BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSEPH LEEPER,

Claimant,

vs.

DuPONT PIONEER,

Employer,
Self-Insured,
Defendant.

FILED
FEB 23 2016
WORKERS' COMPENSATION

File No. 5052196

ARBITRATION

DECISION

Head Note Nos.: 1402.40; 1801; 1803 2505

STATEMENT OF THE CASE

Joseph Andrew Leeper, claimant, filed a petition in arbitration seeking workers' compensation benefits from DuPont Pioneer, self-insured employer. Hearing was held on November 17, 2015. Presiding at the hearing was Deputy Workers' Compensation Commissioner Erin Q. Pals.

Claimant, Joseph Andrew Leeper, was the only witness who testified live at trial. The evidentiary record also includes claimant's exhibits I-II and defendant's exhibits A-B. The parties submitted a hearing report at the commencement of the evidentiary hearing. On the hearing report, the parties entered into certain stipulations. Those stipulations are accepted and relied upon in this decision. No findings of fact or conclusions of law will be made with respect to the parties' stipulations.

The parties requested the opportunity for post-hearing briefs which were submitted on December 3, 2015.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained permanent disability as a result of the August 27, 2013 work injury. If so, what is the nature and extent of claimant's entitlement to permanent partial disability benefits?
2. Whether claimant is entitled to additional temporary total disability/healing period as a result of the August 27, 2013 work injury.
3. Whether penalty benefits should be awarded.
4. Whether claimant is entitled to payment of medical expenses.

5. Whether claimant is entitled to reimbursement for independent evaluation under Iowa Code section 85.39.
6. Assessment of costs.

FINDINGS OF FACT

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

The parties have stipulated that Joseph Andres Leeper ("Leeper") sustained a compensable injury on or about August 27, 2013 to his bilateral arms. At the time of the injury he was working as an electrician for defendant DuPont Pioneer ("DuPont").

Leeper treated for his injury with Mark G. Davis, PAC at Kossuth Regional Health Center ("Kossuth"). The August 28, 2013, clinical notes reflect that Leeper reported signs and symptoms consistent with carpal tunnel syndrome (CTS). He did have a history of CTS many years prior which was treated conservatively and then the symptoms resolved. He reported that currently he was experiencing right wrist weakness, tenderness, and numbness and tingling in the median distribution of right hand. He also had rare occasional symptoms in his left hand but his right hand was clearly the worst. These symptoms had been present for no more than "a few weeks." (Ex. 1, p. 2) He was assessed as having signs and symptoms of CTS, as well as flexor tendinitis, right greater than left. He was treated conservatively. He was not given any specific restrictions at work other than to be allowed to wear his splint when possible. (Ex. 1, p. 2)

Leeper continued to receive conservative treatment at Kossuth including physical therapy. (Ex. 2) He reported very slight improvement. At the end of November electromyogram studies were ordered. (Ex. 2, p. 7) The studies confirmed bilateral CTS to a moderate degree. He was referred to an orthopedist. (Ex. 2, p. 8 & 29-30)

On May 9, 2014, Leeper was seen by John L. Gaffey, M.D., at Des Moines Orthopaedic Surgeons, P.C. (DMOS). Leeper reported that he worked in maintenance and has had numbness and tingling into both of his hands on and off for many years. He also reported pain at the wrist on the right side with twisting activities. Dr. Gaffey's assessment was bilateral CTS with right more symptomatic than left. He also felt Leeper had right wrist DRUJ arthritis. He recommended a splint for the arthritis and noted this would be addressed outside of the workers' compensation claim. For the bilateral CTS, he provided cock-up wrist splints for both wrists for Leeper to wear at night. Dr. Gaffey also injected the patient's right wrist. Leeper was kept off work until May 12, 2014, at which time he could return to full duty. (Ex. 2, pp. 31-33)

Leeper returned to Kossuth on May 19, 2014, for a wellness exam and annual review. He presented "without complaints, problems or concerns." (Ex. 2, p. 9) The notes indicate that he recently had a steroid injection in the right wrist. (Ex. 2, p. 9)

Leeper was seen again on May 22, 2015 at Kossuth for his annual exam. He again presented without complaints, problems, or concerns. Since he was last seen at Kossuth he underwent bilateral carpal tunnel release. He reported he had relief of the numbness and tingling in his fingers. However, he did continue to have pain in the palm of his hand. He reported he was following up with the orthopedist regarding these symptoms. (Ex. 2, pp. 10-12)

On June 27, 2014, Leeper returned to see Dr. Gaffey at DMOS. Leeper felt the night splints helped because he was not wakened at night. However, he did feel as if both of his hands were going to explode on a daily basis. Dr. Gaffey noted that the CTS had been resistant to conservative management. Leeper was scheduled for right carpal tunnel release with the left to follow two weeks later. (Ex. 1, pp. 34-35)

Dr. Gaffey performed the right carpal tunnel release on July 17, 2014. (Ex. 1, pp. 50-54) He was kept off work until July 19, 2014. (Ex. 1, pp. 36-37) At his follow-up appointment on July 30, 2014, Leeper reported to Dr. Gaffey that his right side was symptom free; no numbness or tingling. Leeper was scheduled for his left carpal tunnel release the following day. He was kept off of work until August 4, 2014. (Ex. 1, pp. 37-39)

Dr. Gaffey performed the left carpal tunnel release on July 31, 2014. (Ex. 1, pp. 54-57) Leeper returned to Dr. Gaffey on August 13, 2014, and reported that he was doing well. He reported having occasional shooting pain but no numbness or tingling or any other difficulties. However, he did have some pain in both palms. He was released to return to work with restrictions. (Ex. 1, pp. 39-41)

On September 3, 2014, Leeper saw Dr. Gaffey again. He continued to have pain in his palms, especially on the left side. Leeper felt like he would still have trouble strength-wise going back to full-duty. He was released to return to work with a 15 pound lifting restriction, and he was to avoid repetitive vigorous grasping, pinching, pushing, pulling, and twisting. (Ex. 1, pp. 41-43)

On November 5, 2014, Leeper was still experiencing pain in his palms, but the numbness and tingling was completely gone. He was released to full duty except he was to avoid weight bearing through the wrists in an extended position. (Ex. 1, pp. 43-45)

On December 3, 2014, Leeper reported to Dr. Gaffey that he was doing well. Leeper noticed that he had less strength while doing certain activities than he used to. Otherwise, he denied any significant numbness or tingling or any other difficulty. Dr. Gaffey advised working with the stress ball or grip strengthening device at home. He was also to continue wearing his cockup wrist splints at night. He was released to full duty and maximum medical improvement. Dr. Gaffey recommended Leeper follow-up on an as needed basis. (Ex. 1, pp. 45-47)

On December 22, 2014, Dr. Gaffey stated that he did not foresee any future diagnostic or therapeutic interventions for the injury. He also opined that Leeper had sustained zero percent permanent partial impairment as a result of the carpal tunnel. (Ex. 1, p. 48)

Leeper requested additional care and defendant arranged for him to be seen by Benjamin Paulson, M.D., at Iowa Ortho for a second opinion and to assume care. On June 22, 2015, Leeper was seen by Dr. Paulson. He reported bilateral wrist pain that occurred constantly and fluctuated. He felt the pain was aggravated by pushing and leaning. He reported that he had numbness and tingling that began in August of 2013, then had bilateral carpal tunnel releases in July of 2014. He had some occupational therapy with some relief and had now developed increased incisional tenderness. He did not have significant numbness or tingling, it was greatly improved. The doctor noted mild swelling and tenderness. Dr. Paulson's assessment was bilateral hand pillar pain status post bilateral carpal tunnel releases. The doctor felt this was not unusual and that the symptoms should eventually calm down. Additional occupational therapy was ordered to help with scar tissues. He was returned to work without restrictions. (Ex. 1, pp. 84-93)

On August 27, 2015, Leeper returned to see Dr. Paulson for a recheck of his wrists. He reported that the symptoms were acute and had improved. Aggravating factors included working. The doctor noted that the patient's pain was nearly completely resolved. The doctor also noted that Leeper's left and right hand range of motion and sensation were normal. Dr. Paulson placed him at maximum medical improvement as of that day, August 27, 2015. He released Leeper with no work restrictions and informed him to follow-up as needed. (Ex. 1, pp. 94-96)

At his attorney's request, Leeper was seen for an independent medical evaluation (IME) on July 16, 2015, with John D. Kuhnlein. As a result of that IME Dr. Kuhnlein issued a written report on September 4, 2015. Dr. Kuhnlein noted that Leeper was a fair historian, at best. Leeper reported that at his job he wore leather gloves but did not wear high dexterity gloves. He noted that his symptoms markedly changed once the employer instituted a policy that required workers in his area to wear gloves at all times. Leeper believed that the glove used was a significant contributing factor to his CTS because it caused him to increase his grip and grasp function. Dr. Kuhnlein opined that it was more probable than not that the conditions presented to Mr. Davis on August 28, 2013, and subsequently treated by Dr. Gaffey arose from his work at Pioneer as a result of cumulative trauma. Leeper reported to Dr. Kuhnlein that he continued to have ongoing pain in both palms. He also reported occasional numbness when he did not wear his splint. Dr. Kuhnlein described the numbness in the ulnar nerve distribution. Additionally, Leeper reported problems with gripping and grasping. Dr. Kuhnlein noted that Leeper had just started another round of therapy the day before the IME appointment . He did think it would be reasonable for Mr. Leeper to use the gloves that the therapist was now providing when working with vibratory or power tools as a means of dampening the vibratory exposures to his hands. He also suggested that he only push on an occasional basis while he was still in therapy. Dr.

Kuhnlein further noted that Leeper was currently in therapy and recommended that he finish the treatment outlined by Dr. Paulson. (Ex. 1, pp.106-117)

On October 16, 2015, Dr. Kuhnlein sent a missive to claimant's counsel supplementing his September 4, 2015. Dr. Kuhnlein re-examined Leeper on October 15, 2015, after he had finished his therapy. The doctor noted that pursuant to the AMA Guides, using the Tissue Rating Methodology there was no ratable impairment. However, pursuant to chapter 18, there was a ratable impairment for pain. Dr. Kuhnlein assigned 1 percent right upper extremity impairment for pillar pain and 1 percent left upper extremity impairment for the pillar pain. Dr. Kuhnlein noted that Leeper does have problems in his activities of daily living at work and at home. This is especially true with respect to gripping and grasping. With respect to restrictions, Dr. Kuhnlein felt it was reasonable for Leeper to use gloves that would help with exposure to vibration and meet safety requirements at his workplace. He did not feel he needed any further formal care. (Ex. 1, pp. 127-129)

The first issue to be addressed is whether claimant sustained any permanent impairment as a result of the work injury. Leeper contends that he has sustained permanent impairment as a result of the August 27, 2013 claim and that his injury is industrial in nature. Defendant disputes that claimant sustained any permanent disability as a result of the work injury and further disputes that any permanency would be compensated on an industrial basis. I find the preponderance of the evidence does not support claimant's claim for permanent partial disability benefits.

Leeper essentially argues two bases for permanent impairment. First, Leeper argues that based on Dr. Gaffey's operative notes there has been a change in his anatomy; therefore, he sustained permanent impairment. Specifically, claimant states that based on Dr. Gaffey's operative notes, "it is plain that there was a complete, if not almost complete loss or at least derangement of the transverse carpal ligaments." (Claimant's Brief, p. 19) However, there is no expert medical opinion in this case that has opined that Leeper has sustained any permanent impairment on this basis. Therefore, I find the preponderance of the evidence does not support this claim.

Second, Leeper argues that he sustained permanent impairment as a result of the work injury because even after the surgeries he had ongoing symptomatology. In support of this position he, in part, relies on the opinions of Dr. Kuhnlein. Dr. Kuhnlein is the only expert in this matter who has assigned any permanent impairment to Leeper as a result of the work injury. As previously, noted Dr. Kuhnlein opined that "there was no objective basis upon which to assign impairment." (Ex. 1, p.128) However, he did assign 1 percent impairment to each upper extremity based on chapter 18 of the AMA Guides. According to chapter 18 of the AMA Guides there is a specific protocol for assessment which permits physicians to reach conclusions about pain-related impairment. (AMA Guides, p. 583). Unfortunately, Dr. Kuhnlein did not reveal what, if any, of the protocols he used when arriving at his impairment rating. Dr. Kuhnlein merely states, "I would assign a 1% right upper extremity impairment for the pillar pain. I would also assign a 1% left upper extremity impairment for the pillar pain." (Ex. 1, p.

128) Because Dr. Kuhnlein failed to disclose the protocol or basis for the assessment of impairment I do not find Dr. Kunnlein's opinion regarding permanent impairment to be persuasive.

Furthermore, the record as a whole does not support a finding of permanency. Neither orthopaedic surgeon, Dr. Gaffey or Dr. Paulson, assigned any permanent impairment to Leeper. Nor did either treating doctor assign any permanent restrictions to Leeper. As previously noted Dr. Kuhnlein was the only physician to assign any permanency and for the reasons set forth above I did not find his opinion with regard to permanency to be persuasive. Therefore, I find claimant has failed to carry his burden of proof to show by a preponderance of the evidence that the August 27, 2013, work injury was the cause of permanent impairment.

We now turn to the issue of temporary disability benefits. Claimant is seeking three periods of healing period/temporary total disability benefits. Defendant disputes claimant's entitlement to these three periods but stipulates that claimant was at least off work during these three timeframes. Because claimant failed to carry his burden of proof to show that he sustained permanent impairment due to the work injury he is not entitled to healing period benefits. See Iowa Code section 85.34(1). However, he may be entitled to temporary total disability benefits. Under Iowa law, if an injured worker is off work more than three calendar days due to a work injury, then entitlement to temporary total disability (TTD) benefits begins on the fourth day and continues until the worker returns to work or is medically recovered enough to return to similar work. If an injured worker is off work more than fourteen calendar days then the injured worker is entitled to payment for the three-day waiting period. See Iowa Code sections 85.32, 85.33(1).

The first period of time in which Leeper asserts entitlement to TTD benefits is from May 10, 2014 through May 11, 2014. On May 9, 2014, Leeper received an injection for his left carpal tunnel from authorized physician, Dr. Gaffey. He indicated that Leeper could not work until May 12, 2014. (Ex. 1, p. 33). Administrative notice is taken of the 2014 calendar. I note that May 9, 2014 was a Friday and May 12, 2014 was a Monday. Pursuant to Iowa Code section 85.27, claimant was paid wages for the day of work he missed on Friday, May 9, 2014. Leeper returned to work and received wages on Monday, May 12, 2014. Claimant failed to show he had any lost wages on Friday, Saturday, or Sunday. Therefore, he is not entitled to temporary total disability benefits during this timeframe. I find the preponderance of the evidence does not support Leeper's claim for TTD benefits from May 10, 2014 through May 11, 2014.

The second period of time in which Leeper asserts entitlement to TTD benefits is from July 17, 2014 through July 20, 2014. Dr. Gaffey performed surgery on the right side on Thursday, July 17, 2014. He stated that Leeper could not work until July 19, 2014. (Ex. 1, p. 37, 50-52) July 19, 2014 was as a Saturday and July 20 was a Sunday. Claimant contends that Dr. Gaffey disabled Leeper from July 17, 2014 to July 18, 2014 and he is therefore entitled to TTD benefits. However, defendant correctly point out that Leeper was paid TTD for July 20, 2014 and that July 17 through

July 19 was his three-day waiting period. Claimant is only entitled to TTD payment for the three day waiting period if he is off work more than fourteen calendar days. Thus, I find claimant has failed to carry his burden of proof to show entitlement for TTD benefits from July 17, 2014 to July 19, 2014.

Third, Leeper asserts entitlement from July 31, 2014 through August 3, 2014. Leeper saw Dr. Gaffey on Wednesday, July 30, 2014. At that time, Dr. Gaffey stated that Leeper could not work until Monday, August 4, 2014. Dr. Gaffey performed surgery on the left side on July 31, 2014. According to the records, Leeper was paid wages on July 30, 2014. Defendant points out that according to claimant's exhibit II, p. 40-41, claimant was paid TTD benefits for the period of July 31, 2014 through August 7, 2014. Therefore, I find claimant has failed to show entitlement to additional weekly benefits for the time period of July 31, 2014 through August 3, 2014.

Thus, I find the preponderance of the evidence does not support Leeper's claim for additional temporary total disability benefits during any of the three claimed periods of time.

The next issue to be addressed is whether penalty benefits should be assessed against the defendant. Claimant is seeking 50 percent penalty benefits for the defendant's failure to pay healing period compensation (for May 10, 2014 to May 11, 2014, July 17, 2014 to July 20, 2014, and July 31, 2014 to August 3, 2014) by its due dates. However, of these stated time periods the only date claimant proved entitlement for to TTD benefits was July 20, 2014. Claimant was paid temporary benefits for July 20, 2014, on November 6, 2014. (Ex. II, p. 40) Claimant has shown there was a few months delay in this payment of weekly benefits. It is stipulated that claimant's weekly workers' compensation rate is $596.88. Thus, one day of TTD amounts to $85.35. Defendant has not carried their burden under Iowa Code section 86.13 to show why penalty should not be imposed for its delay in the payment of $85.35 of TTD benefits. In determining the amount of the penalty that should be imposed consideration was given to the length of the delay, the number of delays, the employer's past record of penalties, and the other factors set forth by the Supreme Court I find a penalty in the amount of thirty and no/100 dollars ($30.00) is appropriate.

Claimant is also seeking penalty benefits for benefits payable under Iowa Code section 85.27. Iowa law does not provide for penalty benefits for failure or delay in payment of medical benefits under section 85.27. Penalty benefits are only provided for failure or delay in payment of weekly compensation benefits. Therefore, I find claimant has failed to show entitlement under Iowa Code chapter 85 to any penalty benefits for delay or failure of defendant to pay medical benefits.

Additionally, claimant is seeking penalty benefits for failure to pay permanent partial disability benefits. Having found that claimant has failed to prove entitlement to any permanent partial disability benefits this issue is moot.

The next issue that must be addressed is medical expenses. Claimant is seeking reimbursement of itemized expenses he incurred while traveling to authorized medical appointments. Leeper testified that he traveled to the doctors on the dates and for the miles listed in the attachment to the hearing report. Defendant provides no evidence to dispute the testimony. Therefore, I find Leeper should be reimbursed for the medical mileage set forth in the attachment to the hearing report for which he has not already been reimbursed for. The mileage shall be reimbursed at the appropriate rate for when each mile was incurred. Mileage shall be reimbursed pursuant to Iowa Code section 85.27 and 876 IAC 8.1(2).

Claimant is also seeking reimbursement for food expenses he incurred while traveling to and from medical appointments in Des Moines and Mason City. Pursuant to Iowa Code section 85.27, claimant is entitled to mileage and food expenses along with lost wages to attend medical appointments. Claimant provided his receipts for some of his appointments, these include:

- 6/22/15 in the amount of $13.79 (Ex. I, p. 88)
- 07/16/15 in the amount of $11.93 (Ex. I, p. 105)
- 07/23/15 in the amount of $32.28, of which only $10.00 was for his food consumption (Ex. I, p. 93)

Claimant testified he incurred these expenses while traveling to and from medical appointments. I find that for the food expenses in which claimant submitted receipts he has shown by a preponderance of the evidence that he is entitled to reimbursement for those food expenses under Iowa Code section 85.27. Thus, defendant shall reimburse claimant food expenses in the amount of $35.72.

Claimant testified that he also incurred food expenses for 17 other trips but he was not aware that he needed to keep his receipts. Claimant introduced evidence that he asked the insurance carrier on at least two occasions whether there was a default meal reimbursement rate. Leeper testified he did not receive a response to those inquiries. There is no evidence in the record that he was provided a response from defendant or that defendant ever informed him he was required to provide them with meal receipts. He testified that on the trips where he did not keep his receipts he conservatively estimates that he spent $5.00 for food on each trip. Therefore, for the food expenses where claimant did not keep his receipts I find that he has carried his burden to show entitlement to reimbursement. Defendant shall reimburse claimant food expenses in the amount of $85.00 for these trips in which claimant did not keep a receipt. Therefore, defendant shall reimburse claimant a total of $120.75 for meal reimbursements incurred for travel to medical appointments.

Claimant is also seeking additional wages for any overtime pay which he believes he lost due to the work injury. In support of his position claimant cites Iowa Code section 85.27(7) which states in pertinent part: "the employee shall be paid an

amount equivalent to the wages lost at the employee's regular rate of pay for the time the employee is required to leave work." The statute specifically states reimbursement is at an employee's regular rate of pay. Therefore, under Iowa Code chapter 35, claimant is not entitled to reimbursement for any lost overtime wages.

We now turn to claimant's request for reimbursement for Dr. Kuhnlein's fees and Leeper's transportation expenses for the two examinations performed by Dr. Kuhnlein pursuant to Iowa Code sections 85.39 and/or 86.40. Iowa Code section 85.39 states,

> If an evaluation of permanent disability had been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination.

In the present case, Dr. Gaffey, an authorized treating physician placed him at maximum medical improvement (MMI) on December 3, 2014. On December 22, 2014, Dr. Gaffey opined that Leeper had sustained zero percent permanent partial impairment. (Ex. 1, pp. 45-49). Subsequently, claimant requested additional treatment which was authorized with Dr. Paulson who recommended some additional therapy which started the day before claimant was scheduled to see Dr. Kuhnlein.

Dr. Kuhnlein examined Leeper on July 16, 2015. Dr. Kuhnlein felt Leeper had not reached MMI because he was still in therapy. (Ex. 1, p. 115) Prior to this time an evaluation of permanent disability had been made by a physician retained by the employer and Leeper believed that evaluation was too low. Thus, the prerequisites to qualify for reimbursement under the statutory process of section 85.39 were met. Therefore, I find that the expenses associated with the July 16, 2015 examination are properly awarded under Iowa Code section 85.39. Defendant shall reimburse claimant in the amount of $2,682.50.

Claimant is also seeking reimbursement under section 85.39 for the expenses associated with the second appointment with Dr. Kuhnlein. However, because defendant is responsible for the July 16, 2015 examination pursuant to section 85.39 they are not responsible for a second 85.39 examination.

Alternatively, Leeper is seeking to have the cost of the second examination with Dr. Kuhnlein taxed as a cost. This section states, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Because claimant was not successful in proving by a preponderance of the evidence that he sustained any permanent impairment, I exercise my discretion and find it is not appropriate to award the expenses associated with the October 2015 Dr. Kuhnlein examination as a cost.

Finally, we turn to the remaining costs sought to be recovered by the claimant. Costs are to be assessed at the discretion of the deputy commissioner who heard the case. In the present case claimant is seeking reimbursement for the $100.00 filing fee and $15.22 for certified mail expense to serve the original notice and petition. I find that these are appropriate costs under 876 IAC 4.33(3) & (7). Therefore, defendant shall reimburse claimant costs in the amount of $115.22.

CONCLUSIONS OF LAW

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). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

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).

For the reasons set forth above, I found claimant failed to carry his burden of proof to show by a preponderance of the evidence that that August 27, 2013, work injury caused permanent disability.

Claimant also asserted a claim for temporary total disability benefits. When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1). For the reasons set forth above I conclude claimant failed to prove entitlement to any additional temporary total disability benefits.

Claimant is asserting a claim for penalty benefits under Iowa Code section 85.39. 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. Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996). For purposes of determining whether an employer has delayed in making payments, payments are "made" either 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 when (b) the check is delivered personally to the claimant by the employer or its workers' compensation insurer. Robbennolt, 555 N.W.2d at 235. Weekly compensation payments are due at the end of the compensation week. Robbennolt, 555 N.W.2d 229, 235.

If the employer fails to show reasonable cause or excuse for the delay or denial, the commissioner shall 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.

In the present case, the documents show that prior to hearing defendant made two payments of temporary total disability benefits totaling $864.48. The date of the check for both payments was November 6, 2014. The payments were for time missed from work at the end of July and beginning of August 2014. According to the records, these payments were not made when due. Defendant offered no explanation or excuse why these payments were not made until November of 2014. After considering the factors set forth by the Iowa Supreme Court I find that a penalty in the amount of $30.00 is appropriate.

Claimant is also asserting entitlement to payment of 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).

For the reasons set forth in the above findings of fact I conclude defendant shall reimburse claimant medical expenses in the amount of one hundred twenty and 75/100 dollars ($120.75).

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.

Defendant is 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).

For the reasons set forth above I conclude defendant shall reimburse claimant 85.39 expenses in the amount of two thousand six hundred eighty-two and 50/100 dollars ($2,682.50).

Costs are to be assessed at the discretion of the deputy commissioner hearing the case. Because claimant was generally successful in his claim I find it is appropriate to assess costs against the defendant as set forth above. Thus, defendant shall reimburse claimant costs in the amount of one hundred fifteen and 22/100 dollars ($115.22).

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay penalty benefits in the amount of thirty and no/100 dollars ($30.00).

Defendant shall reimburse claimant for transportation and medical expenses in the amount of one hundred twenty and 75/100 dollars ($120.75).

Defendant shall reimburse claimant for Dr. Kuhnleins's independent medical evaluation fee in the amount of two thousand six hundred eighty-two and 50/100 dollars ($2,682.50).

Defendant shall be entitled to credit for all weekly and medical benefits paid to date.

Defendant shall reimburse claimant's costs in the amount of one hundred fifteen and 22/100 dollars ($115.22).

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1 (2) and 876 IAC 11.7.

Signed and filed this 23rd day of February, 2016.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

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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.