BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DESHON WYATT,

Claimant,

vs.

BERTCH CABINET MANUFACTURING,

Employer,

and

EMC PROPERTY & CASUALTY COMPANY,

Insurance Carrier,
Defendants.

File No. 5060912

ARBITRATION DECISION

Head Note Nos.: 1402.40, 1403.20
1801, 1803

STATEMENT OF THE CASE

Claimant DeShon Wyatt filed a petition in arbitration seeking workers' compensation benefits from defendants Bertch Cabinet Manufacturing, employer, and EMC Property & Casualty Company, insurer. The hearing occurred before the undersigned on March 12, 2019, in Waterloo, Iowa.

The parties filed a hearing report at the commencement of the arbitration hearing. In 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.

The evidentiary record consists of: Joint Exhibits 1 through 6, Claimant's Exhibits 7 through 13, and Defendants' Exhibits A through B and E through L. Claimant testified on his own behalf. The evidentiary record closed on March 12, 2019. The case was considered fully submitted upon receipt of the parties' briefs on April 12, 2019.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant's work-related injury on February 15, 2016 resulted in any permanent disability, and if so, the extent of his industrial disability.

2. Whether claimant is entitled to alternate medical care.

3. Whether claimant is entitled to temporary total disability/healing period benefits from March 28, 2016 through May 4, 2016.

4. Whether claimant is entitled to reimbursement for his independent medical examination.

5. Costs.

FINDINGS OF FACT

Claimant sustained a stipulated work-related injury to his right shoulder on February 15, 2016 when he was flipping a cabinet and felt a sharp pain. (Claimant Testimony) At the time of his injury, claimant was working as a "boxer" for defendant-employer, which required him to build cardboard boxes around finished cabinets as they came down the line. (Cl. Testimony)

Defendants scheduled claimant for an evaluation at Allen Occupational Health Services on February 17, 2016. (Joint Exhibit 1, page 1) Although claimant was initially diagnosed with a right shoulder strain, he was then referred to an orthopedic specialist, Thomas Gorsche, M.D., after an MRI revealed a partial tear of claimant's supraspinatus tendon. (JE 1, pp. 4, 6; JE 2, p. 15) Dr. Gorsche later described the tear as "very small." (JE 3, p. 22)

Dr. Gorsche reviewed the MRI with claimant and recommended against surgery. (Cl. Testimony) Instead, Dr. Gorsche recommended physical therapy and restricted duty of no use of claimant's right arm. (JE 3, p. 17)

Claimant then began physical therapy on April 4, 2016. (JE 5, p. 32) Before claimant started physical therapy, he was terminated by defendant-employer for excessive absenteeism. (Defendants' Ex. G, pp. 6, 9) Despite his termination, claimant continued physical therapy through April 28, 2016, when he was discharged after meeting all of his goals. (See JE 5) At his final session on April 28, 2016, claimant demonstrated good functional strength and active range of motion. (JE 5, p. 43)

Claimant then returned to Dr. Gorsche on May 4, 2016, after being discharged from physical therapy. (JE 3, p. 20) At the May 4, 2016 appointment, claimant had not worked since being terminated by defendant-employer. (JE 3, p. 20; Cl. Testimony) Dr. Gorsche noted claimant's physical therapy "ha[d] been helping," his pain was "resolved," and he had stopped taking anti-inflammatories. (JE 3, p. 20) As a result, Dr. Gorsche placed claimant at maximum medical improvement (MMI) and released him from care without work restrictions. (JE 3, p. 20)

Upon his full-duty release, claimant returned to work at his part-time cooking position with Casey's—a job he had held concurrently with his "boxer" job at defendant-employer for about five months before his work injury.

Despite testifying he had pain two weeks after being released from Dr. Gorsche's care and returning to Casey's, claimant did not obtain or request any additional treatment for his shoulder until September 29, 2016. (Claimant's Ex. 11, p. 103) Defendants denied claimant's request for additional treatment based on Dr. Gorsche's opinion that claimant's then-current complaints of right shoulder pain were unrelated to his work injury of February 15, 2016. (See JE 3, p. 21; JE 6, p. 106) Dr. Gorsche later went on to opine that claimant sustained no permanent disability as a result of the February 15, 2015 work injury. (JE 3, p. 25)

At the time of claimant's request for additional medical care in September of 2016, claimant was still working as a part-time cook at Casey's but had also found additional work as a full-time lumber stacker at Wieland & Sons. (Cl. Testimony) As a lumber stacker, claimant was required to pull wood off of a belt and toss it into crates. (Def. Ex. A [Cl. Deposition Transcript, pp. 18-20])

While claimant was still employed as a full-time lumber stacker with Wieland & Sons, he quit his part-time job at Casey's and obtained a second full-time job with Pries Enterprises. (Cl. Testimony) It appears claimant's job with Pries began sometime around October of 2017. (See Def. Ex. A [Cl. Depo. Tr., p. 24])

Notably, in his pre-employment physical for Pries, which was completed on October 17, 2017, claimant denied shoulder pain. (JE 1, p. 11) His examination was normal, and he was deemed able to perform the essential physical requirements for the "packer" position. (JE 1, pp. 13-14)

Claimant was evaluated by John Kuhnlein, M.D., for an independent medical examination (IME) on September 13, 2017, roughly one month before his physical for Pries. Claimant told Dr. Kuhnlein that while he did not have pain at the time of his May 4, 2016 appointment with Dr. Gorsche, he quickly developed activity-dependent pain upon his return to his part-time cooking job with Casey's. (Cl. Ex. 7, p. 84) Claimant additionally reported having 6/10 average pain and 9/10 maximum pain at the time of his evaluation with Dr. Kuhnlein. (Cl. Ex. 7, p. 85) This directly contradicts claimant's assertion in his pre-employment physical for Pries that he had no shoulder pain. (See JE 1, p. 11) Claimant also told Dr. Kuhnlein the physical therapy prescribed by Dr. Gorsche was "overall ineffective," contradicting both his reports to Dr. Gorsche on May 4, 2016 and his deposition testimony. (Cl. Ex. 7, p. 83; see JE 3, p. 20; Def. Ex. A [Cl. Depo. Tr., p. 56])

Dr. Kuhnlein went on to opine that claimant's "current right shoulder pain would be related back" to his work injury. (JE 7, p. 87) Dr. Kuhnlein specifically indicated his opinion was dependent on the accuracy of the history presented by claimant, including claimant's assertion that he "continued to have activity-dependent right shoulder pain" when he was released by Dr. Gorsche in May of 2016. (JE 7, p. 87) Dr. Kuhnlein recommended a second opinion for claimant's ongoing right shoulder problems, assigned a 4 percent whole person impairment rating, and recommended a 40- to 50-pound lifting restriction. (JE 7, pp. 87-88)

After his IME with Dr. Kuhnlein, claimant started working for Pries. Claimant performed three jobs at Pries: "packer," "stretcher," and "saw help." (Cl. Testimony) As a "packer," claimant was required to pull pieces of aluminum out of a crate and stack the pieces into a bundle. (Def. Ex. A [Cl. Depo. Tr., pp. 26-27]) He testified in his deposition that he had difficulty "one time" in this position when "one part was too heavy." (Def. Ex. A [Cl. Depo. Tr., p. 27])

He was then moved to a "stretcher," where he moved the aluminum into a machine, which claimant operated by buttons. (Def. Ex. A [Cl. Depo. Tr. pp. 29-30)] Claimant testified both his arms were fatigued after a full shift of operating the buttons. (Def. Ex. A [Cl. Depo. Tr. pp. 30-31)]

Lastly, claimant worked as a "saw help," which required him to stand at a belt and watch to make sure the aluminum pieces continued down the belt in the correct direction. (Def. Ex. A [Cl. Depo. Tr. pp. 32-33]) Claimant testified he had no issues performing this job.

For roughly two months, claimant worked 80-hour workweeks while simultaneously employed at Wieland & Sons and Pries. (Cl. Testimony) Claimant eventually quit his job at Wieland & Sons and remained employed at Pries for roughly one year.

At the time of the hearing, claimant was no longer working for Pries. (Cl. Testimony) Instead, he voluntarily quit his job at Pries for a better full-time job with Ashley Industrial Molding, where he sands and molds parts, primarily using his right arm. (Cl. Testimony)

Despite working several jobs after being terminated by defendant-employer, including a several-month stint in which he worked 80 hours per week with 2 full-time jobs, claimant has not received treatment for his right shoulder since he was released from Dr. Gorsche's care in May of 2016. I acknowledge claimant was denied authorization for additional treatment in early-2017; however, claimant routinely used the emergency room for personal conditions after May of 2016, and not once did he mention any right shoulder pain.

On August 17, 2016, which would have been after claimant's return to part-time work with Casey's, claimant presented to the emergency room after a car accident. (JE 6, p. 52) The exam revealed no tenderness and full range of motion in claimant's extremities. (JE 6, p. 54)

On October 16, 2016, which would have been after claimant began his job as a lumber stacker at Wieland & Sons and after claimant requested authorization for additional treatment, claimant presented to the emergency room with numbness and tingling in his bilateral hands due to his uncontrolled diabetes. (JE 6, p. 63) He was diagnosed with diabetic peripheral neuropathy. (JE 6, p. 65) Claimant was discharged with pain medication and advised to establish a relationship with a primary care physician. (JE 6, pp. 65-66) There is no mention of shoulder symptoms in the notes

from that visit. (See JE 6, pp. 61-68) In fact, the notes indicate claimant specifically denied extremity weakness. (JE 6, p. 62)

Claimant returned to the emergency room on March 19, 2017 with swollen joints, for which he was given an anti-inflammatory, and on May 21, 2018 with chest pain and a cough, for which he was examined and released. (See JE 6, pp. 71, 73, 76-77) Again, absent from the notes from these visit are mentions of right shoulder symptoms. (See JE 6, pp. 69-77)

Claimant did not have a primary care provider and instead essentially used the emergency room as such. Despite going to the emergency room for complaints as trivial as a swollen eye or swollen joints (see JE 4, p. 27; JE 6, p. 71), he never went to the emergency room for right shoulder pain, nor did he ever mention right shoulder pain at any of his emergency room visits. This undercuts claimant assertion that he continued to have activity-dependent pain, which was severe as 9/10, after being released from Dr. Gorsche's care.

Also undercutting claimant's assertion that he had activity-dependent pain after being released from Dr. Gorsche's care is the fact that claimant was able to simultaneously work 2 full-time jobs, resulting in 80-hour workweeks, for a period of several months. Claimant in his post-hearing brief argues he had to cut back to 1 full-time job because of his right shoulder complaints, but I do not find this argument convincing in light of claimant's deposition testimony that he quit his job at Wieland & Sons due to his diabetes. (Def. Ex. A [Cl. Depo. Tr., p. 23]) Claimant also left his job at Pries not because of right shoulder problems, but because the job at Ashley Industrial Molding was "better." (Cl. Testimony)

These are not the only inconsistencies in the record regarding claimant's alleged activity-dependent pain. Claimant testified and told Dr. Kuhnlein that his activity-dependent pain returned during his first seven-hour shift at Casey's, which was about two weeks after being released from Dr. Gorsche's care. (Cl. Testimony; Cl. Ex. 7, p. 84) Claimant, however, did not request additional treatment for his right shoulder until September of 2016 (Cl. Ex. 11, p. 103), more than three months after his pain allegedly returned. Claimant's reports of right shoulder pain to Dr. Kuhnlein also directly contradict claimant's statement in his physical for Pries, which occurred just one month after Dr. Kuhnlein's examination.

Dr. Kuhnlein's causation opinion was reliant on the accuracy of the history given by claimant, including claimant's assertion that he had activity-dependent right shoulder pain after being released from Dr. Gorsche's care in May of 2016. As set forth above, there are simply too many discrepancies in the record for me to find that claimant's claims of activity-dependent right shoulder pain following his release from Dr. Gorsche's care are accurate or credible. Because Dr. Kuhnlein's causation opinion is based on a presumption that I do not find credible, I likewise do not find Dr. Kuhnlein's opinion to be convincing.

While I recognize Dr. Kuhnlein assigned an impairment rating for claimant's shoulder due to motor and range of motion deficits, this rating is not consistent with

claimant's lack of symptoms upon being discharged from physical therapy and released from Dr. Gorsche's care, the absence of treatment following his release, or his ability to perform several jobs after being terminated by defendant-employer. For these reasons, I find the opinions of Dr. Gorsche to be more persuasive than the opinions of Dr. Kuhnlein.

Ultimately, I find insufficient evidence of a permanent disability to claimant's right shoulder. I find claimant's right shoulder injury resolved by May 4, 2016 and that claimant was medically capable of returning to substantially similar employment on that date.

Claimant also alleges he is entitled to temporary disability benefits from his termination on March 28, 2016 through May 4, 2016, when he was released from Dr. Gorsche's care without restrictions. As mentioned, claimant was terminated for excessive absenteeism. (Defendants' Ex. G, pp. 6, 9) Claimant was tardy on February 16, 2019; February 19, 2016; and March 8, 2016, and had an unexcused absence on March 7, 2016, when he did not return to work after a doctors' appointment. (Def. Ex. G, p. 6) He was given a written warning for his tardiness on March 14, 2016. (Def. Ex. G, p. 8) The warning provided that an additional tardy would lead to termination of his employment per defendant-employer's "3 point attendance policy." (Def. Ex. G, p. 8) Claimant was then tardy again on March 28, 2016, at which time he was terminated. (Def. Ex. G, p. 6)

Claimant argues he was tardy on several of these dates because he was forced to drive 25 miles to the Waterloo plant for his light duty assignment. (Cl. Testimony) Claimant does not have a valid driver's license. (Cl. Testimony) Claimant essentially asserts that but for his work injury he would not have had to travel 25 miles to work, would not have been tardy, and would not have been terminated.

While claimant suggests in his post-hearing brief that traveling 25 miles to a different plant was not suitable because he did not have a valid driver's license, there is no evidence in the record that defendants knew claimant had a transportation issue. I also find claimant's suggestion that he was concerned about driving without a license to be insincere in light of the fact that claimant was involved in a motor vehicle accident and charged with an OWI in August of 2016, just a few months after his termination. (Cl. Testimony) I therefore find defendants offered claimant suitable work through claimant's termination.

I also find, however, that claimant's termination was based on inconsequential conduct that employers typically overlook and tolerate. Though I acknowledge claimant was tardy on 4 occasions leading up to his termination, 3 of these tardies were documented after claimant was late by 1 or 2 minutes. (Def. Ex. G, p. 6) On March 28, 2016, the date on which claimant was terminated, he was 15 minutes late, but he also called to let defendant-employer know he was having car trouble. (Def. Ex. G, p. 6; Cl. Testimony) I therefore find that while defendants acted in accordance with their attendance policy, the conduct that led to claimant's termination was not serious or the type of conduct that would cause any employer to terminate any employee.

CONCLUSIONS OF LAW

The first issue to be decided is whether claimant's work-related injury on February 15, 2016 resulted in any permanent disability.

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).

In the instant case, I found the opinions of Dr. Gorsche to be more convincing than those of Dr. Kuhnlein, in part because Dr. Kuhnlein relied on a history I did not find credible or accurate. As such, I found insufficient evidence to support claimant's claim that he sustained a permanent disability to his right shoulder. I therefore conclude claimant failed to satisfy his burden to prove he sustained any permanent disability due to his work-related injury on February 15, 2016. Claimant proved only a temporary work-related injury to his right shoulder.

My conclusion that claimant proved only a temporary injury to his right shoulder that has since resolved renders claimant's claim for alternate medical care moot.

The next issue to be decided is claimant's entitlement to temporary benefits from March 28, 2016 through May 4, 2016. Having concluded claimant is not entitled to permanent partial disability (PPD) benefits, I conclude claimant's claim for temporary benefits is governed by Iowa Code section 85.33. Iowa Code section 85.33(3) provides:

> If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employer offers the employee suitable

> work and the employee refuses to accept the suitable work offered by the employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal.

Refusal of suitable work by an employee results in forfeiture of any temporary disability or healing period benefits pursuant to Iowa Code section 85.33(3). Schutjer v. Algona Manor Care Center, 780 N.W.2d 549, 559 (Iowa 2010). Iowa Code section 85.33(3) only applies, however, if the employer offers suitable work to the employee. Id.

The employer bears the burden to establish the prerequisites of Iowa Code section 85.33(3). Koehler v. American Color Graphics, File No. 1248489 (App. Feb. 25, 2005). Specifically, the employer must establish by a preponderance of the evidence that work was offered to the claimant, that the work was suitable, and that claimant intentionally refused the offered work. Neal v. Annett Holdings, Inc., 814 N.W.2d 512 (Iowa 2012); Raymie v. JB Schott Family Farms, File No. 5041943 (App. Oct. 7, 2016); Brodigan v. Nutri-Ject Systems, Inc., File No. 5001106 (App. April 13, 2004); Woods v. Siemens Furnas Control, File Nos. 1303082, 1273249 (Arb. July 2002) (Final agency action by Commissioner Trier).

Termination by itself is not sufficient grounds to disqualify an employee from temporary benefits under Iowa Code section 85.33(3). Raymie, File No. 5041943 (App. Oct. 7, 2016); Terhark v. Hope Haven, File No. 5031853 (App. Feb. 26, 2013); Alonzo v. IBP, Inc., File No. 5009878 (App. Oct. 31, 2006); Franco v. IBP, Inc., File No. 5004766 (App. Feb. 28, 2005). Instead, for misconduct to be tantamount to a refusal to perform suitable work, it must be "serious and the type of conduct that would cause any employer to terminate any employee" and "have a serious adverse impact on the employer." Reynolds v. Hy-Vee, Inc., File No. 5046203 (App. Oct. 31, 2017). The misconduct needs to be more egregious "than the type of inconsequential misconduct that employers typically overlook or tolerate." Id. While an employee "is not entitled to act with impunity toward the employer," the Commissioner has held that "not every act of misconduct justifies disqualifying an employee from workers' compensation benefits even though the employer may be justified in taking disciplinary action." Id. (citation omitted).

In this case, I found suitable work was offered to claimant through his termination on March 28, 2016. However, I also found the conduct that led to claimant's termination was inconsequential and the type of misconduct that employers typically overlook or tolerate. I therefore conclude claimant's misconduct was not tantamount to a refusal to perform suitable work. Thus, claimant's termination, though justified per defendant-employer's attendance policy, was not sufficient grounds to disqualify claimant from temporary total disability (TTD) benefits. I conclude claimant is entitled to TTD benefits from March 28, 2016 through May 4, 2016, the date on which I found he was capable of returning to substantially similar employment.

I echo the sentiments of the deputy commissioner in Ibrahim v. ABM Industries, File No. 5059441, who in his arbitration decision noted that this outcome seems odd and somewhat unjust when a claimant's termination is justified by defendant-employer's personnel policies:

> Realistically, an employer will typically follow its attendance policy and personnel policies. . . . When an employee fails to appear for work repeatedly, it is not realistic to expect an employer to maintain that employee indefinitely. Yet, when this employer actually takes action, acts in a responsible business manner, and complies with its own established personnel policies, it forfeits a defense in this worker's [*sic*] compensation case. That seems like an odd and perhaps unjust result to the undersigned. . . .

Ibrahim v. ABM Industries, File No. 5059441 (Arb. Jan. 30, 2019). Regardless, I am bound by the case law that has developed on this issue, and based on that case law conclude claimant is entitled to TTD benefits from March 28, 2016 through May 4, 2016.

The final issues to be addressed are whether claimant is entitled to reimbursement for his IME and whether defendants should be assessed with the cost of claimant's filing fee. Turning first to claimant's IME, Iowa Code section 85.39 allows claimants to request reimbursement for an IME "[i]f an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low." Iowa Code § 85.39. In Reh v. Tyson Foods, Inc., File No. 5053428, the commissioner concluded there is a "distinct" difference between evaluations of permanent impairment and evaluations to determine causation. See Reh, File No. 5053428 (App. Mar. 26, 2018).

In this case, Dr. Kuhnlein's IME occurred in September of 2017. (Cl. Ex. 7) While Dr. Gorsche gave a causation opinion in December of 2016, before Dr. Kuhnlein's IME, he did not comment on permanent disability until December of 2018. (Ex. 3, pp. 21-22, 25) Based on the commissioner's decision in Reh, I therefore conclude Dr. Gorsche's causation opinion in December of 2016 did not trigger the reimbursement provisions of Iowa Code section 85.39. I further conclude that there had been no evaluation of permanent disability by an employer-retained physician when claimant obtained his IME with Dr. Kuhnlein. Thus, I conclude claimant is not entitled to reimbursement for his IME under Iowa Code section 85.39.

Assessment of costs is a discretionary function of the agency. Iowa Code § 86.40. Having found Dr. Gorsche's opinions to be more persuasive than those of Dr. Kuhnlein, I decline to assess the cost of Dr. Kuhnlein's report as a cost. However, I conclude claimant's filing fee is reasonable and assess $100.00 to defendants pursuant to 876 IAC 4.33 subsection (7).

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing with respect to permanent partial disability benefits.

Defendants shall pay claimant temporary total disability benefits from March 28, 2016 through May 4, 2016.

All weekly benefits shall be paid at the stipulated rate of two hundred seventy-two and 52/100 dollars ($272.52) per week.

Defendants shall pay accrued weekly benefits, including but not limited to the underpayment of the weekly rate, in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and 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).

Pursuant to rule 876 IAC 4.33, costs are taxed to defendants in the amount of one hundred and 00/100 ($100.00).

Signed and filed this 24th day of April, 2019.

STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876 4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.