BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NICOLE HOMAN, Claimant, vs. WELLS ENTERPRISES, INC., Employer, and ACE AMERICAN, Insurance Carrier, Defendants.	File Nos. 19001872.01 5066743.01 ARBITRATION DECISION Head Note Nos.: 1402.40, 1803, 2502, 4000.2

STATEMENT OF THE CASE

Claimant, Nicole Homan, filled petitions and arbitration seeking worker's compensation benefits from Wells Enterprises, Inc., (Wells), Employer, and Ace American, Insurer, both as defendants. This case was heard on October 15, 2020, with a final submission date of November 13, 2020.

The record in this case consists of Joint Exhibits 1-6, Claimant's Exhibits 1-14, Defendant's Exhibits A-E, and the testimony of claimant and David Calhoun.

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 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.

ISSUES

For file number 5066743.01 (date of injury November 9, 2017):

1. Whether the injury caused a permanent disability, and if so,

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

3. Whether the disability is an industrial disability.

4. Commencement of date of benefits.

5. Whether claimant is entitled to reimbursement for an independent medical evaluation (IME) under Iowa code section 85.39.

6. Whether defendants are liable for a penalty under Iowa code section 86.13.

7. Costs.

For file number 19001872.01 (date of injury July 14, 2018):

1. Whether the injury caused a permanent disability, and if so,

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

3. Whether the disability is an industrial disability.

4. Commencement of date of benefits.

5. Whether claimant is entitled to reimbursement for an independent medical evaluation (IME) under Iowa code section 85.39.

6. Whether defendants are liable for a penalty under Iowa code section 86.13.

7. Costs.

FINDINGS OF FACTS

Claimant was 36 years old at the time of hearing. Claimant graduated from high school. Claimant has certifications for a CNA and a paralegal.

Claimant has worked as a cashier at Hy-Vee and Dollar General.

Claimant began with Wells in 2004. Claimant worked as a production line worker and as a line operator. Claimant initially worked for Wells from 2004 through 2006. Between 2006 and 2014 claimant worked for two different employers. Claimant returned to Wells in 2014.

Claimant began on her return to Wells as an assistant machinery operator. Claimant said the job required her to lift between 50-60 pounds.

On November 9, 2017, claimant was working when a tub of ice cream cones, weighing approximately 25-30 pounds, fell from a shelf approximately 2 feet above claimant's head onto the back of her head and neck. Claimant testified she felt immediate pain, but continued to work until her break. Claimant testified she felt dizzy and had a headache. Claimant went to the emergency room.

The same day claimant was evaluated at the emergency room at Floyd Valley Healthcare. Claimant was assessed as having a neck contusion and sprain. She was treated with medication and told to follow-up with her primary care doctor. (JE 2, pp. 12-13)

On November 16, 2017, claimant was evaluated by Alexandria Kohn, ARNP. Claimant had headaches with nausea and blurred vision. Claimant was assessed as having a cervical strain and migraine headaches. Claimant was prescribed medication and given lifting restrictions. (JE 3, pp. 36-38)

Claimant returned in follow-up with NP Kohn on December 6, 2017. Claimant had improvement in headaches, but still had headaches. Claimant was assessed as having resolving cervical muscle strain and headaches. Claimant was returned to work at regular duty. (JE 3, pp. 41-42)

Claimant saw NP Kohn on January 18, 2018. Claimant had a flare-up of migraines. She was assessed as having migraines and a cervical strain. Claimant was referred to a neurologist. (JE 3, pp. 47-48)

On February 12, 2018, claimant was seen by Michael Nguyen, M.D. Claimant was assessed as having a concussion with post-concussive headaches. Claimant was recommended to have vestibular therapy. (JE 5, pp. 52-54)

Claimant returned for follow-up with Dr. Nguyen on March 26, 2018. Dr. Nguyen recommended continued therapy. He completed FMLA documents for claimant and indicated claimant would need to have 12 hours per day off twice a month due to her headaches. (JE 5, pp. 60-67)

Claimant returned on May 7, 2018, to Dr. Nguyen with complaints of recurring headaches. Claimant was assessed as having post-concussive headaches and given different medication. (JE 5, pp. 69-70)

On July 14, 2018, claimant's left hand became stuck in a machine. Claimant was seen at the emergency room at Floyd Valley Healthcare on the same day. She was assessed as having a contusion to the left thumb. Claimant was released home on that day. (JE 2, pp. 33-34)

On July 20, 2018, claimant was evaluated by Yorell Manon-Matos, M.D. Claimant was assessed as having a forearm contusion and recommended to wear a brace. Claimant was returned to regular duty. (JE 5, pp. 75-76)

On July 27, 2018, claimant was seen by William Andrews, M.D., a neurologist. Claimant had ongoing headaches. Dr. Andrews recommended an MRI of the cervical spine. (JE 5, pp. 82-84)

On August 8, 2018, claimant underwent a cervical MRI. It showed a slight disc bulge at various levels. (JE 5, p. 86)

Claimant underwent an MRI of the left upper extremity. It showed a tear of the ulnar collateral ligament. (JE 5, p. 94)

Claimant returned to Dr. Manon-Matos on August 24, 2018. Claimant was assessed as having left de Quervain's tenosynovitis and thumb CMC joint early osteoarthritis and contusion. Claimant was given an injection. She was returned to work at light duty and limited to lifting less than 5 pounds. (JE 5, pp. 95-97)

Claimant returned to Dr. Manon-Matos on October 2, 2018, with complaints of continuing left upper extremity pain. Surgery was discussed. (JE 5, pp. 98-99)

On November 6, 2018, claimant was seen by Dr. Andrews and given a Botox injection for continued neck pain and headaches. (JE 5, pp. 102-103)

On January 23, 2019, claimant underwent surgery on her left thumb. Surgery consisted of a left thumb carpometacarpal joint trapezium resection. Surgery was performed by Dr. Manon-Matos. (JE 5, pp. 105-106)

Claimant returned to Dr. Andrews on February 5, 2018. Claimant was given a second Botox injection. (JE 5, pp. 108-109)

Claimant returned for follow-up with Dr. Manon-Matos on March 5, 2019. Claimant was restricted from using her left hand. (JE 5, p. 114)

On May 29, 2019, Dr. Andrews gave claimant a third Botox injection for headaches. (JE 5, p. 121)

Claimant continued to follow-up with Dr. Manon-Matos from March, 2019, through August, 2019. During that time claimant underwent physical therapy and had injections with no significant improvement in symptoms. (JE 5, pp. 114-135)

On August 22, 2019, claimant returned to Dr. Manon-Matos with continuing complaints of left thumb pain. Claimant requested a second surgery. (JE 5, pp. 133-134)

On October 7, 2019, claimant underwent a second surgery to her left thumb consisting of a left flexor carpi radialis tendon sheath release and an A1 pulley trigger release. (JE 5, pp. 136-137)

In a December 20, 2019, note, Dr. Manon-Matos indicated claimant had no permanent partial impairment to the left upper extremity. (JE 5, p. 145)

On January 27, 2020, claimant returned to Dr. Andrews. Claimant complained of neck pain, migraine headaches and nausea. Claimant's medication was changed, and claimant was scheduled for a follow-up visit in April 2020. (JE 5, pp. 146-148)

Claimant testified that due to Covid-19 she was unable to return to Dr. Andrews in a follow-up visit.

In a July 13, 2020, letter written by defendant's counsel, Dr. Andrews opined that claimant had reached MMI as of November 9, 2018, and that claimant may require additional Botox treatments. Dr. Andrews also indicated claimant had no permanent impairment and did not require any permanent restrictions. (JE 5, p. 150)

In a July 23, 2020, report, Sunil Bansal, M.D., gave his opinions of claimant's condition following an IME. Claimant continued to have daily headaches. Claimant had continued neck pain. Claimant's left hand was still painful in the thumb area, and she had swelling. Claimant had occasional numbness and tingling in the hand. (CE 1, pp. 1-14) Dr. Bansal found the claimant at MMI on June 17, 2020. He found that claimant had a 4 percent permanent impairment due to a traumatic brain injury (TBI). He found claimant had a 5 percent permanent impairment to the body as a whole due to her neck condition. Dr. Bansal opined that claimant had a 5 percent permanent impairment to the left upper extremity, converting to a 3 percent permanent impairment to the body as a whole. (Exhibit 1, pp. 15-18)

Dr. Bansal recommended trigger point injections for claimant's neck. He restricted claimant to no climbing ladders and to avoid repetitive neck motions. He limited claimant to lifting no greater than 10 pounds on the left. (Exhibit 1, p. 19)

In an August 6, 2020, supplemental report written by claimant's counsel, Dr. Bansal indicated he read Dr. Andrews July 13, 2020, report, and his review of the report did not change his opinions. (CE 2)

At the time of hearing, claimant was still employed at Wells. At the time of hearing, claimant was still working the same job as at the time of injury. Claimant was working without any restrictions. At the time of the November 9, 2017, injury, claimant was earning $20.30 per hour. At the time of hearing, claimant was earning $21.98 per hour. (TR pp. 44-45, 60-61)

Claimant testified at hearing her personal doctor had recently prescribed medications and additional physical therapy for her injuries. (TR p. 23)

Claimant testified at hearing she was scheduled to work the same hours she did at the time of injury, but had missed days due to severe headaches. (TR p. 36)

David Calhoun testified that he is the director of Corporate Risk Management at Wells. In that capacity, Mr. Calhoun is familiar with claimant's worker's compensation case. Mr. Calhoun testified that in 2017 claimant earned $57,731. He testified that for 2020 claimant should earn around $65,000 for the year. (TR pp.60-62)

Claimant agreed that she would probably earn approximately $65,000 for 2020. (TR p. 45)

Claimant said she has to be careful with the way that she grips. She said that she mainly uses her right hand at work and cannot really use her left upper extremity. (TR pp. 38-39)

CONCLUSION OF LAW

The first issue to be determined is whether claimant's injury has resulted in a permanent disability.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

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).

Regarding claimant's injury of November 9, 2017, (file number 5066743.01), claimant contends she has a permanent disability due to headaches, a traumatic brain injury and a neck injury.

Claimant injured her neck and head when a 20-25 pound container of ice cream cones fell approximately 2 feet on her neck. Claimant was initially assessed as having a neck strain and a scalp contusion.

In November 2017, claimant had CT scans of her neck and head that were normal. (JE 2, pp. 16-17)

In August 2018, claimant had an MRI of the cervical spine. The MRI showed slight disc bulges at various levels and was analyzed as normal. (JE 5, pp. 86, 102)

Claimant treated with Dr. Andrews, a neurologist, from July 2018 through January 2020. Dr. Andrews administered three rounds of Botox injections to help with claimant's headaches. Claimant last treated with Dr. Andrews in January 2020. At that time

claimant was found to have full range of motion of the neck. (JE 5, p. 147) In a July 2020 opinion, Dr. Andrews indicated that claimant had no permanent restrictions or permanent impairment. (JE 5, p. 150)

Dr. Bansal found that claimant had permanent impairment for her headaches, for the neck and for an alleged TBI. (CE 1 and 2) There are several problems with Dr. Bansal's opinion regarding permanent impairment. First, Dr. Bansal found that claimant had a permanent impairment for the injury in part due to radicular complaints and loss of range of motion. (CE 1, p. 16) As noted, claimant had no loss of range of motion in her exam with Dr. Andrews in January 2020. There is also scant evidence in any treatment records that claimant had radicular symptoms caused by a cervical injury. As noted, both CT scans and an MRI were normal for claimant's cervical spine.

Second, Dr. Bansal found that claimant had a permanent impairment, finding claimant sustained a TBI. It appears this opinion is based on a finding that claimant has memory issues, difficulty in time relationships, an impairment with problem solving, concentration issues and confusion. (CE 1, pp. 15-16; AMA Guides to the Evaluation of Permanent Impairment tables 13-5 and 13-6, pp. 320-321)

There is little evidence in the treatment records that claimant has memory issues. There is little evidence in the record that claimant has difficulty with time relationships, impairment with problem solving, concentration issues or confusion. Dr. Bansal did no testing whatsoever to measure claimant's cognitive function.

Dr. Bansal's finding that claimant has a permanent impairment to the cervical spine is problematic as detailed above. His finding that claimant has a permanent impairment due to a TBI is contrary to the treatment records. His finding that claimant has a permanent impairment due to a TBI also lacks any measure of claimant's cognitive abilities. Based on this, Dr. Bansal's opinion that claimant has a permanent impairment regarding the November 9, 2017, injury is found not convincing.

CT scans of claimant's neck and head were normal. An MRI of the claimant's cervical spine was unremarkable. Dr. Andrews found the claimant had no permanent impairment or permanent restrictions regarding the November 2017 injury. Dr. Bansal's opinions regarding permanent impairment are found not convincing. Based on this, it is found that claimant has failed to carry her burden of proof she sustained a permanent disability caused by the November 9, 2017, injury.

The record reflects the claimant has ongoing headaches related to the November 2017 accident. The record also reflects that Dr. Andrews recommended claimant continue to have ongoing treatment for headaches in his opinion of July 2020. (JE 5, p. 150) However, as detailed above, a treating neurologist has opined that claimant has no permanent impairment for the November 2017 injury. Dr. Bansal's opinion is that claimant does have a permanent impairment due to a traumatic brain injury. As noted, there is little evidence in the record to support this finding. Because the only rating that suggests claimant has a permanent impairment due to headaches is marred by

including a permanent impairment for cognitive issues, I cannot find in favor of claimant, given the record as detailed above.

As claimant failed to carry her burden of proof she sustained a permanent impairment due to the November 2017 injury, all other issues, except for reimbursement of the IME, are moot.

Regarding the July 14, 2018, date of injury to claimant's left upper extremity (file number 19001872.01), claimant alleges she has a permanent impairment to her left upper extremity due a crush injury at work.

Claimant underwent two surgeries to her hand performed by Dr. Manon-Matos. Claimant is left hand dominant. Claimant credibly testified she has ongoing difficulties with the use of her left hand and routinely performs duties at work with her right hand. Medical records indicate claimant's injury also resulted in pain to her forearm and wrist. (JE 5, p. 89, JE 6, p. 212) Claimant credibly testified that she has cramping, pain and swelling in her left wrist.

Experts have opined regarding whether claimant has a permanent impairment to the left upper extremity. Dr. Bansal evaluated claimant once for an IME. Dr. Bansal found that claimant had a permanent impairment to the left upper extremity. (CE 1, p. 16)

Dr. Manon-Matos treated claimant for an extended period of time. He opined that claimant had no permanent impairment for her work injury and two subsequent surgeries. (JE 5, p. 145)

There are several problems with Dr. Manon-Matos' opinion. Dr. Manon-Matos offers no analysis or rationale how he determined claimant had no permanent impairment. Claimant had two surgeries. Dr. Manon-Matos gives no reason how claimant has no permanent impairment following two hand surgeries. Because of these inconsistencies in the opinion of Dr. Manon-Matos, his opinions regarding permanent impairment are found not convincing.

Claimant had a crush injury to her dominant left hand. Claimant had two surgeries to that hand. Claimant credibly testified that approximately two years after the injury she still has difficulty with strength and range of motion in her left hand. Claimant credibly testified she has swelling, pain and cramping in her left upper extremity. Claimant's credible testimony is corroborated by the opinions of Dr. Bansal. Given this record, claimant has carried her burden of proof she has a permanent impairment to the left upper extremity due to the July 14, 2018, date of injury.

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

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The

extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

As noted, claimant credibly testified she has pain, swelling and cramping in the left upper extremity. The only rating regarding claimant's crush injury is to the left upper extremity. Given this record, the assigned rating of Dr. Bansal for the claimant of a 5 percent permanent impairment to the left upper extremity due to the July 14, 2018, crush injury is found convincing. Claimant is due 12.5 weeks of permanent partial disability benefits at the rate of $758.99 per week (250 weeks x 5 percent).

The next issue to be determined is the commencement date of benefits. Dr. Bansal opines that claimant had reached maximal medical improvement as of July 17, 2020. Permanent partial disability benefits shall commence as of that date.

The next issue to be determined is whether defendants are liable for penalty under Iowa code section D 6.13 regarding claimant's date of injury of July 14, 2018 (file number 19001872.01).

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).

It appears defendants have not paid claimant any permanent partial disability benefits based on the opinion of Dr. Manon-Matos. There is no evidence in the record defendants contemporaneously conveyed the basis of the denial of benefits to claimant. Claimant is due $9487.38 in permanent partial disability benefits for the left upper extremity injury (12.5 weeks x $758.99). A 50 percent penalty is appropriate. Defendants are liable for a penalty of $4743.69 for failing to comply with Iowa code section 86.13 (4C:3) ($9487.38 x 50 percent).

The next issue to be determined is whether claimant is due reimbursement for an IME under Iowa code section 85.39.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Regarding the IME, the Iowa Supreme Court provided a literal interpretation of the plain-language of Iowa Code section 85.39, stating that section 85.39 only allows the employee to obtain an independent medical evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 847 (Iowa 2015).

Under the Young decision, an employee can only obtain an IME at the employer's expense if an evaluation of permanent disability has been made by an employer-retained physician.

Iowa Code section 85.39 limits an injured worker to one IME. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009).

The Supreme Court, in Young noted that in cases where Iowa Code section 85.39 is not triggered to allow for reimbursement of an independent medical examination (IME), a claimant can still be reimbursed at hearing the costs associated with the preparation of the written report as a cost under rule 876 IAC 4.33. Young at 846-847.

Dr. Manon-Matos, the employer-retained expert, gave his opinion of claimant's permanent impairment on December 20, 2019. Dr. Andrews, the employer-retained expert, gave his opinion of claimant's permanent impairment on July 13, 2020. Dr. Bansal, the employee-retained expert, issued his opinion in a report dated July 23, 2020. Given this chronology, claimant is entitled to reimbursement for expenses related to the IME of Dr. Bansal.

The final issue to be determined is cost. Costs are awarded at the discretion of this agency. Claimant prevailed in file number 19001872.01 (date of injury July 14, 2018). Claimant did not prevail in file number 5066743.01 (date of injury November 9, 2017). Given this record, claimant is due all costs found in CE 14, except for the $100 filing fee associated with file number 5066743.01.

ORDER

THEREFORE, IT IS ORDERED:

Regarding file number 5066743.01 (date of injury November 9, 2017):

That claimant shall take nothing in the way of benefits from this file.

Regarding file number 19001872.01 (date of injury July 14, 2018):

That defendants shall pay claimant 12.5 (twelve point five) weeks of permanent partial disability benefits at the rate of $758.99 (seven hundred fifty-eight and 99/100 dollars) per week commencing on July 17, 2020.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

The defendants shall pay a penalty of $4743.69 (four thousand seven hundred forty-three and 69/100 dollars).

For both files:

The defendants shall reimburse claimant for costs associated with Dr. Bansal's IME.

The defendants shall pay all costs as detailed in Exhibit 14, except for the $100 (one hundred dollars) filing fee for file number 5066743.01.

That defendants shall file subsequent reports of injury as required by this agency under rule 876 IA C3.1(2).

Signed and filed this ___9th__ day of March, 2021.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Robert Tucker (via WCES)

Erin Tucker (via WCES)

Steven Durick (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.