

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RYAN SCHMIDT,

Claimant,

vs.

LOVE'S TRAVEL STOPS & COUNTRY  
STORES,

Employer,

and

INDEMNITY INSURANCE COMPANY  
OF NORTH AMERICA,Insurance Carrier,  
Defendants.

File No. 1642100.01

ARBITRATION DECISION

Head Note No.: 1801

## STATEMENT OF THE CASE

The claimant, Ryan Schmidt, filed a petition for arbitration and seeks workers' compensation benefits from Love's Travel Stops and County Stores, employer, and Indemnity Insurance Company of North America, insurance carrier. The claimant was represented by Randall Schueller. The defendants were represented by Robert Gainer.

The matter came on for hearing on November 23, 2021, before Deputy Workers' Compensation Commissioner Joe Walsh in Des Moines, Iowa via Court Call videoconferencing system. The record in the case consists of Joint Exhibits 1 through 19; Claimant's Exhibits 1 through 6; and Defense Exhibits A through E. The defendants proposed Joint Exhibit 20 and then withdrew the exhibit at the time of hearing. The claimant testified at hearing. Tracy Barksdale was appointed the court reporter for the proceeding. The matter was fully submitted on December 11, 2021, after helpful briefing by the parties.

## ISSUES

The parties submitted the following issues for determination:

1. The primary issue is whether the claimant has reached maximum medical improvement. Claimant is seeking a running award of temporary benefits.
2. Whether the claimant is entitled to a penalty for late indemnity payments.

### STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship.
2. Claimant sustained an injury which arose out of and in the course of employment on January 2, 2018.
3. The parties amended the Hearing Report on the record. The parties have stipulated to the average gross wages, marital status and exemptions and contend the weekly rate of compensation is \$883.46.
4. Defendants have paid and are entitled to a credit of 202 weeks of compensation prior to hearing.
5. Affirmative defenses have been waived.
6. Medical benefits are not in dispute.

### FINDINGS OF FACT

Claimant Ryan Schmidt was 38 years old as of the date of hearing. He resides in Muscatine, Iowa. Mr. Schmidt testified live and under oath at hearing. I find him to be a highly credible witness. His appearance was professional. His testimony was consistent with the other evidence in the record. He was a good historian under the circumstances. There was nothing about his demeanor which caused me any concern for his truthfulness.

Mr. Schmidt is married with two young children. As mentioned, he resides with his family in Muscatine, Iowa. He graduated from Waverly-Shell Rock High School in 2002. He also obtained a bachelor's degree from Kaplan University in approximately 2012. He received excellent grades and he is obviously bright and industrious. His work history is solid. He worked for Hy-Vee for several years, working his way up from a part-time stocker to the position of assistant store director. (Transcript, page 22) In 2012, he accepted a position for a business called Hawkeye International as service manager. He then moved to the field of convenience store/truck stop as general manager. He held two such positions before being hired by Love's Travel Stops & Country Stores, the defendant employer in this case.

As the general manager, Mr. Schmidt's duties varied significantly. He was responsible for the entire operation at Love's. His main duties were managerial, including payroll, scheduling, human resources, and inventory. He was, however, a working manager who also performed other functions when necessary, such as cashiering and maintenance. At his store location, he also oversaw a fast food restaurant and a tire shop. Mr. Schmidt necessarily knew and was able to work all of those positions. (Tr., p. 24) He worked long hours on salary. He started at \$65,000.00 per year and was given a raise after a positive job review in December 2017. (Tr., p.

25) The parties have stipulated that his average earnings prior to January 2, 2018, were \$1,272.40 per week. I find that Mr. Schmidt is bright, well-educated and possesses significant employment skills in the competitive labor market.

On January 2, 2018, Mr. Schmidt suffered, what would turn out to be a catastrophic work injury. While performing routine mopping in his store he slipped and fell. (Tr., p. 25) Mr. Schmidt testified he remembered falling. The next thing he remembered was being in his wife's car sometime later. (Tr., pp. 25, 44) He has no recollection of being in the emergency room that night at all. (Tr., p. 44) Mr. Schmidt testified that he injured his head, neck and back. He also developed mental conditions of depression and anxiety. (Tr., p. 26) He filled out an accident report a week later which is entirely consistent with the other evidence in the record. (Cl. Ex. 5)

There are numerous medical treatment records in evidence, 296 pages to be precise. (See Joint Exhibits 1 through 18) There is really very little dispute about his medical treatment per se. The primary dispute is whether Mr. Schmidt has recovered from this stipulated work injury, and the legal consequences of his injury. The employer and insurance carrier accepted the claim and has continuously directed and authorized his reasonable medical care. Mr. Schmidt has not returned to work since his accident.

After his initial emergency room visit, Mr. Schmidt was evaluated at Concentra where he was diagnosed with the following conditions:

1. Concussion with loss of consciousness of 30 minutes or less, subsequent encounter
2. Post-concussion headache
3. Cervical neuropathic pain
4. Sprain of right wrist, subsequent encounter
5. Acute midline low back pain without sciatica

(Jt. Ex. 2, p. 17) His early symptoms are well-documented in the Concentra records. He was given treatment for these conditions by Concentra physicians and then quickly referred to specialists.

On January 26, 2018, a neurologist, Irena Charysz Birski, M.D., examined Mr. Schmidt. She documented his serious, debilitating ongoing headaches, as well as other associated symptoms.

In addition he's been dealing with dizziness, feeling off balance, poor concentration and memory, he feels tired and sluggish, he feels mentally slow but states these [sic] mental processing is fine. This is all exacerbated when the patient is in public place. He tries to go to Walmart or Menards just to get out, but notices that he needs to support himself with a cart due to feeling dizzy and off balance in addition that being in crowds of people results in panic anxiety aggravates his symptoms.

(Jt. Ex. 3, p. 24) He has continued to be treated regularly by Dr. Charysz Birski. By August 2018, she opined the following:

Sadly enough that 7 months after initial injury the patient still deals with multiple symptoms of postconcussive syndrome including postconcussive headaches, persistent dizziness, nonradicular neck pain, and panic and anxiety. There is very minimal improvement with physical therapy that he will continue. However, it is certainly concerning that the patient still has not improved significantly as statistically speaking improvement is expected and we don't see it yet.

(Jt. Ex. 3, p. 33) His latest visit prior to hearing was in November 2020.

Throughout his treatment records, Dr. Charysz Birski continued to document his lack of meaningful improvement despite numerous attempts at various treatments. (Jt. Ex. 3, pp. 36-45) His ongoing headaches are well documented in these records. He was also evaluated and treated by pain management specialists who documented their efforts to control his pain symptoms for his neck and low back. (Jt. Exs. 6 and 7) Joseph Brooks, D.O., followed Mr. Schmidt for his neck pain and migraines as well. He attempted numerous treatments between October 2018 and September 2019, none of which helped significantly. (Jt. Ex. 8)

In April 2019, Mr. Schmidt was referred for a second neurological opinion from the University of Iowa Hospitals and Clinics Neurology Department primarily for his headaches and neck pain. (Jt. Ex. 9, p. 113) The result of this was referrals for a neuropsychological evaluation, as well as a mental health evaluation. Later in April 2019, he underwent neuropsychological examination with Joseph Barrash, Ph.D. This evaluation documented Mr. Schmidt's subjective symptoms at this time. (Jt. Ex. 10, pp. 117-121) Dr. Barrash opined that Mr. Schmidt's conditions were not attributable to "a brain injury" but rather non-neurologic facts such as severe headaches, neck pain, disrupted sleep, fatigue and severe emotional distress. (Jt. Ex. 10, p. 120) Dr. Barrash recommended treatment for depression, anxiety and physical concerns. He opined Mr. Schmidt was unable to work at the present time, however, he could eventually be eased back into work following treatment. (Jt. Ex. 10, p. 120)

In July 2019, Mr. Schmidt underwent psychiatric evaluation at the University of Iowa Hospitals and Clinics, by Susan Duffy, M.D. Dr. Duffy took history and performed a thorough evaluation. She ultimately diagnosed generalized anxiety disorder and chronic pain. She opined he did not suffer from major depression. (Jt. Ex. 11, pp. 128-129) She recommended medications, as well as psychotherapy treatment from a therapist who specializes in individuals with chronic pain. (Jt. Ex. 11, p. 129) As a result of this evaluation, Mr. Schmidt began treating with psychologist Valerie Keffala, Ph.D. He also began seeing Delwyn Miller, M.D., and Devin Keenan, PA-C, in the Department of Adult Psychiatry on July 29, 2019, to manage medications.

Dr. Keffala first examined Mr. Schmidt on July 12, 2019, and has continued to treat him through the date of hearing. (Jt. Ex. 12, pp. 131-247) Much of her treatment has focused on managing his chronic pain. Much of her focus was on education, meditation-type exercises and mindfulness. Throughout her treatment of Mr. Schmidt, Dr. Keffala has documented his ongoing symptoms. My interpretation of these notes is

that he has shown little progress in his symptoms since beginning his treatment. He has continued to suffer from essentially the same symptoms. He has developed strategies for dealing with his more severe symptoms when they arise. Dr. Keffala has never released him to any type of work.

At his psychiatric evaluation in July 2019, Dr. Miller utilized the diagnosis of generalized anxiety disorder and increased his duloxetine in an effort to help with his sleep and anxiety. (Jt. Ex. 13, p. 252) Mr. Schmidt continues to treat with Adult Psychiatry, his last examination prior to hearing being August 26, 2021. At that time the following is documented: "Continues to experience dizziness, lightheadedness. Significant headaches, chronic pains. Visual disturbance can accompany the symptoms. Periodic loss of memory as above." (Jt. Ex. 17, p. 288)

In addition, Mr. Schmidt had a functional capacity evaluation (FCE) in December 2019, at Rock Valley Physical Therapy. (Jt. Ex. 16) The therapist noted that he was generally cooperative and "he worked hard to process information." (Jt. Ex. 16, p. 275) He was positive in 2 of 4 "inappropriate performance indicators" and was inconsistent in 2 of 5 measures on the "consistency profile." (Jt. Ex. 16, p. 275) Mr. Schmidt completed the FCE and was technically placed in the light work category. (Jt. Ex. 16, p. 276) However, the following is also documented:

#### RETURN TO WORK

Does patient plan to return to work? Yes

Return to Work Status No

#### EVALUATOR COMMENTS

Ryan presented today with 2 walking sticks. His gait was slow and guarded. He appeared to be really trying to focus in order to answer questions. He expressed anxiety when being around people. He appeared to be forcing himself to relax by closing his eyes and working on his breathing. Ryan substantially perspired and exhibited a higher HR throughout testing. His lumbar and cervical ROM were moderately to severely limited. He was stronger with left grip strength vs right even though he is right handed. He was unable to complete the knuckle to shoulder lift and not able to complete any other lifts or push/pull due to cervical pain and LBP pain, dizziness and headaches. Based upon his inability to lift, higher HR, cervical LBP pain and headaches, balance issues and anxiety around people I do not feel he is safe to return to work.

(Jt. Ex. 16, p. 276)

Mr. Schmidt has also been examined by the Department of Neuro-Ophthalmology, Michael Wall, M.D., in June 2021. This was a follow up evaluation as he had apparently been seen five months earlier. (Jt. Ex. 18, p. 290) His earlier record is not in evidence. Mr. Schmidt testified that it took "a little over a year to get approval"

from the insurance company for this eye examination. (Tr., p. 38) The insurance carrier, however, did ultimately approve and pay for the treatment. It is noted that his December 14, 2020, appointment with Dr. Keffala, the following is documented. "He is looking forward to his upcoming appointment with neuro-ophthalmology, hoping they may be able to help identify why he continues to have headaches and significant dizziness, particularly related to moving objects in his line of vision, and offer a way to treat his concerns." (Jt. Ex. 12, p. 207) Following his first visit to Dr. Wall, which is not in evidence, he reported to Dr. Keffala that he was hopeful that this treatment was going to help. In fact, she quoted him as stating, "I am trying to psych myself up that this is going to work." (Jt. Ex. 12, p. 209) Mr. Schmidt testified that it took some time to get approval for the specialized glasses, even after the appointment had been approved.

In his June 2021 evaluation, Dr. Wall documented Mr. Schmidt's difficulties with vision. "Ryan is a 37 year old male with dizziness and diplopia since his head trauma. He has reduced NPA for age but normal near vision OS today, amblyopia OD. This reduced NPA is likely effort related. He seems to be alternating fixating rapidly which is giving him his symptoms." (Jt. Ex. 18, pp. 292-293) He was provided with special glasses described as fresnel OD, to use on a trial basis. In his follow-up appointment in August 2021. "He is happy with the double vision improving with the fresnel, but it is hard to tolerate the fresnel for long periods of time." (Jt. Ex. 18, p. 294) An adjustment was made at that time to allow Mr. Schmidt to intermittently use an eye patch instead of the fresnel. It appears he is supposed to return for evaluation following this adjustment, however, this had not occurred at the time of hearing. I find that this is significant as this appears to be the treatment that Mr. Schmidt has the most belief could work to significantly reduce his symptoms and allow him to return to work. At the time of hearing, Mr. Schmidt was under active, continuing medical treatment from Dr. Wall which may substantially decrease his overall disability if successful.

Phil Davis, MS, provided an expert report which assessed his vocational abilities in October 2021. Mr. Davis reviewed appropriate medical records and interviewed Mr. Schmidt and his spouse. He opined that Mr. Schmidt's prior work history involved work in the medium to heavy physical demand level, ultimately opining that "his current limitations both physically and mentally have now eliminated his ability to obtain full time gainful employment." (Jt. Ex. 19, p. 304)

On May 26, 2021, Sanjay Sundar, M.D., examined Mr. Schmidt for a defense IME. Dr. Sundar appears to be an orthopedist. Dr. Sundar stated in the report that he "reviewed roughly 2-1/2 cartons of copious clinical documents ... detailing Mr. Schmidt's medical care since the time of his work-related injury." (Def. Ex. A, p. 1) He examined Mr. Schmidt as well and took further history. (Def. Ex. A, pp. 2-4) He then answered a series of questions posed by defense counsel. He opined the following:

I do not attribute any of the patient's current medical conditions to his work related injury. Given his lack of any focal findings on imaging studies of the cervical spine or other neuro imaging, I do not feel that there is any diagnosis to be made related to his work-related injury. With regards to the patient's other medical conditions, including general anxiety,

agoraphobia, panic attacks, and depression, I would defer to his other treating providers. Once again, I do not feel that those medical issues are related to the patient's fall and presumed loss of consciousness on the date of injury.

(Def. Ex. A, p. 4) With regard to maximum medical improvement, he opined the following. "Given the lack of focal findings or objective evidence of an injury, I would place him at MMI 4 weeks after the injury occurred. This is primarily [sic] as he likely had myofascial spasm at that time which should typically resolve in this time frame." (Def. Ex. A, p. 4)

After receiving this orthopedic expert report, the defendants continued paying Mr. Schmidt his weekly benefits and authorizing medical treatment. I find this was a wise decision by defendants. I do not find Dr. Sundar's medical opinions to be persuasive, particularly as it relates to Mr. Schmidt's post-concussive syndrome and mental health issues. While Dr. Sundar's CV is not in evidence, it is apparent he is an orthopedist and not qualified to opine regarding claimant's post-concussive syndrome or severe anxiety. In fact, he confusingly deferred to Mr. Schmidt's authorized treating providers as it relates to these conditions. Claimant's authorized treating psychologist, Dr. Keffala has repeatedly related Mr. Schmidt's ongoing mental condition to the work injury. (Jt. Ex. 12, pp. 155, 157, 161, 163, 165, 171, 179, 181, 183, 185, 187, 191, 193, 200, 205, 208, 210, 213, 215, 220, 223, 226, 229, 232, 235, 239, 241, 244, 247)<sup>1</sup>

Defendants have repeatedly asked Dr. Keffala to return Mr. Schmidt to work. On each occasion, Dr. Keffala has declined. (Cl. Ex. 2, p. 4; Jt. Ex. 12, pp. 150, 199) Mr. Schmidt testified that he is still technically employed by the employer, however, he has never returned to work since the date of his injury.

Mr. Schmidt testified that his symptoms have continued since the date of injury through the time of hearing. The symptoms he described are severe. (Tr., pp. 40-43) He has dizziness, significant difficulties with sleep, memory loss, and severe headaches. These appear to be classic post-concussive symptoms. He no longer drives at all, although has made some progress sitting in the driver's seat of an automobile.

The defendants contend that Mr. Schmidt has reached MMI at some point following his work injury. The problem is that the only medical evidence presented is from Dr. Sundar, whose opinion is rejected. Dr. Sundar opined claimant reached MMI on or about January 30, 2018, four weeks after his work injury. On the other hand, claimant has not presented particularly compelling evidence that Mr. Schmidt is still actively healing or that significant improvement is expected in his condition. The defendants therefore focus heavily upon Mr. Schmidt's subjective impression of his own condition, pointing to his testimony that his condition has not changed much from the

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<sup>1</sup> Defendants did not even assert on the prehearing conference report that medical causation was an issue as it relates to temporary disability.

date of his injury forward in spite of significant treatment efforts. At hearing, the following exchange occurred on cross-examination:

Q. From - - you started treating with Dr. Keffala in 2019. Do you feel that you have gotten better?

A. I feel like I've gotten a lot more tools at my disposal to help manage through or work through pain and issues I have.

Q. But from overall health perspective, do you feel that your health has improved, stayed the same, or gotten worse from when you first started treating with Dr. Keffala?

A. Stayed the same, improved a little, yes.

(Tr., p. 50, lines 24-25; Tr. p. 51, lines 1-9)

When asked by the undersigned about his understanding of his prognosis from his treatment conversations with physicians, Mr. Schmidt testified to the following:

A. When I ask the question, I kind of feel like I get a blanket statement of everybody recovers differently, but then they throw out that there's you know, typically we see X, Y, Z but there's also times where it might be people take longer than normal from the X, Y, Z to get better.

(Tr., p. 56, lines 22-5; Tr. p. 57, lines 1-3)

While there is some truth to this perspective, it is also true that some of his treatment, in particular, the neuro-ophthalmology treatment from Dr. Wall did not even begin until 2021. Mr. Schmidt testified that this treatment did not begin until then because of authorization delays by the insurance carrier. Whether this is true or not, the fact is that this treatment appears to hold the most promise to significantly improve his condition such that he may be able to at least attempt to return to some type of work. His treating physicians, in particular, Dr. Keffala have asked for patience, pointing out that everyone responds to treatment for post-concussive mental disabilities differently.

### CONCLUSIONS OF LAW

The primary question submitted is whether Mr. Schmidt has reached maximum medical improvement at the time of hearing. This issue is academic and significant only from a procedural perspective. The parties have stipulated that Mr. Schmidt sustained an injury which arose out of and in the course of his employment and that this injury is a cause of temporary disability during a period of recovery. The primary question is whether the period of recovery has ended, and if so, when.



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

At the time of hearing, Mr. Schmidt had not returned to work and was not capable of substantially similar employment. The issue is whether he is at maximum medical improvement. In this case, defendants argue that claimant is at maximum medical improvement. In their brief defendants argue the following. "Given the claimant's specific testimony, the appropriate date for maximum medical improvement would be either January 30, 2018 [Dr. Sundar's MMI date], but not later than the first treatment with Dr. Keffala [July 12, 2019]". Up through the date of hearing, defendants continued to pay weekly benefits and the parties stipulated that 202 weeks of benefits had been paid. Claimant argues he is still in his healing period and benefits should continue as a running award because no medical provider has returned him to work.

The imposition of a rating of permanent impairment is equivalent to an opinion that further significant improvement from the injury is not expected. Absent a showing that further improvement was expected, healing period ends when a permanent rating is given. Brown v. Weitz Company, File No. 830840 (App. March 13, 1990); Miller v. Halletts Materials, File No. 861983 (App. November 23, 1992). The persistence of pain does not prevent a finding that the healing period is over, provided the underlying condition is stable. Pitzer v. Rowley Interstate, 507 N.W.2d 389 (Iowa 1993). Medical stability is viewed in terms of industrial disability; if it is unlikely that further treatment of pain will decrease the extent of permanent industrial disability, continued pain management will not prolong healing period. Id. at 392. Specifically, when a condition is stable medically further treatment "may extend the length of the healing period if a substantial change in industrial disability is also expected to result. Id. at 391. On the other hand, if the continued treatment is merely expected to assist with the symptoms rather than "decrease the extent of permanent disability" then the healing period should end. Id.

When an injury occurs in the course of employment, the employer is liable for all of the consequences that "naturally and proximately flow from the accident." Iowa Workers' Compensation Law and Practice, Lawyer and Higgs, section 4-4. The Supreme Court has stated the following. "If the employee suffers a compensable injury and thereafter suffers further disability which is the proximate result of the original injury, such further disability is compensable." Oldham v. Scofield & Welch, 222 Iowa 764, 767, 266 N.W. 480, 481 (1936). The Oldham Court opined that a claimant must present sufficient evidence that the disability was naturally and proximately related to the original work injury.

I find by a preponderance of evidence that the claimant has not reached maximum medical improvement. While it is possible that his condition has plateaued, it is noted that his medical providers have not provided an impairment rating. Based upon the record before me, it does not appear that the defendants have requested a rating from any of the treating physicians. In April 2019, his neuropsychologist suggested that following a period of treatment, he could possibly be eased back into work and provided guidance for doing so. (Jt. Ex. 10, p. 120) This has never been attempted. Shortly thereafter, Dr. Keffala began treating Mr. Schmidt. Dr. Keffala has repeatedly told the insurance carrier that Mr. Schmidt was unable to return to work, however, she has not suggested that he has plateaued. Rather, she has recommended patience. It is also true that Dr. Keffala's treatment records do not provide a great deal of hope that his condition will improve significantly, however, she has opined that everyone heals differently from this type of injury.

I find it is significant, however, that Mr. Schmidt only began treatment with a neuro-ophthalmologist in 2021. His last appointment with Dr. Wall was in August 2021, just a few months prior to hearing. Dr. Wall had recommended treatment modifications to adjust his use of prescription lenses in order to help control his diplopia and dizziness which would presumably alleviate some of his anxiety and other symptoms. These treatment efforts do not appear to be complete to make a finding of medical stability. Furthermore, while his treatment with Dr. Keffala has not placed him in a position to attempt to return to work yet, his treatment regimen is designed to eventually allow him to do this at some point. All of his continued treatment seems to be focused upon getting him to a position where he is able and capable of working or at least attempting to return to work. If this occurs, much better evidence will be available regarding his true loss of earning capacity. Therefore, I find the greater weight of the evidence supports a finding that Mr. Schmidt is still in a healing period.

Since the phrase maximum medical improvement is assessed in terms of an injured worker's industrial disability, the issue is whether there is likely to be a change of his condition which would prolong healing period. This is essentially the same issue which would be presented in any review-reopening case. Therefore, much of this debate is academic. If I had to assess Mr. Schmidt's permanent disability at the present time, without the benefit of seeing if any of his ongoing treatment is successful, I would find that he is permanently and totally disabled at the present time. He has never been released to attempt any type of work and given his current symptoms and limitations, such a prospect is unlikely, at least as of the time of hearing.

The final issue is penalty.

Claimant also seeks an award of penalty benefits pursuant to Iowa Code section 86.13. Iowa Code section 86.13(4) provides:

a. If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits

in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.

b. The workers' compensation commissioner shall award benefits under this subsection if the commissioner finds both of the following facts:

- (1) The employee has demonstrated a denial, delay in payment, or termination in benefits.
- (2) The employer has failed to prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.

c. In order to be considered a reasonable or probable cause or excuse under paragraph "b," an excuse shall satisfy all of the following criteria:

- (1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.
- (2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.
- (3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

Claimant contends that the defendants unreasonably delayed benefits from March 30, 2021, through May 3, 2021. Mr. Schmidt testified that he did not receive his regular weekly checks during this period of time. (Tr.,p. 36) He testified that defendants issued a check on April 26, 2021, for the period from March 30, 2021, through May 3, 2021. (Tr. pp. 36-37; See also Cl. Ex. 4) The employer's payment logs verify this. (Def. Ex. E, p. 30) Thus it is clear that four weeks of benefits were paid untimely. The defendants offered no evidence at hearing about these late payments. It appears to have been some type of mistake which was immediately corrected once observed. Nevertheless, a penalty is mandatory. I find a penalty of \$1,200.00 is appropriate to deter defendants from making such a mistake in the future.

ORDER

THEREFORE IT IS ORDERED:

This matter is bifurcated and only the issues addressed herein are final. At such point in the future when either party contends that claimant has reached maximum medical improvement or other justiciable issues arise, said party may request a bifurcated hearing by motion on permanency, or any other disputed issue, without filing a new petition.

All benefits shall be paid at the rate of eight hundred eighty-three and 46/100 dollars (\$883.46) per week.

Defendants shall pay the claimant healing period benefits from the date of injury through the date of hearing, and ongoing until such time as the claimant reaches maximum medical improvement.

Defendants shall pay accrued weekly benefits in a lump sum.


Defendants shall be given a credit for the weeks previously paid.

Defendants shall pay a penalty of one thousand, two hundred and 00/100 dollars (\$1,200.00).

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

Costs are taxed to defendants.

Signed and filed this 12<sup>th</sup> day of April, 2022.

  
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JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Randall Schueller (via WCES)

Robert Gainer (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.