimant was having symptoms at work. (JE 1, p. 3) It was not until his symptoms began to affect his work that claimant would know of the seriousness of his injury. Claimant provided notice within 90-days of his injury. Defendants have failed to prove their affirmative defense of lack of notice.

Causation

All of the defendants have disputed that claimant's right and left carpal tunnel syndrome arose out of and in the course of his employment with Bodine Electric.

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 Electric 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.

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

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

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

Dr. Kennedy and Dr. Broghammer opined that claimant's work was not a causative or aggravating factor in his carpal tunnel syndrome. It was their opinion that claimant's age was most likely the factor causing his carpal tunnel syndrome.

Dr. Lawler at the UIHC opined that claimant's work was likely an aggravating factor for his bilateral carpal tunnel syndrome. Dr. Lawler has special expertise in upper extremities. Dr. Taylor opined that the work claimant performed and the repetitive action in assembling hundreds of thousands of motors contributed to his carpal tunnel syndrome. Dr. Cloos was in agreement with Dr. Lawler as to causation. I find the opinions of doctors Taylor, Lawyer and Cloos to be convincing on causation of claimant's carpal tunnel syndrome. Dr. Lawler is a specialist. Dr. Cloos performed surgery on claimant and had the most medical contact/knowledge of his condition. Dr. Taylor considered the entire scope to claimant's work at Bodine Electric and had claimant demonstrate some of the awkward positions he used at work. The claimant credibly testified that this employer had recently improved the ergonomics of the workplace. Those changes were not present during much of his employment.

Dr. Kennedy and Dr. Broghammer opined that claimant's carpal tunnel was a result of personal conditions. Dr. Lawler did not believe that claimant fit into most categories that typically cause carpal tunnel due to personal conditions. The opinions

on causation by Dr. Broghammer and Dr. Kennedy are not convincing. I do not find that the reliance by Dr. Broghammer on the three-minute video enhances his opinion. The video was short and only showed a portion of what claimant performed. Claimant rotates to differing positions now every day and in the past would rotate every week. The video is far short of a comprehensive evaluation of the work he typically performs to be relied upon.

Claimant has proven by a preponderance of the evidence that his right and left carpal tunnel syndromes arose out of and in the course of his work with Bodine Electric.

Fund Liability

Section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, section 17:1, p. 211 (2014-2015).

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 355 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

In this case, claimant developed right and left carpal tunnel at the same time. While the left wrist was initially worse than the right, claimant was symptomatic in the right and left wrist as of October 25, 2016. Claimant has proven a first qualifying injury. Claimant has failed to prove a second qualifying injury for Fund liability as the claimant developed his bilateral carpal tunnel as the same time.

Extent of Disability

Benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under section 85.34(2)(s); the degree of disability must be computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. DeLong's Sportswear, 332 N.W.2d 886 (Iowa 1983).

Since claimant has suffered a permanent functional loss of 5 percent to the left upper extremity and 3 percent to the right upper extremity, these ratings are appropriately converted to 7 percent of the body as a whole, using the combined values

chart. (AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, p. 604) Seven (7) percent of 500 weeks is 35 weeks. Claimant is entitled to 15 weeks of benefits for the permanent partial disability in his arms.

Healing Period

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, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

The parties have stipulated in both files that if a determination was made as to a work related injury, the claimant is entitled to healing period benefits from August 8, 2017 to August 18, 2017 and July 2, 2019 to July 6, 2018. Defendants are responsible for healing period benefits during these times.

Medical Expenses

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).

Pursuant to Iowa Code section 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Claimant is entitled to an order of reimbursement if he/she has paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

In cases where the employer's medical plan covers the medical expenses, claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, the defendants are ordered to make payments directly to the provider. See Krohn, 420 N.W.2d at 463. Where medical payments are made from a plan to which the employer did not contribute, the claimant is entitled to a direct payment. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 867-68 (Iowa 2008). ("We therefore hold that the commissioner did not err in ordering direct payment to the claimant for past medical expenses paid through insurance coverage obtained by the claimant independent of any employer contribution.") See also, Carl A. Nelson & Co. v. Sloan,

(Iowa App. 2015) 873 N.W.2d 552 (Iowa App. 2015) (Table) 2015 WL 7574232 15-0323).

Claimant has requested medical expenses related to his carpal tunnel symptoms in the amount of $25,449.80 and medical mileage related to his treatment for his carpal tunnel symptoms in the amount of $810.74. The parties stipulated in the hearing reports the fees and prices by providers were reasonable and that the care was related to the conditions upon which the claim of injury is based. The claimant has proven the medical expenses and medical mileage are causally related to his work injury and that they are reasonable. I award claimant the medical expenses and medical mileage requested.

Penalty

If weekly compensation benefits are not fully paid when due, section 86.13 requires that additional benefits be awarded unless the employer shows reasonable cause or excuse for the delay or denial. Weekly compensation payments are due at the end of the compensation week. Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229, 235 (Iowa 1996).

Delay attributable to the time required to perform a reasonable investigation is not unreasonable. Kiesecker v. Webster City Meats, Inc., 528 N.W.2d 109 (Iowa 1995).

It is not unreasonable to deny a claim when a good faith issue of law or fact makes the employer's liability fairly debatable. An issue of law is fairly debatable if viable arguments exist in favor of each party. Covia v. Robinson, 507 N.W.2d 411 (Iowa 1993). An issue of fact is fairly debatable if substantial evidence exists which would support a finding favorable to the employer. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

An employer's bare assertion that a claim is fairly debatable is insufficient to avoid imposition of a penalty. The employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

If the employer fails to show reasonable cause or excuse for the delay or denial, the commission must impose a penalty in an amount up to 50 percent of the amount unreasonably delayed or denied. Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996). The factors to be considered in determining the amount of the penalty include the length of the delay, the number of delays, the information available to the employer and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

Defendants reasonably relied on the opinions of Dr. Broghammer and Dr. Kennedy to deny the claim.

The claim for penalty benefits is denied.

Costs

Claimant has requested the IME costs in File No. 5061924. As I have denied this case, I do not award these costs. I also excluded the supplemental report for Dr. Taylor from the record and I decline to award the cost of the supplemental report. I do award claimant the $100.00 filing fee.

ORDER

For File No. 5061923 (date of injury October 25, 2016)

Defendants Bodine Electric and Amerisure Partners Insurance shall pay claimant thirty-five (35) weeks of permanent partial disability benefits at the weekly rate of five hundred seventy and 27/100 dollars ($570.27) commencing August 19, 2017.

Defendants Bodine Electric and Amerisure Partners Insurance shall pay claimant healing period benefits from August 8, 2017 to August 18, 2017 and July 2, 2019 to July 6, 2018 at the weekly rate of five hundred seventy and 27/100 dollars ($570.27).

Defendants Bodine Electric and Amerisure Partners Insurance shall pay claimant medical expenses in the amount of twenty-five thousand four hundred forty-nine and 80/100 dollars ($25,449.80) and medical mileage in the amount of eight hundred ten and 74/100 dollars ($810.74).

Defendants Bodine Electric and Amerisure Partners Insurance shall pay claimant costs of one hundred and 00/100 dollars ($100.00).

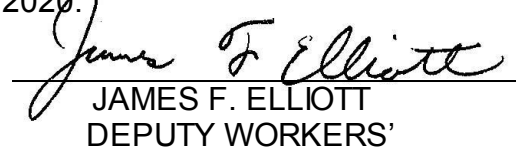
All interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See, Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

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

For File No. 5061924 (date of injury April 12, 2017)

The claimant shall take nothing.

Signed and filed this 21st day of April, 2020.



JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Mark J. Sullivan (via WCES)

Caitlin R. Kilburg (via WCES)

Sarah Christine Timko (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.